

Motor Accident Guidelines: Part 8 – Authorised Health Practitioners

**Effective from
1 December 2019**

General introduction to the Motor Accident Guidelines

Publication note

These Guidelines are published by the State Insurance Regulatory Authority (the Authority).

The Authority is part of the NSW Department of Customer Service, the Authority is constituted under the *State Insurance and Care Governance Act 2015* and is responsible for regulating workers compensation insurance, motor accidents compulsory third party (CTP) insurance and home building compensation insurance in NSW.

These Guidelines are titled 'Part 8 – Authorised Health Practitioners' and the clause numbers are prefixed with the number eight (8). This is to facilitate their inclusion, without the need to renumber the clauses, as a new Part 8 of any future Motor Accident Guidelines that may be published to replace the current Motor Accident Guidelines published on 15 January 2019.

Replacement and transition

These Guidelines:

- revoke the following clauses in the Motor Accident Guidelines published on 15 January 2019:
 - clauses 4.131 – 4.136, and
 - clauses 7.150 - 7.151
- apply to all claims and applications at the Dispute Resolution Service (DRS) made before or after the commencement of these Guidelines; and
- apply to all appointments of Authorised Health Practitioners on or after 1 December 2019
- do not invalidate the appointment of Authorised Health Practitioners made before 1 December 2019

A step taken in respect of any claim or application at DRS in accordance with the Motor Accident Guidelines published on 15 January 2019 before the commencement of these Guidelines, is as valid as it would be if taken in accordance with these Guidelines.

Legislative framework

The *Motor Accident Injuries Act 2017* (NSW) establishes a scheme of CTP insurance and the provision of benefits and support relating to the death of, or injury to, people injured as a consequence of motor accidents in New South Wales (NSW) on or after 1 December 2017.

Injury or death to a person as a result of a motor accident occurring before 1 December 2017 is governed by either the *Motor Accidents Act 1988* (NSW) or the *Motor Accidents Compensation Act 1999* (NSW) and the relevant Regulation and Guidelines made under the *Motor Accidents Compensation Act 1999* (NSW).

The objects of the Act, as described in [section 1.3](#) are to:

- encourage early and appropriate treatment and care to achieve optimum recovery of persons from injuries sustained in motor accidents and to maximise their return to work or other activities
- provide early and ongoing financial support for persons injured in motor accidents
- continue to make third party bodily insurance compulsory for all owners of motor vehicles registered in NSW
- keep premiums for third party policies affordable by ensuring that profits achieved by insurers do not exceed the amount that is sufficient to underwrite the relevant risk and by limiting benefits payable for minor injuries
- promote competition and innovation in the setting of premiums for third party policies, and provide the Authority with a role to ensure the sustainability and affordability of the compulsory third party insurance scheme and fair market practices
- deter fraud in connection with CTP insurance
- encourage the early resolution of motor accident claims and the quick, cost-effective and just resolution of disputes
- ensure the collection and use of data to facilitate the effective management of the CTP insurance scheme.

The *Motor Accident Injuries Regulation 2017* (the Regulation) contains provisions that supplement the implementation and operation of the Act in a number of key areas.

Guideline-making powers

These Guidelines are made under [sections 7.52\(2\) and 10.2](#) of the Act, which enable the Authority to issue Motor Accident Guidelines with respect to any matter that is authorised or required by the Act to be provided for in the Guidelines.

Interpretation of the Guidelines

These Guidelines should be read in conjunction with the Motor Accident Guidelines published on 15 January 2019, relevant provisions of the Act and the Regulation, and in a manner that supports the objects of the Act as described in [section 1.3](#) of the Act.

Commencement of the Guidelines

These Guidelines come into effect on 1 December 2019 and apply to motor accidents occurring on or after 1 December 2017.

The Guidelines apply until the Authority amends, revokes or replaces them in whole or in part.

Purpose of the Guidelines

The Guidelines support delivery of the objects of the Act and the Regulation by establishing clear processes and procedures, scheme objectives and compliance requirements. In particular, the Guidelines describe and clarify expectations that apply to respective stakeholders in the scheme. The Authority expects stakeholders to comply with relevant parts of the Guidelines that apply to them.

Application of the Guidelines

Relevant parts of the Guidelines apply to key customers of the scheme, including:

- vehicle owners and policyholders
- injured persons and claimants.

