



Workers Compensation Commission

e-Bulletin No. 101

April 2020

President's Welcome

Welcome to e-Bulletin No. 101 of the Workers Compensation Commission.

In formulating this e-Bulletin, I have had regard to the Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 the object of which is to deal with the public health risk of COVID-19 and its possible consequences.

This bulletin outlines:

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The Commission's operations

Since 24 March 2020 and the suspension of in-person hearings, the Workers Compensation Commission has continued its important role of facilitating settlement of disputes between parties, and hearing and determining entitlements to benefits. It is the Commission's intention to continue hearing cases by telephone and using its online portal throughout the COVID-19 crisis, no matter how long it lasts.

I again stress to lawyers the importance of thorough preparation for telephone con/arbs and mediations including:

- Early notification to the Commission of the names and contact numbers of those attending on behalf of a party;
- Insurers attending the telephone event;
- Properly instructing counsel;

- Consulting with clients and holding client conferences well in advance of the listing event; and
- Parties discussing the case with each other prior to the telephone event to narrow issues and to give the best opportunity to resolve the dispute.

Case management and resolution of medical disputes

In e-Bulletin No 99, issued on 24 March 2020, I announced the suspension of in-person medical examinations by Approved Medical Specialists (AMSs) due to concerns for the safety and wellbeing of workers, doctors and their staffs. Since that time, Commission staff have been consulting with stakeholders with a view to resolving medical disputes, including recommencing AMS examinations under some changed conditions.

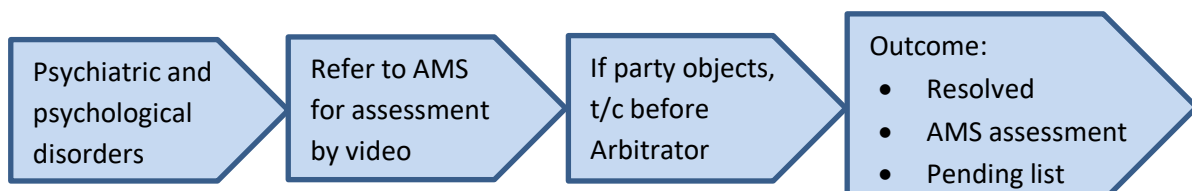
Bear in mind the COVID-19 situation is rapidly changing and we are following the advice and directions of the National Cabinet, Chief Medical Officer and Ministerial directions, as released from time to time. The Commission will vary any arrangements made if any new advice requires a further change in process.

Commission staff have undertaken a detailed review of every medical assessment matter we have suspended. We are confident that the approach outlined in this e-Bulletin will enable many of these assessments to be finalised.

Set out below are various strategies for dealing with medical disputes. This approach is designed to explore the early resolution of the dispute and AMS assessment by a modality which does not require an in-person examination. Some assessments simply may not be capable of being accommodated by another means during the current public health crisis. If an alternative to an in-person assessment cannot be accommodated, the dispute will be placed in a 'medical assessment pending list', with a view to prioritising these matters for assessment when the restrictions due to the pandemic ends. A medical dispute will only proceed to an in-person assessment in exceptional circumstances and under strict controls.

Procedure for resolving medical disputes involving psychiatric and psychological disorders

Consultation by video is an option open to AMSs and is suited to psychiatric assessments in circumstances where an in-person assessment is unable to be conducted.



If a medical dispute is in relation to a psychiatric and psychological disorder, the matter will be listed for assessment by an AMS psychiatric specialist in the usual way. The parties will be notified of the assessment and that it will be conducted by video. The worker's legal representative must ensure their client is able to participate by video, including that they have access to and the ability to operate necessary equipment. Modern mobile phones (smartphones) with high resolution cameras are adequate and easily accessible. These are preferable to laptops and desktop computers as the picture quality is generally superior.

If, on review of the file, the AMS is of the opinion that the medical dispute is not suitable for assessment by video, the AMS will remit the matter to the Registrar for the matter to be held in the 'medical assessment pending list'.

If either party opposes assessment by video, the matter will be listed for teleconference before an Arbitrator. The Arbitrator may:

- Attempt to resolve the opposition to video assessment and refer the matter to an AMS for assessment by video;
- Attempt to bring the parties to an acceptable resolution of the medical dispute; or
- Remit the matter to the Registrar to be held in the 'medical assessment pending list'.

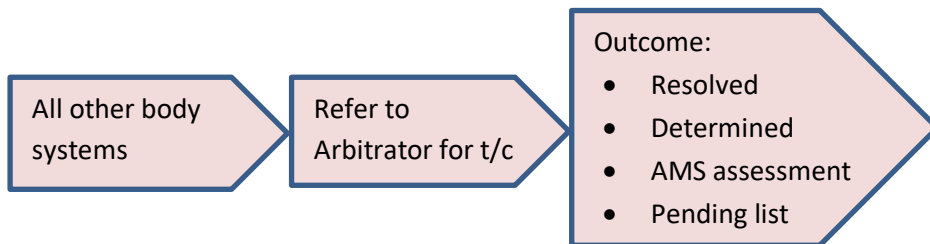
The parties may, by consent, apply to restore a matter from the 'medical assessment pending list' at any time, for either AMS assessment or Arbitrator teleconference.

