

Independent Medical Advisers Guidelines 2022



SOUTH
AUSTRALIAN
EMPLOYMENT
TRIBUNAL

Independent Medical Advisers Guidelines 2022

These guidelines set out the procedures for referring medical questions for assessment by independent medical advisers, the conduct of any necessary examination, the provision of a medical report, the payment for such report and the giving of oral evidence.

These revised guidelines were published in February 2022 following a review of the procedures and consultation with stakeholders.



SOUTH
AUSTRALIAN
EMPLOYMENT
TRIBUNAL

CONTENTS

CHAPTER A: INTERPRETATION	1
Abbreviations used in these Guidelines.....	1
Words and Phrases Defined in these Guidelines.....	1
CHAPTER B: THE REFERRAL PROCESS.....	2
The medical question	2
The identity of the medical adviser(s)	2
Grounds for Objection to an independent medical adviser the Registrar has appointed.....	3
Referral form	3
The Registrar Arranges the Assessment	3
Paying the Worker's Expenses.....	3
Provision of information and documentation	4
Non acceptance of a referral	4
CHAPTER C: THE ASSESSMENT PROCEDURE	5
Examination by independent medical adviser	5
Circumstances where no medical examination required	5
Powers of an independent medical adviser	6
CHAPTER D: THE MEDICAL REPORT	7
The report	7
Action on the report.....	7
CHAPTER E: ORAL EVIDENCE.....	8
In proceedings before SAET permission is required to cross-examine an adviser	8
Matters relevant to the giving of oral evidence.....	8

CHAPTER A: INTERPRETATION

Abbreviations used in these Guidelines

1. In these Guidelines, these abbreviations are used:
 - RTW Act - Return to Work Act 2014
 - NAATI - National Accreditation Authority for Translators and Interpreters
 - SAET – the South Australian Employment Tribunal.

Words and Phrases Defined in these Guidelines

2. In these guidelines, these words and phrases have the following meanings:
 - independent medical adviser (adviser) means a medical practitioner appointed by the Minister under section 118 of RTW Act
 - day or days means calendar days unless specified as working days
 - Registrar means the Registrar of SAET
 - President means the President of SAET
 - Member means the President, a Deputy President or Commissioner of SAET with the conduct of the relevant proceedings
 - SAET Independent Medical Advisers Induction Manual means the then current Independent Medical Advisers Induction Manual endorsed by the President
 - worker means a person who has made a claim under the RTW Act
 - lead assessor means an independent medical adviser nominated to coordinate the degree of whole person impairment resulting from complex injuries requiring assessment of multiple body systems
 - party includes the worker, a compensating authority or an employer
 - compensating authority is a compensating authority within the meaning of the RTW Act and includes scheme agents
 - Impairment Assessment Guidelines means the Impairment Assessment Guidelines provided for by s 22 of the RTW Act

CHAPTER B: THE REFERRAL PROCESS

The medical question

3. SAET or a court may, on its own initiative or on application by a party to proceedings before SAET or the court, refer any medical question or questions arising in proceedings before SAET or the court to 1 or more independent medical advisers specified by SAET or the court for inquiry and report.
4. The question or questions to be referred to an independent medical adviser will be framed by SAET or the court after inviting submissions from the parties to the proceedings.

The identity of the medical adviser(s)

5. The parties to the proceedings will be invited to agree upon the adviser(s) and must advise the Member in writing of the name of the adviser(s) they have agreed to within 14 days of the finalisation of the medical question(s).
6. Where a referred question concerns a whole person impairment resulting from complex injuries requiring assessment of multiple body systems and multiple assessors are required to assess different body systems, the parties should agree upon and advise the Member of the lead assessor.
7. If the parties do not advise the Member as set out above, the Registrar is, as soon as reasonably practicable, to seek a recommendation of the Minister's Advisory Committee as to the appropriate adviser(s) who is/are to conduct the inquiry whereupon the Registrar shall appoint the adviser(s) and advise the parties in writing of the name of the adviser(s).
8. If the chosen adviser(s) is/are not available within a period of 2 months from the date of SAET's initial contact, parties should agree upon another adviser(s) or the Registrar will appoint one.
9. If the parties do not advise the Registrar of the name of the lead assessor the Registrar is to appoint the lead assessor prior to making the appointment for assessment and advise the parties in writing.
10. When choosing an adviser, the parties should consider:
 - by reference to the current list of independent medical advisers who are appropriate to answer the question(s) having regard to the body systems to be assessed
 - the availability of the adviser and whether he or she can conduct any necessary examination of the worker within 2 months.