Relevant parts of the Guidelines also apply to key scheme stakeholders and service providers, including:

- insurers
- health practitioners
- lawyers and other representatives
- staff of the Authority
- decision-makers
- courts and other dispute resolution bodies.

Under the Act, including [section 10.7](#), it is a condition of an insurer's licence under the Act that it complies with relevant provisions of the Guidelines.

Compliance with the Guidelines

The Authority will monitor and review compliance with the Guidelines. Compliance and enforcement will be undertaken in accordance with the Authority's [Compliance and Enforcement Policy](#) (July 2017).

Part 8 of the Motor Accident Guidelines: Authorised Health Practitioners

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Authorised Health Practitioners

Introduction

- 8.1 This Part of the Guidelines provides for the appointment of health practitioners for the purposes of authorisation under Division 7.7, section 7.52 of the Act.
- 8.2 This Part of the Guidelines applies to all appointments commencing on or after 1 December 2019.
- 8.3 A health practitioner may be appointed as a decision-maker in the Dispute Resolution Service and as an authorised health practitioner at the same time. However, a health practitioner may not act in both roles for the same claim.

Health practitioners authorised to give evidence

- 8.4 A health practitioner, other than the injured person's treating health practitioner, is only authorised to give evidence in proceedings by:
 - (a) an agreement between the parties for the health practitioner to conduct a joint medical assessment, or
 - (b) appointment by the Authority to its list of authorised health practitioners, or
 - (c) appointment by the Authority for a specific purpose and duration on application by a claimant or insurer.

Joint medical assessments

- 8.5 In a claim, where a legally-represented claimant and an insurer agree to a health practitioner conducting a joint medical assessment, that health practitioner is authorised under section 7.52(1)(b) of the Act for the purposes of that claim.
- 8.6 The parties must instruct the health practitioner in writing to conduct the joint medical assessment. The joint instruction letter must state that:
 - (a) the health practitioner is to perform a joint medical assessment, and
 - (b) the health practitioner must send the report and any supplementary reports to both parties on completion.
- 8.7 If a party identifies an error in the report, it may request the health practitioner to re-issue the report with the correct information. The party must send the request and supporting evidence to the health practitioner in writing within 7 calendar days of receiving the initial report and provide a copy of the request and supporting evidence to the other party.
- 8.8 No supplementary reports can be requested unless agreed to by both parties. A report issued by the health practitioner to correct an error is not considered supplementary.
- 8.9 The insurer will meet the cost of the joint medical assessments, including the initial report and any supplementary reports.

Appointment by the Authority to its list

- 8.10 If a claimant or insurer propose to obtain evidence from a health practitioner other than the claimant's treating health practitioner, for the purposes of relying on that evidence in proceedings before a court for damages or in connection with a merit review under Division 7.4, a medical assessment under Division 7.5 or the assessment of a claim under Division 7.6 in relation to a medical matter concerning an injured person, they must use their best endeavours to obtain that evidence from a health practitioner appointed by the Authority to its list of authorised health practitioners.
- 8.11 A health practitioner seeking appointment to the Authority's list of authorised health practitioners must apply to the Authority by the application form available on the Authority's website (www.sira.nsw.gov.au).
- 8.12 As far as reasonably practicable, the Authority will ensure that there are authorised health practitioners appointed in the regional areas of NSW.
- 8.13 The Authority will determine the application for appointment against the eligibility requirements and notify the applicant in writing of its decision to accept or decline appointment. Where the Authority declines to appoint a health practitioner, the Authority will notify the health practitioner of the reasons for its decision.
- 8.14 If the health practitioner disagrees with the Authority's decision, they may seek an internal review of the decision by writing to the Authority within 14 calendar days of the notification receipt, and provide any relevant information as to why their application should be accepted. The Authority will undertake the internal review and notify the health practitioner of the outcome within 21 calendar days after receiving the request for review or after receiving the last document or information the Authority may request from the health practitioner.
- 8.15 The Authority will publish on its website (www.sira.nsw.gov.au) the names of all authorised health practitioners their contact details, practice locations, and other information relevant to their role as an authorised health practitioner.
- 8.16 Health practitioners appointed to the Authority's list must continue to meet the eligibility requirements and comply with the terms of appointment to remain authorised under this section.
- 8.17 The NSW Medical Board Policy 'Guidelines for medico-legal consultations and examinations' (File reference DD10/10871 revised December 2005) applies to all health practitioners appointed under this section. Where the Policy refers to the NSW Medical Board's Code of Professional Conduct: *Good Medical Practice*, this only applies to health practitioners who are medical practitioners under the *Medical Practice Act 1992*.

