

# CONVENOR OF MEDICAL PANELS

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## **CONVENOR’S DIRECTIONS AS TO THE ARRANGEMENT OF BUSINESS OF MEDICAL PANELS (WORKPLACE INJURY REHABILITATION AND COMPENSATION ACT 2013)** **2015**

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(These Convenor’s Directions apply to all references of medical questions received and/or Medical Panels convened by the Convenor on or after 1 July 2015).

### **Introduction**

1. These are directions as to the arrangement of the business of Medical Panels established under Division 2 of Part 6 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (‘the Act’). They are given under section 303(6) of the Act.
2. Subsections (3), (4) and (6) of section 303 provide:-  
  
**“303 Procedures and powers**
  - (3) The Minister may, for the purposes of –
    - (a) ensuring procedural fairness in the procedures of the Medical Panels; and
    - (b) facilitating the proper administration of the Medical Panels –  
  
make guidelines as to the procedures of Medical Panels.
  - (4) The Minister must consult with the Attorney-General before making any guidelines under this section.
  - (6) The Convenor may give directions as to the arrangement of the business of the Medical Panels but must not give directions inconsistent with any guidelines made by the Minister.”
3. At the date of these directions, no guidelines have been made by the Minister under section 303(3).

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## **Purpose and objectives**

4. The purpose of these directions is to assist in the timely and efficient provision of opinions by Medical Panels for referrals under the Act by the implementation of directions as to the arrangement of the business of Medical Panels.
5. For this purpose, the directions aim to ensure that referrals are in accordance with law, that Medical Panel opinions are responsive to the questions referred and that the process affords the parties natural justice and procedural fairness.

## **Convenor and Office of the Convenor**

6. Subsections (2), (3) and (6) of section 537 provide:-

### **“537 Establishment and constitution**

- (2) For the purpose of constituting Medical Panels, there is to be a list of members consisting of medical practitioners nominated by the Minister on the recommendation of the Convenor and appointed by the Governor in Council.
  - (3) From the list of members under subsection (2), the Minister –
    - (a) must appoint a Convenor; and
    - (b) may appoint one or more Deputy Convenors.”
  - (6) The Convenor may delegate to a Deputy Convenor the exercise of any function or power conferred on the Convenor by or under the Act.”
7. For the purposes of these directions, “Convenor” means the Convenor or a Deputy Convenor.

## **Reference of medical questions (“referral”)**

8. The Convenor will examine each referral to ensure he/she is satisfied that the referral is validly made, is from a person or body exercising appropriate referral powers under the Act and the referral asks a statutory medical question appropriate for determination by a Medical Panel. All referral documents are to be provided in single sided ‘A4’ format. If any information in the referral may hinder the Convenor in convening a Panel or may prevent the Panel in addressing the question/s, including information which:
  - is incomplete, unclear or inadequate; or
  - contains a deficiency in content or format; or
  - contains a question which is unclear in its meaning; or
  - contains a question which is not a statutory medical question appropriate to be determined by a Medical Panel-

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the Convenor will not convene a Panel to address the questions, until he/she consults the person or body making the referral with a view to that person or body clarifying or amending the information and/or the question/s.

9. The person or body making the referral should provide a copy of the referral and all supporting documents relevant to the referral to all parties. Once the Convenor is satisfied that the referral is validly made, asks a statutory medical question appropriate to be determined by a Medical Panel, contains no deficiencies and all parties concerned have been provided with a copy of the referral with all supporting documents relevant to the referral, the Convenor will convene a Panel.

### **Information and documents relating to the medical question**

10. Section 304 provides:-

#### **“304 Reference of medical question**

A person or body referring a medical question to a Medical Panel must give the Convenor-

(a) a document specifying-

- (i) the injury or alleged injury to, or in respect of, which the medical question relates; and
- (ii) the facts or questions of fact relevant to the medical question that the person or body is satisfied have been agreed and those facts or questions that are in dispute; and

(b) copies of all documents relating to the medical question in the possession of that person or body.”

11. If the documents referred to in section 304 are not received with the referral the Convenor will request the documents from the referring party or body and will not convene a Medical Panel until the documents are received.
12. If a party advises the Convenor that he/she or it considers the person or body referring a medical question to a Medical Panel has not submitted copies of particular documents relating to the medical question which are in the referring party's or body's possession, the Convenor may, but is not obliged to, obtain copies of such documents. The Convenor will obtain such documents if the nominated Panel decides that the particular documents are necessary for the proper consideration of the medical question.
13. The Convenor may, before convening a Medical Panel in relation to a particular referral, seek such further information and/or advice that the Convenor considers necessary or desirable for the proper consideration of the medical question by a Medical Panel.

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14. The Convenor will, where necessary or appropriate, advise all parties in writing of the further information and/or advice that he/she receives in relation to that particular referral.

### **Surveillance Information**

15. A party which relies on surveillance information recorded digitally or electronically (including videotapes and DVD) ('recorded surveillance information') in the referral must provide:
- two copies of the recorded surveillance information (and any accompanying written report) to the Medical Panel; and
  - a copy of the recorded surveillance information (and any accompanying written report) to all other parties in the referral.
16. A party that provides recorded surveillance information shall identify in its written submission the particular parts of the information upon which it relies and state the consequences that it asserts flow from such information.

