

# CONVENOR OF MEDICAL PANELS

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## **CONVENOR'S DIRECTIONS** **AS TO THE ARRANGEMENT OF BUSINESS AND** **AS TO THE PROCEDURES OF MEDICAL PANELS** **(ACCIDENT COMPENSATION ACT 1985) 2012**

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(These Convenor's Directions replace the previous Convenor's Directions that were issued on 1 March 2008)

### **Introduction**

1. These are directions as to the arrangement of the business, and as to the procedures, of Medical Panels established under Division 3 of Part III of the *Accident Compensation Act 1985* ('the Act'). They are given under section 65(7) and section 65(9) of the Act.
2. Sub-sections (7), (8), (8A) & (9) of section 65 provide:-

#### **"65 Procedures and powers**

- (7) The Convenor may give directions as to the arrangement of the business of the Panels.
- (8) The Minister may for the purposes of –
  - (a) ensuring procedural fairness in the procedures of the Medical Panels; and
  - (b) facilitating the proper administration of the Medical Panels –  
issue guidelines as to the procedures of Medical Panels.
- (8A) The Minister must consult with the Attorney-General before issuing any guidelines under this section.
- (9) The Convenor may give directions as to the procedures of the Panels but may not give directions inconsistent with any guidelines issued by the Minister."

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3. At the date of these directions, no guidelines have been issued by the Minister under section 65(8).

**Purpose and objectives**

4. The purpose of these directions is to define the procedures to ensure Medical Panels provide opinions on medical questions that are of real assistance in the resolution of medical questions arising in relation to WorkCover claims.
5. To fulfil this purpose, these directions aim to facilitate:-
- (a) referrals on questions that are clear “medical questions” as defined in section 5(1) of the Act;
  - (b) opinions of Medical Panels that are responsive and pertinent as answers to the question/s referred; and
  - (c) a process by which opinions are produced in a manner that is efficient and transparently thorough and fair.

**Convenor and Convenor's office**

6. Sub-sections (2) & (3) of section 63 provide:-

**“63 Establishment and constitution**

- (2) For the purpose of constituting Panels, there is to be a list of members consisting of medical practitioners appointed by the Governor in Council.
- (3) From the list of members under sub-section (2) the Minister –
  - (a) must appoint a Convenor; and
  - (b) may appoint a Deputy Convenor.”

7. Sub-section (10) of section 63 of the Act provides:-

“(10) The [Victorian WorkCover] Authority must appoint such officers and employees as are necessary for the proper functioning of medical panels.”

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**Receipt of referrals**

8. The Convenor will examine each referral to ensure he is satisfied that the referral is validly made and is from a person or body exercising appropriate referral powers under the Act and the referral asks a statutory medical question appropriate to be determined by a Medical Panel. If any information in the referral is incomplete or unclear or contains a deficiency which may prevent the Panel in addressing the question/s, or, a question is unclear in its meaning or is not a statutory medical question appropriate to be determined by a Medical Panel, the Convenor will not convene a Panel to address the question, until he consults the person or body making the referral with a view to that person or body clarifying or amending the information and/or the question/s.
9. Once the Convenor is satisfied that the referral is validly made and asks a statutory medical question appropriate to be determined by a Medical Panel, and contains no deficiencies, the Convenor will endeavour to ensure that all parties concerned have been or will be provided with a copy of the referral and all supporting documents received from the referring person or body.

**Information and documents relating to the medical question**

10. Sub-sections (6A) & (6B) of section 65 provide:-

**“65 Procedures and powers**

- (6A) A person or body referring a medical question to a Medical Panel must submit a document to the Medical Panel specifying –
    - (a) the injury or alleged injury to, or in respect of, which the medical question relates;
    - (b) the facts or questions of fact relevant to the medical question which the person or body is satisfied have been agreed and those facts or questions that are in dispute.
  - (6B) A person or body referring a medical question to a Medical Panel must submit copies of all documents relating to the medical question in the possession of that person or body to the Medical Panel.”
11. If the document referred to in section 65(6A) is not received with the referral the Convenor will request the document from the referring party or body and will not convene a Medical Panel until the document is received.