Eligibility requirements

- 8.18 The Authority may appoint a health practitioner to its list of authorised health practitioners if it is satisfied that the health practitioner:
- (a) has at least five years of full-time equivalent relevant clinical experience, including an understanding of the treatment and/or management of motor accident related injuries,
 - (b) holds current General or Specialist registration with the Australian Health Practitioner Regulation Agency (AHPRA) with no conditions, undertakings, reprimands, limitations or restrictions on registration as a result of a disciplinary process. The practitioner must not be subject to supervisory requirements, or have any provisions on their registration that may adversely impact their performance in the role, and
 - (c) has high-level communication skills, such that they would be able to comply with the requirements for consultations, examinations and reports outlined in the NSW Medical Board Policy titled 'Guidelines for medico-legal consultations and examinations' (File reference DD10/10871 revised December 2005).
- 8.19 The Authority will consider all relevant information available to assess whether a health practitioner meets the eligibility requirements and may request additional information from the applicant or third parties. This may include:
- (a) information related to complaints, compliance, or breaches of legislation, guidelines, or fee schedules within the last 10 years,
 - (b) current disciplinary proceedings that may affect the practitioner's registration, ability to undertake the role, or integrity of the compensation schemes if appointed, and
 - (c) if the practitioner has any pending criminal charges or has, within the last 10 years, been convicted of any criminal offence or demonstrated behaviour that could be seen to affect the practitioner's ability to undertake the role with impartiality and fairness, or negatively impact the integrity of the personal injury compensation schemes in NSW.

Restrictions

- 8.20 The Authority may appoint an authorised health practitioner to its list with or without making the appointment subject to restriction. For example, the Authority may restrict a health practitioner to only be authorised to give evidence on:
- (a) specified medical matters, or
 - (b) medical matters in specified claims, or
 - (c) medical matters related to specified claimants or kinds of claimants.
- 8.21 The Authority may also restrict a health practitioner's appointment to a defined period or for the duration of a specific claim.

- 8.22 The Authority may impose a restriction on a health practitioner's appointment at any time during the period of authorisation, after first notifying the health practitioner.

Terms of appointment

- 8.23 Appointment as an authorised health practitioner requires that during the term of appointment the health practitioner must:
- (a) act without bias and in a way that does not give rise to an apprehension of bias in the performance on their responsibilities,
 - (b) comply with the relevant law, including the *Motor Accident Injuries Act 2017*, the *Motor Accident Injuries Regulation 2017*, and these Guidelines including the Expert Witness Code of Conduct in Part 7,
 - (c) act in an ethical, professional and considerate manner when examining injured persons,
 - (d) agree to the Authority publishing on its website (www.sira.nsw.gov.au) the health practitioner's name, contact details, practice location(s), and other information relevant to the terms and extent of their appointment.
 - (e) notify the Authority within 14 calendar days of any change to name or details,
 - (f) have access to the necessary resources and infrastructure to do all administrative activities necessary for the role,
 - (g) comply with all legal requirements for practice, including relevant policies and codes of conduct,
 - (h) comply with the standards and conduct for medico-legal consultations, examinations and reports, as set out in the NSW Medical Board Policy titled 'Guidelines for medico-legal consultations and examinations' (File reference DD10/10871 revised December 2005). Where the Policy refers to the NSW Medical Board's Code of Professional Conduct: *Good Medical Practice*, this only applies to health practitioners who are medical practitioners under the *Medical Practice Act 1992*.
 - (i) establish and maintain appropriate and secure record management systems to manage work and maintain records and data lawfully and efficiently,
 - (j) comply with all privacy obligations including under the *Health Records and Information Privacy Act 2002* (NSW) and the *Privacy Act 1988* (Cth),
 - (k) participate in the Authority's performance framework for authorised health practitioners, including complying with any mandatory training required by the Authority for authorisation, and the Authority's data reporting and training requirements, and

- (l) co-operate with the Authority's complaints handling framework, including responding to complaints with full and accurate details and, when indicated by the Authority, taking remedial action.