The worker must undertake the following measures in preparation for a video consultation:

- The worker should be in a quiet room, where the door can be closed. This will ensure that no children, pets or others will interrupt the assessment.
- Before commencing the assessment, the worker must inform other persons in the premises that they must not interrupt the consultation or enter the room for any other purpose unless it is an emergency.
- The room lighting must be adequate, and the light source should face the worker.
- The mobile phone (or laptop or desktop computer) should be placed on a stable surface and not held. Movement requires more bandwidth and reduces both video and audio quality.
- The device should be plugged into an AC adapter (power point). Battery operation should be avoided as videoconferencing equipment can quickly deplete batteries. This is particularly relevant in psychiatric interviews, which can extend over 1.5 – 2 hours.
- Where possible, the worker should practise videoconferencing with another person beforehand to familiarise themselves with the process.
- The worker should be dressed as if he or she was going to see the doctor in person. It is not acceptable to wear pyjamas or unsuitable attire.

- The worker should ensure the camera and microphone are switched on and working prior to the video consultation.

Procedure for resolving medical disputes involving other body systems

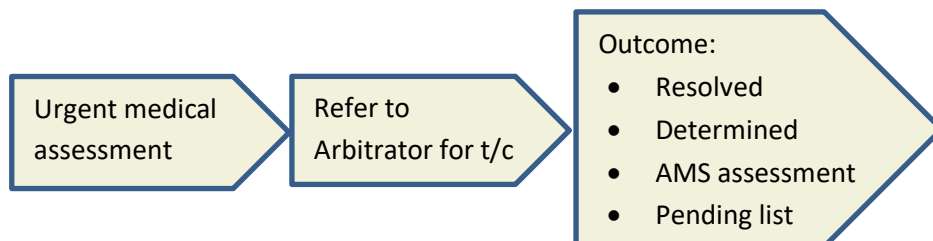


Medical disputes for all other body systems will be initially listed for teleconference before an Arbitrator. The Arbitrator may:

- Attempt to bring the parties to an acceptable resolution of the medical dispute;
- Determine the medical dispute, where appropriate;
- Attempt to narrow the evidence and issues between the parties and refer the dispute to an AMS for assessment by video; or
- Remit the matter to the Registrar to be held in the ‘medical assessment pending list’.

The parties may, by consent, apply to restore a matter from the ‘medical assessment pending list’ at any time, for either AMS assessment or Arbitrator teleconference.

Medical disputes requiring urgent in-person medical assessments



If the legal representative identifies the case as being urgent and requiring an in-person medical assessment, the dispute will be fast-tracked to an Arbitrator for teleconference. The Arbitrator may:

- Attempt to bring the parties to an acceptable resolution of the medical dispute;
- Determine the medical dispute, where appropriate;
- Attempt to narrow the evidence and issues between the parties and refer the dispute to an AMS for assessment by either video or in-person assessment; or
- Remit the matter to the Registrar to be held in the ‘medical assessment pending list’.

If the Arbitrator determines that an in-person assessment is required and the matter is urgent, the following procedure will apply to the assessment:

- The assessment will only be conducted if it can take place near the worker's place of residence.
- The day before the physical assessment, the AMS will conduct a video consultation with the worker to take a history and address any relevant issues.
- Attendance at the in-person assessment by private vehicle or by hire car or other similar transport is strongly encouraged. If travel is by hire car or similar, the Commission will ensure the vehicle is properly cleansed before use and the cost of the transport will be met. Where at all possible, the worker should attend an in-person appointment alone.
- The AMS will conduct the in-person assessment in the shortest time possible and will take all necessary precautions to minimise the risk of infection to the worker, staff and themselves.
- Given that gatherings are currently restricted to two people, interpreters will be required to attend by telephone.

Medical disputes assessed 'on the papers'

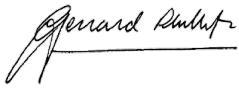
The requirement for the worker to submit to an examination by an AMS not mandatory (see section 324(1)(c) of the *Workplace Injury Management and Workers Compensation Act 1998*). The majority of medical disputes lodged with the Commission will require examination by an AMS, either in-person or by video. Only in rare cases, for example, where a worker has passed away, would an AMS make the assessment based solely on medical and other evidence provided by the parties.

Comment

I understand that this approach will not see that every matter is dealt with in the timely and efficient way that these claims usually enjoy. Some matters will be able to be completed while others due to their nature or complexity must wait. Uppermost in my mind is the ongoing need to keep workers, AMSs and staff safe from possible COVID-19 infection. The advice from the National Cabinet on 29 March 2020 was for Australians to stay in their homes unless it is absolutely necessary to go out. Certain groups – those over the age of 70, people over 60 with health problems, or Indigenous people over the age of 50 - are advised to stay home wherever possible. In-person assessments will therefore not be recommended for those groups.

In formulating these intended approaches to AMS examinations, the Commission will continue to be guided by National Cabinet advice and Ministerial directions.

This is a time where each of us is being called upon to be creative and to adapt to the extraordinary circumstances we all face. With patience and goodwill, we can adapt our usual way of doing business to keep in operation the processes that deliver justice.

A handwritten signature in black ink, appearing to read "Gerard Phillips", written over a horizontal line.

Judge Gerard Phillips
President