

Guideline Arranging medico-legal assessments



MOTOR ACCIDENT INSURANCE COMMISSION

How to use this guideline

This guideline should be read by insurers and legal practitioners when arranging medico-legal assessments of injured persons with Compulsory Third Party (CTP) insurance claims in Queensland.

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1. Purpose

The purpose of this guideline is to provide a best practice model for arranging medico-legal assessments of injured persons with CTP insurance claims. It is intended to assist insurers and legal representatives arrange consistent, timely and appropriate medico-legal assessments that have minimal impact upon a claimant's recovery and do not cause unnecessary delay, inconvenience or expense.

This guideline should be read in conjunction with the appropriate governing legislation including the *Motor Accident Insurance Act 1994*, the *Motor Accident Insurance Regulation 2004*, the *Civil Liability Act 2003*, the *Civil Liability Regulation 2003* and the *Uniform Civil Procedure Rules 1999*.

This guideline reinforces the application of legislation by encouraging the use of joint medico-legal assessments, where both parties agree for one expert in the relevant field to provide a medico-legal opinion. Joint medico-legal assessments have potential benefits including minimising inconvenience to claimants associated with attending multiple assessments, reducing unnecessary expense and facilitating the faster resolution of claims.

Developed through consultation with the Insurance Council of Australia, the Queensland Law Society, the Australian Lawyers Alliance, Queensland CTP insurers and medical and allied health professionals, this guideline aims to address concerns regarding the quality, impact and process of arranging medico-legal assessments.

While compliance with this guideline is voluntary it is hoped all parties will adopt it as a "best practice" approach when organising medico-legal assessments of claimants.

2. Application

This guideline applies to all medico-legal assessments associated with Compulsory Third Party (CTP) insurance claims which fall within the scope of the *Motor Accident Insurance Act 1994*, and is effective May 2007.

For medico-legal assessments arranged prior to May 2007, only the relevant sections of the guideline apply. For example, where a medico-legal assessment has been arranged but the letter of instruction has not yet been sent to the medical expert prior to the release of this guideline, only the sections titled “Information to be provided to a medico-legal expert”, “Requirements for the medico-legal report” and “Obligations upon receipt of a medico-legal report” need apply. As a transitional provision it is not intended that arrangements previously made need to be revisited.

This guideline has no application to reports by treating practitioners.

3. Definitions

In this guideline:

“AMA5” means the fifth edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association.

“clinical experience” should reflect currency in relation to continuing professional development requirements as defined by the guidelines of the expert’s respective professional body.

“days” means calendar days.

“PIRS” means the *Psychiatric Impairment Rating Scale*.

“medico-legal assessment” means an examination or assessment carried out by a medico-legal expert for the purpose of preparing a medico-legal report.

“medico-legal expert” means a person who would, if called as a witness at the trial of a proceeding, be qualified to give opinion evidence as an expert medico-legal witness in relation to a medico-legal issue arising in the proceeding, and who is independent of the treatment process.

“medico-legal report” means a document giving a medico-legal expert’s opinion on an issue arising in the proceeding.

“parties” means the claimant or their legal representative, and the insurer or their legal representative.

“treating practitioner” means a doctor or another person who has provided or is providing treatment or advice in relation to an injured person.

“treating practitioner’s report” means a report by a treating practitioner if the evidence is limited to one or more of the following matters in relation to the injured person:

- the results of any assessment made;
- a description of the treatment or advice;
- the reason the treatment or advice was, or is being, given;
- the results of giving the treatment or advice.

4. When to arrange a medico-legal assessment

A medico-legal assessment should not be arranged until:

- all available and appropriate treating practitioners' reports have been obtained; and
- injuries appear to have stabilised and are likely to have reached maximum medical improvement.

However, a medico-legal assessment can be arranged at any time for the purpose of determining whether or not a request or requirement for rehabilitation is reasonable and appropriate.

5. Nominating/selecting a medico-legal expert

When nominating/selecting a medico-legal expert, care should be taken to:

- select a medico-legal expert who is appropriately qualified and experienced to provide clarity on the relevant issues e.g. the most appropriate expert may be one who has further specialised, such as a paediatric neurologist or an orthopaedic hand specialist, depending on the injuries;
- consider availability of appointments and capacity to complete the report within the required timeframe;
- arrange a medico-legal assessment in a location agreeable to both the claimant and the insurer;
- clarify the claimant's need for assistance with arranging or funding their reasonable cost of travel associated with the assessment; and
- create minimal disruption to the claimant's rehabilitation e.g. prior to arranging neuropsychological medico-legal assessments, consultation should occur with the treating neuropsychologist to determine appropriate timing of the assessment and sharing of test results.

The medico-legal expert nominated/selected needs to have:

- the appropriate qualifications and training in order to apply the principles of AMA5 or PIRS when assessing level of impairment;
- peer acceptance, be of good standing with the relevant health practitioner registration board and give opinions that stay within their own area of expertise; and
- current and ongoing clinical experience.