8.24 Appointment as an authorised health practitioner requires that during the term of their appointment by the Authority to its list of authorised health practitioners, the health practitioner must not:

- (a) provide treatment advice and/or services to injured persons referred to them for examination or assessment in their capacity as an authorised health practitioner,
- (b) accept a referral or examine an injured person if the authorised health practitioner has a conflict of interest,
- (c) ask for or accept any inducement, gift, or hospitality from individuals or companies, or enter into arrangements that could be perceived to provide inducements, that may affect, or be seen to affect, their ability to undertake the role of an authorised health practitioner in an impartial and unbiased manner,
- (d) engage in activities or publicly express opinions that might be perceived to compromise the practitioner's ability to undertake the role of an authorised health practitioner in an impartial and unbiased manner,
- (e) undertake medico-legal assessments outside of their area(s) of expertise.

8.25 A health practitioner who is appointed as an authorised health practitioner should accept all referrals whether made on behalf of an injured person or an insurer, but should decline a request for examination or assessment if:

- (a) they are not adequately qualified or experienced,
- (b) there may be a conflict of interest (personal, work-related, or financial), or
- (c) for any other reason they are unable to complete the task within the terms specified by the third party.

Cessation of appointment

8.26 The Authority may revoke a health practitioner's appointment at any time. The Authority will notify the health practitioner in writing of its intention and the reasons for the revocation.

8.27 If the health practitioner disagrees with the Authority's decision, they may seek an internal review of the decision by writing to the Authority within 14 calendar days of the notification receipt, and provide any relevant information as to why their appointment should not be revoked. The Authority will undertake the internal review and notify the health practitioner of the outcome within 21 calendar days after receiving the request for review or after receiving the last document or information the Authority may request from the health practitioner.

- 8.28 A health practitioner may cease their appointment at any time during the term of the appointment by notifying the Authority in writing.
- 8.29 If a health practitioner's appointment is revoked or ceased, the evidence given by the health practitioner in the period that they were authorised remains admissible.

Appointment by the Authority on application by the parties

- 8.30 Where a claimant or insurer proposes to obtain evidence from a health practitioner not appointed by the Authority to its list of authorised health practitioners, a claimant or insurer may apply by writing to the Authority to seek the appointment of that health practitioner to be authorised.
- 8.31 The application to the Authority must include:
- (a) reasons why the applicant party cannot obtain evidence from a health practitioner on the Authority's list,
 - (b) reasons why it is not possible to have a joint medical assessment,
 - (c) the name, address and qualifications and/or experience of the health practitioner the applicant party requests the Authority appoints,
 - (d) evidence that the health practitioner agrees to be bound by the Expert Witness Code of Conduct outlined in Part 7 and the guidelines relating to consultations and reports outlined in the NSW Medical Board Policy titled 'Guidelines for medico-legal consultations and examinations' (File reference DD10/10871 revised December 2005), and
 - (e) details of the specific claim or claims for which the evidence is being sought, including claim number, claimant name, and other identifying information.
- 8.32 The Authority may appoint the health practitioner if the Authority is satisfied that:
- (a) the applicant cannot obtain evidence from a health practitioner on the Authority's list, and
 - (b) the health practitioner has suitable qualifications and skills to give the evidence.
- 8.33 The Authority will determine the application for appointment and notify the applicant in writing of its decision. Where the Authority accepts the appointment, the Authority will also notify the health practitioner that they are authorised to give evidence and outline the terms of their appointment including any restrictions.
- 8.34 The claimant or insurer relying on evidence by a health practitioner appointed under this section must provide to the other party a copy of the Authority's notification of authorisation.
- 8.35 Unless otherwise determined by the Authority, a health practitioner appointed under this section is only authorised for the purposes and duration of the

relevant claim or claims. The Authority may impose further restrictions on the appointment at any time during the period of authorisation.

- 8.36 The Authority may revoke a health practitioner's appointment at any time. The Authority will notify the applicant and the health practitioner in writing and advise the reasons for the revocation.
- 8.37 A health practitioner appointed under this section must include in their report(s) a statement that they are authorised by the Authority and any restrictions on the appointment that apply.