

Medical Panels

David Ellis

Legal Manager

Medical Panels

Topics of Presentation

- Convenor of Medical Panels
- Eligible Medical Panellists
- Who can make a referral to a Medical Panel?
- Referral of statutory “medical questions”
- Material to be given to a Medical Panel?
- A “Certificate of Opinion” (*WorkCover*)
- A “Certificate of Determination” or “Certificate” (*Wrongs Act*)
- “Tribunal” Status
- Submissions
- No Appeal – Only Judicial Review

Convenor of Medical Panels

- The Convenor of Medical Panels is appointed by the Minister for WorkCover
- There can also be a Deputy Convenor (Currently the Deputy Convenor administers Wrongs Act referrals)
- The Convenor (Deputy Convenor) appoints each Medical Panel
- The Convenor has issued Directions for the operations of Medical Panels for WorkCover and the Deputy Convenor for the Wrongs Act

Eligible Medical Panellists

- The Governor in Council approves a list of medical practitioners to be eligible to be appointed to a Medical Panel.
- Only medical practitioners can be appointed to a Medical Panel.
- Consultants are used by a Panel when a particular specialty is not available, more than five Panellists are required or advice is needed from an allied health professional.

Referral of statutory “medical questions”

- Medical questions in WorkCover referrals are defined in Section 5 of the Accident Compensation Act 1985.
- Specific questions can only be referred by certain persons or entities.
- There is only one statutory question defined in the Wrongs Act 1958. (referred by the Respondent)

Material to be given to a Medical Panel

- In WorkCover-The details of alleged or accepted injuries, agreed facts and disputed facts (ie: the issue in dispute)
- In Wrongs Act-the “Certificate of Assessment” and the prescribed information, which includes details of the alleged injuries
- In all referrals-All documents relating to the medical question in the referrers possession

A “Certificate of Opinion” (WorkCover)

- The “Certificate of Opinion” on that medical question is binding on all parties and the courts.

A “Certificate of Determination” or “Certificate” (Wrongs Act)

- A Panel can issue a “Certificate of Determination”
or
- A “Certificate” that an alleged injury is not stable but
will satisfy the threshold when stable
or
- A “Certificate” that an alleged injury is not stable and
fix a time for further assessment.

“Tribunal” Status

- A Medical Panel has the status of a “Tribunal”
- Rules of procedural fairness apply
- However, examinations must be held in private
- No right of direct legal representation at examination
- Panel must provide reasons for its opinion

Submissions

- Each party to a referral may make a submission to a Medical Panel
- However, in WorkCover there are occasions when a Court or Conciliation Officer has ruled that a submission pertaining to a particular referral is irrelevant or not appropriate
- Ideally submissions define the issue in dispute and do not merely restate medical opinions given in the documents.

No Appeal – Only Judicial Review

- There is no appeal available on the substantive issues
- A judicial review can be sought on the basis of a denial of procedural fairness or jurisdictional error (error of law)
- However, the Supreme Court can only send the referral back to the same Panel or another Panel to complete in the correct manner