6. Joint medico-legal assessment

Where possible, both parties should consider a joint medico-legal assessment. When one party requests a joint assessment and nominates a particular medico-legal expert, the other party is to respond to that request within 14 days, and either:

- agree to the proposed medico-legal expert nominated; or
- nominate an alternative(s) expert; or
- advise why they are not agreeable to a joint medico-legal assessment.

When arranging a joint medico-legal assessment, both parties are to agree to the material to be provided to the expert and the joint letter of instruction. If agreement cannot be reached regarding a joint medico-legal assessment for any reason, both parties may proceed to organise their own assessments. If the joint report is agreed to, the cost (including the claimant's reasonable travel expense) is to be borne by the parties as agreed or shared equally.

7. Arranging a medico-legal assessment

When arranging a medico-legal assessment a party must notify any other party, within seven (7) days of arranging the medico-legal assessment, of:

- the date of the medico-legal assessment;
- the name of the medico-legal expert; and
- the purpose of the medico-legal assessment.

Where the claimant requires assistance with arranging or funding their reasonable cost of travel, the arranging party should advise of any travel arrangements which have been or will be made, and/or what expenses will be funded.

If requested, the arranging party should provide any other party with a copy of the letter of instruction to the medico-legal expert. Upon receipt of a copy of the letter of instruction, any other party should:

- make a preliminary determination as to whether they require their own medico-legal assessment; and
- if they would like to provide a comment on the letter of instruction, do so within 14 days; and
- where practical, ensure they are in a position to proceed expeditiously with their own medico-legal assessment after receipt of the other party's medico-legal report.

The arranging party should ensure the expert and the party(s) involved agree upon the fees the expert charges, and the timeframe for completion of the report.

8. Information to be provided to a medico-legal expert

The letter of instruction to the medico-legal expert should clearly define:

- the purpose of the assessment and report by outlining requirements of the medico-legal expert and providing guidance by detailing specific and appropriate questions;
- the timeframe within which the medico-legal report is required;
- the arrangements for payment;
- whether an interpreter is required and confirmation of any arrangements which have been made or agreed to in this regard; and
- include a separate list detailing the supporting documentation provided (e.g. a schedule of attached reports to be signed by the medico-legal expert).

The medico-legal expert is to be provided with clear and legible copies of the following:

- police report;
- accident report forms, e.g. Report of Traffic Incident to Police;
- CTP medical certificate;
- section 37 notice;
- additional information form (if one was completed);
- ambulance notes;
- hospital notes;
- any treating practitioners' notes and/or reports;
- any other medico-legal reports already in existence; and
- any additional material the party arranging the medico-legal assessment considers appropriate.

The letter of instruction and associated material should be provided to the medico-legal expert at least 14 days prior to the date of assessment.

The claimant should be advised to take any existing diagnostic records, such as x-ray films, to the appointment.

9. Requirements for the medico-legal report

A medico-legal report must be addressed to the court and signed by the expert. The party requesting the report must specify to the expert that the report must include the following:

- the expert's qualifications and experience;
- the expert's relationship to the claimant (e.g. prior association, treatment or assessment);
- all material facts, whether written or oral, on which the report is based;
- references to any literature or other material relied on by the expert to prepare the report;
- for any assessment conducted, initiated, or relied on by the expert to prepare the report:
 - a description of what was done;
 - whether the assessment was done by the expert or under the expert's supervision;
 - the name and qualifications of any other person involved; and
 - the clinical findings.
- if there is a range of opinions on matters contained within the report, a summary of the range of opinions and the reasons why the expert adopted a particular opinion;
- a summary of the conclusions reached by the expert and whether conclusions drawn are based on scientific evidence, clinical experience or accepted practice (may include references);
- a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion; and
- a statement of how the expert calculated any impairment percentage.

If any impairment percentage is based on criteria provided under AMA5, the report must contain the provisions of AMA5 setting out the criteria. If a range of percentages is available under AMA5 for an injury of the type being assessed, the report must contain the reason for assessing the injury at the selected point in the range.

Alternatively, if any percentage is based on PIRS, the medico-legal expert must follow Schedule 5 and 6 of the *Civil Liability Regulation 2003* (CLR) in assessing a PIRS rating and provide a PIRS report as specified in S12, Schedule 5 of the CLR.

The expert must confirm at the end of the report:

- the factual matters stated in the report are, as far as the expert knows, true;
- the expert has made all enquiries considered appropriate;
- the opinions stated in the report are genuinely held by the expert;
- the report contains reference to all matters the expert considers significant; and
- the expert understands their duty to the court and has complied with the duty.

10. Obligations upon receipt of a medico-legal report

The party in receipt of the medico-legal report must within one (1) month:

- provide any other party with a copy of the report; or
- where a report is identified as containing sensitive material, which, if provided to the claimant could be detrimental to their well-being, have regard to precautions recommended by the medico-legal expert in terms of how the content of the report is conveyed to the claimant; and
- advise the other party of any factual errors identified within the report.

As expeditiously as possible, the party in receipt of the medico-legal report should consider whether any further medico-legal assessments will be arranged as a consequence of the medico-legal report, and inform any other party accordingly.



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