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12. If a party advises the Convenor that he/she or it considers the person or body referring a medical question to a Medical Panel has not submitted copies of particular documents relating to the medical question which are in the referring party's or body's possession, the Convenor may, but is not obliged to do so, obtain copies of such documents, but will if the nominated Panel decides that the particular documents are necessary for the proper consideration of the medical question (See clause 34).

**Further information**

13. The Convenor may, before convening a Medical Panel in relation to a particular referral, seek such further information and/or advice that the Convenor considers necessary or desirable for the proper consideration of the medical question by the Panel.
14. The Convenor will advise all parties in writing of the further information and/or advice that he receives in relation to that particular referral.

**Insufficient information**

15. Sub-section (5A) of section 65 provides:-

“(5A) Notwithstanding sections 67(1A) and 68(1), if a Conciliation Officer refers a medical question to a Medical Panel under section 56(6) and it becomes apparent to the Convenor or the Medical Panel that the formation of an opinion by the Medical Panel on the medical question will depend substantially on the resolution of factual issues which are more appropriately determined by a court than by a Medical Panel-

- (a) the Convenor may decline to convene a Medical Panel; or
- (b) the Medical Panel may decline to give an opinion on the medical question.”

16. The Convenor may, on receipt of a referral or as requested by a Medical Panel, request further information from a Conciliation Officer to clarify factual issues in the referral but in the event that factual issues remain unresolved despite the further information, the Convenor will inform the Conciliation Officer of his decision to decline to convene a Medical Panel or the decision of a Medical Panel to decline to give an opinion on the medical question.<sup>1</sup>

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<sup>1</sup> Section 65(5B)

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**Convening a Medical Panel**

17. On receipt of a valid referral, the Convenor will convene a Medical Panel that he considers appropriate in specialty and number for the consideration of the nature of the medical issues raised by the referral and if there be more than one member, he will nominate one as a presiding member.
18. The Convenor will comply with the "Medical Panels Conflict of Interest Policy" and the "Procedures for Managing Conflict of Interest in the Appointment of Medical Panels" which include the following:
  - A procedure for ensuring that any proposed member of a particular Medical Panel or consultant has never treated or examined the claimant or been engaged to treat or examine the claimant (otherwise than in his or her capacity as a member of a Medical Panel or as a consultant to a Medical Panel).<sup>2</sup>
  - A requirement for a proposed member of a particular Medical Panel or consultant to make a "Statement of Interest" (which includes provision for a statement of no interest) in relation to the parties to a particular referral.
  - A procedure for the replacement of a panellist or consultant when a statement of an interest is made and for the appropriate notification of the parties.
  - A procedure for the replacement of a panellist or consultant if the Convenor or the Deputy Convenor agree there is a reasonably perceived conflict of interest or a reasonable apprehension of bias regarding a particular panellist or consultant, when a complaint of a perception of a conflict of interest or an apprehension of bias is received from a party to a particular referral and for the appropriate notification of the parties.
  - A provision for the parties to a referral to agree that a particular eligible panellist can be a member of a particular Medical Panel when he/she has a perceived or potential conflict of interest, because there is no other suitably qualified eligible panellist without a perceived or potential conflict of interest.
19. The Convenor will send to each proposed member of a particular Medical Panel a notice of appointment and a copy of the referral and all supporting documents, including any additional information obtained by the Convenor and, where appropriate, details of any preliminary advice obtained in relation to the referral.