Grounds for Objection to an independent medical adviser the Registrar has appointed.

11. A party may apply to the Registrar to have the matter reallocated on the grounds that the adviser to whom the matter has been allocated has a conflict of interest. To do that, the party must apply in writing within 7 days of receiving notification of the name and contact details of the adviser detailing the reasons.
12. The Registrar is to decide on the application for reallocation within 7 days of receipt. If the Registrar is of the opinion that there are reasonable grounds for believing that the appointed adviser may have a conflict of interest (eg someone previously treated or examined or where there is a personal relationship) the Registrar must reallocate the matter.

Referral form

13. The parties must confer and file a joint draft referral or separate draft referrals on the approved form, within 14 days of the finalisation of the medical question(s).
14. The Member will as soon as reasonably practicable settle upon the terms of the referral, including whether the referral is standard or complex or includes a whole person impairment, and the list of documents to be provided to the adviser.
15. The compensating authority is to file a Book of Documents in accordance with the list of documents settled by the Member.

The Registrar Arranges the Assessment

16. The Registrar is to contact the agreed or appointed adviser to obtain an appointment for assessment. An appointment for assessment is expected to be provided within 21 days of the request.
17. The Registrar shall advise the parties of the date and location of the assessment.
18. If an interpreter is required, the Registrar is to organise for a NAATI accredited interpreter to assist with the assessment. In the absence of a NAATI accredited interpreter, a non-NAATI interpreter may be used at the discretion of the Registrar provided that in any case the interpreter has no conflict of interest eg personal or financial relationship with the worker or adviser.

Paying the Worker's Expenses

19. The compensating authority must meet any reasonable costs incurred by the worker, including wages, travel and accommodation. This may include pre-payment of travel and accommodation expenses. If the worker is not reasonably able to travel unescorted, this may also include expenses for the worker's escort. In default of agreement such amount shall be determined by the Registrar.

Provision of information and documentation

20. When the Registrar refers the matter to the adviser, the Registrar is to also provide the adviser with the referral form and the Book of Documents settled by the Member.
21. The Registrar may communicate with the parties, or any of the worker's treatment or service providers to clarify the matter or matters in dispute.
22. The parties are not to communicate directly with the adviser at any time with the exception of the worker during any examination. The parties are not to provide additional information to the adviser at any time, unless requested to do so by the adviser.

Non acceptance of a referral

23. An adviser may decline to accept a referral for valid reasons conveyed to the Registrar within 7 days of receiving the referral documents.
24. An adviser to whom a matter is allocated must not accept a referral if the advisor is not adequately qualified or experienced or if there is a known conflict of interest (eg someone previously treated or examined or where there is a personal relationship). For the purpose of identifying any potential conflict of interest, the adviser is to review the referral documents within 7 days of receiving them.
25. If the adviser considers that he or she is not adequately qualified or experienced or that there may be a conflict of interest, the adviser is to immediately notify the Registrar and return the referral documents. The matter will then be reallocated to another adviser by the Registrar.

CHAPTER C: THE ASSESSMENT PROCEDURE

Examination by independent medical adviser

26. The adviser should properly introduce him or herself to the worker and explain his or her specialty or field of medicine in language which the worker can understand.
27. The adviser should explain that that his or her role is not to treat the worker but is that of an independent reviewer who is providing an impartial opinion for use before SAET or a court or and that there are limitations on the confidentiality of the assessment.
28. The advisor shall conduct any examination and questioning of the worker in accordance with the instructions provided in the SAET Independent Medical Advisers Induction Manual.
29. The worker has the option of having an accompanying person present during the history and/or the examination. This should be explained to the worker when the interview is being scheduled. The role of the accompanying person is to support the worker, but not to answer questions or contribute to the assessment. However, should the worker have an intellectual or speech difficulty, it is appropriate for the accompanying person to assist in the communication between the adviser and the worker. A union representative or legal practitioner instructed to act for the worker must not accompany a worker to a medical assessment. The accompanying person is to conduct him or herself appropriately during the examination. The independent medical adviser has the right to ask the person to withdraw if their behaviour interferes with the conduct of the examination.

Circumstances where no medical examination required

30. For the majority of matters, a medical examination of the worker will be necessary for the adviser to be able to form an opinion. However, the adviser may make an assessment without a medical examination if satisfied that the information provided is sufficient to enable determination of the issues. In exercising the discretion not to conduct a medical examination, the adviser must consider:
 - the nature and complexity of the issues in dispute
 - the likely impact of non-examination on the outcome of the dispute
 - the extent and detail of the information provided
 - any submission by the parties as to why a medical examination is required.
 - If no examination is to be conducted, the worker will not attend an appointment with the adviser.

Powers of an independent medical adviser

- 31.** An adviser to whom a medical question has been referred may:—
- consult with any medical practitioner or other health practitioner who is treating or has treated the worker to whom the proceedings relate
 - consult with such other persons as the adviser thinks fit (including another independent medical adviser who has considered or is considering the same or another medical question that relates to the relevant worker); and
 - call for the production of such information (including medical reports, x-rays, scans and the results of other tests) as the independent medical adviser considers
- 32.** Information (including confidential information) may be disclosed to an adviser under the RTW Act without the breach of any law or principle of professional ethics.

CHAPTER D: THE MEDICAL REPORT

The report

33. The adviser must prepare a report (or participate in the preparation of a joint report) at the conclusion of his or her consideration of the medical question and provide the Registrar with a completed report within 10 working days of the assessment or such longer period as the Registrar may allow. The report should be impartial and unbiased and should be comprehensible, easy to read and explain medical terminology.
34. The report must be in the form approved by the Registrar and must set out:
 - details of the medical question; and
 - the opinion of the adviser(s) with respect to the question; and
 - the reason or reasons for the opinion; and
 - the information about the documents and other reports, including any additional information requested by the adviser(s) that have been considered by the adviser(s); and
 - the methodology by which any assessment of permanent impairment is made including appropriate reference to the Impairment Assessment Guidelines; and
 - any other matters that, in the opinion of the adviser(s), should be considered or investigated.
35. A report that complies with these guidelines will be admissible in proceedings before SAET at trial as the evidence of the adviser.

Action on the report

36. Upon receipt of the report, the Registrar is to provide a copy of the report to the parties and the Member.
37. If any party identifies that a report contains an obvious error or contends that the report should be corrected, the party is to file an application for directions. The parties are not to consult the adviser.
38. The Registrar shall determine the amount payable to the adviser for the provision of the report and shall ensure that payment is made within 28 days of the receipt of the report.
39. Should an adviser contend that the amount determined by the Registrar is inadequate the adviser shall within 14 days of the receiving the Registrar's advice inform the Registrar in writing and include an explanation as to why he or she contends that the determination is inadequate. The matter shall then be referred to the President whose determination of the amount payable shall be conclusive.

CHAPTER E: ORAL EVIDENCE

In proceedings before SAET permission is required to cross-examine an adviser

40. A party may apply to SAET for an order to cross-examine an adviser before or at trial; and if the cross-examination is to take place before trial SAET shall determine the circumstances under which the cross-examination will take place.

Matters relevant to the giving of oral evidence

41. An adviser is competent to give oral evidence as to any matter in a report furnished by the adviser and any other relevant matter, as appropriate. As doctors advisers have an ethical obligation to assist SAET and the courts by providing expert evidence when reasonably called upon to do so.
42. SAET and the referring court have an Expert Witness Code of Conduct, to which the adviser must adhere in order for the expert evidence to be admissible. Advisers should familiarise themselves with the relevant code of conduct to ensure that they adhere to its requirements.
43. In giving oral evidence the adviser should have regard to the instructions provided in the SAET Independent Medical Advisers Induction Manual.