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<sup>2</sup> Section 63(5)

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**Medical Panel procedures**

20. The Act provides –

- that a Medical Panel must act informally and may inform itself on any relevant matter in any manner it thinks fit;<sup>3</sup>
- that a Medical Panel may ask the worker to meet with the Panel in order to submit to an examination and/or medical examination/s to answer questions, and to supply copies of all relevant documents in the worker's possession;<sup>4</sup> and
- that a Medical Panel may, if the worker consents, request the provider of any "medical service" who has examined the worker to meet with the Panel to answer questions, and to supply relevant documents to the Panel.<sup>5</sup> However, the worker must be advised that he/she is not obliged to consent. ("medical service" is defined in the Act, and includes services by a medical practitioner, registered dentist, registered optometrist, registered physiotherapist, registered chiropractor, registered osteopath or registered podiatrist);<sup>6</sup> and
- that a Medical Panel must act as speedily as a proper consideration of the reference allows;<sup>7</sup> and that a Panel must form its opinion within 60 days of the referral, unless an extension of time is agreed by the referrer;<sup>8</sup> and
- that a Medical Panel must provide a written opinion within 7 days of forming its opinion and must also provide a written statement of reasons for that opinion.<sup>9</sup>

21. If a Medical Panel requests, but a referrer does not agree, to an extension of time for the Panel to form its opinion on a medical question, the Panel shall, as the circumstances allow, endeavour to form its opinion, but is not obliged to do so if it considers that to do so would hinder proper consideration of the medical question, and, the Panel will notify the parties accordingly.

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<sup>3</sup> Section 65(1)&(2)

<sup>4</sup> Section 65(5)

<sup>5</sup> Section 65(6)

<sup>6</sup> Section 5(1)

<sup>7</sup> Section 65(2)

<sup>8</sup> Section 68(1)

<sup>9</sup> Section 68(3)

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22. The presiding member of a nominated Medical Panel will facilitate consultation between the members with a view to establishing:-
- the number of examinations that are necessary, and which members of the Panel should be present;
  - whether or not the Panel needs any clarification, or further clarification, of the meaning of a medical question contained in the referral;
  - generally whether any further information, or advice, is needed; and
  - when, and by what means, the Panel will confer to form its opinion –
- and the presiding member should advise the Convenor of the outcome of this consultation.
23. The Convenor will, at the request of the Medical Panel, arrange such examinations as are considered appropriate by the Panel. The Convenor will also arrange for professional interpreter services when required or requested by the worker.
24. The Convenor will notify the worker of the examination appointments, and will ensure that the notification is accompanied by:-
- an information booklet relating to Medical Panels (which explains, amongst other things, the procedures of Medical Panels and the legal status of opinions);
  - a list of all relevant documents in the Panel's possession;
  - a request (except in relation to a referral received from a Court) that the worker supply to the Convenor, for distribution to the Medical Panel, copies of any additional documents in the worker's possession (including documents in the possession of the worker's legal representative) that relate to the medical question/s referred;
  - a request that the worker make available at the Medical Panel's examination any imaging and other investigation results in his/her possession and details of medications; and
  - advice as to the possible implications of a failure to attend a Medical Panel appointment or a failure to supply documents or answer questions.
25. The Convenor will advise the referring party and the other parties of the examination appointments and send confirmation of all appointments to each member of the Medical Panel.

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26. The Act provides that a worker's attendance for examination must be in private, unless the Medical Panel considers that it is necessary for another person to be present.<sup>10</sup> If a worker is a minor or a person under a disability, the Panel must permit a representative of the worker to be present.<sup>11</sup> In an examination (other than a psychiatric examination), a Panel may allow a family member or friend to attend during an examination to support or assist the worker to undress/dress, but any such person will not be allowed to speak on the worker's behalf or act as an interpreter. The Panel can require that person to leave the examination if the Panel considers he/she is intruding into the examination.
27. If a surveillance videotape or DVD has been provided, the Medical Panel will view the videotape or DVD in the presence of the worker and seek comments of the worker in relation to the content. If the worker has previously seen the videotape or DVD, then the Panel may note the worker's comment and it is not required to view the videotape or DVD in the presence of the worker unless it considers clarification is required. The Panel may request the Convenor to arrange for a worker to view a videotape or DVD prior to the examination.
28. Where a member of a Medical Panel examining a worker is or becomes aware of any information, circumstance or consideration that is contrary to anything the worker says to the member, the member should inform the worker of the matter and invite the worker to make any desired comment on it within a specified time, and, subject to statutory time-limits, the Panel's opinion should not be concluded until such comment has been received or the specified time has expired, as the case may be. The worker's comment should be taken into consideration by the member and the Panel.
29. Each member of the Medical Panel should make and retain such notes of the history taken from the worker, of the findings on clinical examination and of any test results obtained that he or she, in consultation with any other Panel member/s, considers desirable for the purpose of addressing the medical question.
30. If the Medical Panel considers a worksite inspection is necessary, it will only be undertaken with the consent of the employer. The Panel will invite the worker to attend. The Panel may proceed with the inspection whether or not the worker attends.
31. During a worksite inspection, the Medical Panel should not converse with any person other than the worker, save and except for matters relevant to the inspection, and should only converse with other persons in the presence of the worker, if he/she is present at the worksite inspection. Where the worker does not attend the inspection or declines to be present for any relevant conversation

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<sup>10</sup> Section 65(4)

<sup>11</sup> Section 65(4A)



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and where any statement or information adverse to the worker's position relevant to the medical question/s is made or provided to the Panel in the course of the worksite inspection, the Panel should communicate the statement or information to the worker and the worker should be invited to make any desired comment on it within a specified time and, subject to statutory time-limits, the Panel's opinion should not be concluded until such comment has been received or the specified time has expired, as the case may be.

32. A party to the referral wishing to provide a written submission and/or further document/s to the Medical Panel after receipt of the initial referral must also provide a copy of such written submission and/or further document/s to the other party/s. The Convenor and/or the Medical Panel will record receipt of those documents and provide copies to the other parties, except in the case of a referral from a Court, where the Panel may, if it considers appropriate, request prior approval from the Court to record or view any submission and/or documents. If a videotape or DVD is submitted after receipt of the initial referral it will be managed in accordance with the procedure set out in clause 27, except in the case of a referral from a Court, where the Panel may, if it considers appropriate, request prior approval from the Court to view or record the videotape or DVD.
33. If any additional written submission is received from a party to the referral after receipt of the initial referral, the Convenor will forward, or a Medical Panel will request the Convenor to forward, a copy to the other parties requesting any comment or submission in response be provided to the Panel within 14 days.
34. If a worker advises the Medical Panel that he/she considers the person or body referring the medical question to the Panel (except in the case of a referral from a Court) has not submitted copies of particular documents relating to the medical question which are in the referring party's or body's possession, the Panel must decide whether such documents are necessary for its deliberations. If so, the Panel will request the Convenor obtain copies of such documents from the referring party or body within a specified time frame. The Panel will not issue its Certificate of Opinion until after the copies of the documents are received or notification is received that the documents do not exist and the time limit specified in section 68(1) is suspended from the date of the Panel's request.<sup>12</sup>
35. The Medical Panel may, where necessary, obtain advice from a suitably qualified and experienced person who is engaged as a consultant – (for example: from a medical practitioner, an allied health professional, a psychologist or a provider of occupational rehabilitation services).<sup>13</sup>
36. If the Medical Panel considers a consultant should examine the worker, then the Panel should arrange for the consultant to examine the worker with a Panel member, where possible.

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<sup>12</sup> Section 65(5C)

<sup>13</sup> Section 65(1)

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37. Advice received from a consultant will be considered by the Medical Panel, in reaching its opinion and noted in the Reasons for Opinion.
38. If, during the course of its examination/s, the Medical Panel requires further information because it becomes aware of a matter which has not been canvassed in the referral documents or submissions and the matter is integral to the Panel's deliberations, the Panel will inform the worker of this fact and request the Convenor to write to the parties, including the referring party or body, informing them of the matter and request them to respond within a specified time limit. The Panel's opinion should not be concluded until all responses have been received or the time limit has expired. The time limit specified in section 68(1) is suspended from the date of the Panel's request.<sup>14</sup>
39. The Medical Panel may, prior to forming its opinion on a medical question referred to it, request the parties to submit any material for the Panel's consideration on any issue relevant to the referral within a period of 14 days after the request is sent. The Panel may, but is not be obliged to do so when forming its opinion, consider any submitted material received by it outside the period of 14 days after the request is sent.
40. Where a worker unreasonably does not attend an examination by the Medical Panel or a medical examination by a member/s of the Panel, or hinders an examination or refuses to answer questions, the presiding member will notify the Convenor. The Convenor may write to the worker seeking an explanation of his/her actions and give him/her the opportunity to rectify his/her failure to attend and/or answer questions or of his/her hindrance to the Panel's examination.<sup>15</sup> If the worker continues to unreasonably fail to attend and/or answer questions and/or hinder the Panel's examination, the Panel will issue a Certificate of Opinion that it is unable to give an opinion in answer to the medical questions.

**Certificate of Opinion and Reasons for Opinion**

41. Where there is more than one member of the Medical Panel, the members should confer or consult with each other to form the Panel's opinion on each medical question contained in the referral. The presiding member should coordinate the process of conferring or consulting. If there is a disagreement between the members of the Panel on the answer to a medical question, the Panel shall decide how it resolves the deadlock.
42. In reaching its opinion, the Medical Panel may seek any advice as it deems fit from the advisers or legal advisers appointed by the Convenor for its assistance.

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<sup>14</sup> Section 65(5C)

<sup>15</sup> Section 67(4)

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43. After the Medical Panel has formed its opinion on each medical question, the presiding member should prepare, and circulate to any other Panel members, a draft certificate of opinion and draft written reasons, in the form similar to that set out in **SCHEDULE 1** and **SCHEDULE 2** respectively, for settling. Once so settled by the Panel, the Certificate of Opinion and Reasons for Opinion are to be forwarded to the Convenor for sending to the referrer.
44. All documents which form part of the referral are to be provided in a schedule of attachments in the form entitled 'Enclosure A', set out in **SCHEDULE 3**, which must specify the precise details of the title, nature, date and number of pages of each document and forms part of the Reasons for Opinion. The presiding member must confirm that the Medical Panel took the information in the documents into consideration in forming the opinion and 'Enclosure A' must be forwarded to the Convenor for sending to the referrer.
45. All relevant documents obtained or received by the Medical Panel additional to those provided to the Panel with the referral are to be listed in a schedule of attachments in the form entitled 'Enclosure B', set out in **SCHEDULE 4**, and forms part of the Reasons for Opinion. The presiding member must confirm that the Panel took the information in the documents into consideration in forming the opinion and 'Enclosure B' must be forwarded to the Convenor for sending to the referrer.
46. The Convenor will ensure that the Certificate of Opinion and the Reasons for Opinion are in the appropriate form and that the medical questions have been answered. In performance of this task, the Convenor will commonly seek advice from the advisers or legal advisers he has appointed for the Medical Panel's assistance.
47. If the Convenor believes there is any deficiency in relation to the form of the answers to the medical questions on the face of the Certificate of Opinion or the Reasons for Opinion are not clear then he will communicate his concerns to the presiding member of the Medical Panel.
48. On receiving details of the concerns of the Convenor, the presiding member will communicate with the other Medical Panel members with a view to deciding whether or not to take any further action in relation to the opinion and the reasons, and to redrafting Certificate of Opinion and/or Reasons for Opinion.
49. After the Medical Panel resolves the concerns over the form of the Certificate of Opinion and/or the clarity of the Reasons for Opinion, the presiding member will forward the final signed documents to the Convenor.

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50. On receiving the final signed Certificate of Opinion and final signed Reasons for Opinion from a Medical Panel, the Convenor will forward the Certificate of Opinion and Reasons for Opinion to the referrer. Where the referral was received from a Court, the Convenor will forward only the Certificate of Opinion to the Court and will forward the Certificate of Opinion and Reasons for Opinion to the respective parties. Where the referral was received from the Victorian WorkCover Authority (WorkSafe Victoria), a WorkSafe Agent or a Self-Insurer, a copy of the Certificate of Opinion and Reasons for Opinion will also be forwarded to the worker.

**DR PETER LOWTHIAN**  
MBBS(Hons), FRACP, FRCP, FAFRM, FRACMA



**CONVENOR OF MEDICAL PANELS**

**DR JOHN MALIOS**  
MBBS, FRACGP, MACLM



**DEPUTY CONVENOR OF MEDICAL PANELS**

**Date: 8 June 2012**

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**SCHEDULE 1**

**CERTIFICATE OF OPINION**

**Re: [Worker's Name]**

**Medical Panel Ref. No: M /**

The Medical Panel formed its opinion in response to a referral from Judge/ Magistrate/ Conciliation Officer/ WorkSafe Agent / WorkSafe Victoria)/ Self-Insurer on [date], pursuant to s.45(1)(b) (Court), s.56(6) (Conciliation Officer), s.104B(9) (WorkSafe Victoria / WorkSafe Agent /Self-Insurer), s.93CD(4)(b) (WorkSafe Victoria / WorkSafe Agent / Self-Insurer) of the *Accident Compensation Act 1985*.

The Panel comprised the following members:

**Dr One**  
**Dr Two**  
**Dr Three**

[The Panel consulted with **Dr**..... (specialty) prior to forming its opinion.]

As Presiding Member of this Panel, I have discussed the answers herein with the other Panel Member(s) and this is the opinion of the Panel on the medical questions set out below.

**1. Text of question one?**

Answer to question one.

**2. Text of question two?**

Answer to question two.

**3. ...**

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**Dr. One (Presiding Member)**  
**For and on behalf of the Medical Panel**

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**Date:**

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**SCHEDULE 2**

**REASONS FOR OPINION**

**Re: [worker's name]**

**Medical Panel Ref. No: M /**

1. The referral to the Medical Panel was received on [date]. The documents considered by the Panel are described in Enclosure A [and B].
2. The worker was examined by the Panel members [and Consultant/s] on the following date(s):

<b>Member:</b>	<b>Specialty:</b>	<b>Examination:</b>
date month year	Dr. One	Specialty      One
Dr. Two	Specialty Two	date month year
Dr. Three	Specialty Three	date month year
<b>Consultant:</b>	<b>Specialty:</b>	<b>Examination:</b>
Dr/Mr/Ms	Specialty	date month year

3. The Panel formed its opinion by reference to –
  - (a) the documents and information referred to in Enclosure A [and B]; and
  - (b) the history provided by the worker and the examination findings elicited by the Panel at the abovementioned examination(s) of the worker.

[(c) the guidance provided by the Consultant(s)]

4. The reasons for the Panel's opinion are as follows:

(Reasons should be written succinctly and in plain language. They should clearly reveal the Panel's reasoning. They should include the core clinical and other findings. In the case of a multi-member Panel, the reasons (including the core clinical and other findings) should be those of the Panel as a whole arising from the consultative process.)

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**Dr. One (Presiding Member)**  
**For and on behalf of the Medical Panel**

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**SCHEDULE 3**

**Enclosure A**

[Worker's name]

Medical Panel Ref: M /

**SCHEDULE OF ATTACHMENTS**

	<b>DOCUMENT:</b>	<b>DATE:</b>	<b>PAGES:</b>
1.	Referral and Medical Questions		
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			

I refer to the Medical Panel convened in this matter of which I am the presiding member and acknowledge receipt of the medical and other material listed in this schedule and confirm that the Panel took this information into consideration in forming the opinion.

\_\_\_\_\_  
**Dr. One (Presiding Member)**  
**For and on behalf of the Medical Panel**

\_\_\_\_\_  
**Date:**

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**SCHEDULE 4**

**Enclosure B**

[Worker's name]

Medical Panel Ref: M /

**SCHEDULE OF ATTACHMENTS**

<b>DOCUMENT:</b>	<b>DATE:</b>	<b>PAGES:</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		

I refer to the Medical Panel convened in this matter of which I am the presiding member and acknowledge receipt of the medical and other material listed in this schedule and confirm that the Panel took this information into consideration in forming the opinion.

\_\_\_\_\_  
**Dr. One (Presiding Member)**  
**For and on behalf of the Medical Panel**

\_\_\_\_\_  
**Date:**