### **Medical Records Information**

17. A party which relies upon information from medical records provided to the Panel must provide a copy of the medical records to all other parties in the referral and shall identify in its written submission the particular parts of the medical records upon which the party relies and state the consequences that the party asserts flow from such information.

### **Insufficient information**

18. Section 306(1) provides:-

**“306        When opinion on medical question may not be given**

- (1) Despite sections 302(2) and 313(1), if a Conciliation Officer refers a medical question to a Medical Panel under section 284 and it becomes apparent to the Convenor or the Medical Panel that the formation of an opinion by the Medical Panel on the medical question will depend substantially on the resolution of factual issues which are more appropriately determined by a court than by a Medical Panel-
- (a) the Convenor may decline to convene a Medical Panel; or
  - (b) the Medical Panel may decline to give an opinion on the medical question.”

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19. The Convenor may, on receipt of a referral or as requested by a Medical Panel, request further information from a Conciliation Officer to clarify factual issues in the referral. In the event that any factual issues remain unresolved despite receipt of the further information, the Convenor must inform the Conciliation Officer of his/her decision to decline to convene a Medical Panel or the decision of a Medical Panel to decline to give an opinion on the medical question.<sup>1</sup>

### **Convenor to Convene a Medical Panel**

20. Section 305 provides:-

#### **“305 Convenor to convene Medical Panel**

If a medical question is referred to the Convenor under section 304, subject to section 306(1), the Convenor must, as expeditiously as possible-

- (a) convene a Medical Panel; and
  - (b) give the Medical Panel the documents received by the Convenor with the reference.”
21. On receipt of a valid referral, the Convenor will convene a Medical Panel as expeditiously as possible having regard to considerations including, but not limited to, the availability and suitability of members or consultants and appropriate support resources in the Office of the Convenor. The Convenor will convene a Panel that he/she considers appropriate in specialty and number for the consideration of the nature of the medical issues raised by the referral and if there is more than one member, he/she will nominate one as a presiding member.

### **Managing Conflict of Interest**

22. The Convenor will comply with the ‘Medical Panels Conflict of Interest Policy’ and the ‘Procedures for Managing Conflict of Interest in the Appointment of Medical Panels’ which include the following:
- A procedure for ensuring that any proposed member of a particular Medical Panel or consultant has never treated or examined the worker or been engaged to treat or examine the worker (otherwise than in his or her role as a member of a Medical Panel or as a consultant to a Medical Panel).<sup>2</sup>
  - A requirement for a proposed member of a particular Medical Panel or consultant to make a ‘Statement of Interest’ (which includes provision for a statement of no interest) in relation to the parties to a particular referral.

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<sup>1</sup> Section 306(2)

<sup>2</sup> Section 537(8)

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- A procedure for ensuring that where the Convenor is appointed to a Medical Panel, such appointment is to be made by Deputy Convenor; and where a Deputy Convenor is appointed to a Medical Panel, such appointment is to be made by either the Convenor or by another Deputy Convenor.
  - A procedure for the replacement of a panellist or consultant when a statement of an interest is made and for the appropriate notification of the parties.
  - A procedure for the replacement of a panellist or consultant if the Convenor or the Deputy Convenor agree there is a reasonably perceived conflict of interest or a reasonable apprehension of bias regarding a particular panellist or consultant, when a complaint of a perception of a conflict of interest or an apprehension of bias is received from a party to a particular referral and for the appropriate notification of the parties.
  - A provision for the parties to a referral to agree that a particular eligible panellist can be a member of a particular Medical Panel when he/she has a perceived or potential conflict of interest, because there is no other suitably qualified eligible panellist without a perceived or potential conflict of interest.
23. The Convenor will, once he/she has convened a Medical Panel, send to each proposed member of a particular Medical Panel a notice of appointment and a copy of the documents received with the reference including, where necessary, any additional information obtained by the Convenor and, where appropriate, details of any preliminary advice obtained in relation to the referral.

### **Medical Panel procedures**

24. A Medical Panel will comply with the Act which provides –
- that a Medical Panel must act informally and may inform itself on any relevant matter relating to a reference in any manner it thinks fit;<sup>3</sup>
  - that a Medical Panel may ask the worker to meet with the Panel in order to submit to an examination and/or medical examination/s and to answer questions, and to supply copies of all documents relating to the medical question in the worker’s possession;<sup>4</sup> and
  - that a Medical Panel may, if the worker consents, request the provider of a “medical service” as defined in the Act<sup>5</sup> who has examined the worker to meet with the Panel to answer questions, and to supply relevant documents to the Panel.<sup>6</sup> However, the worker must be advised that he/she is not obliged to consent; and

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<sup>3</sup> Section 303(1) and (2)

<sup>4</sup> Section 307

<sup>5</sup> Section 3

<sup>6</sup> Section 311

- 
- that a Medical Panel must act as speedily as a proper consideration of the reference allows;<sup>7</sup> and that a Medical Panel must form its opinion within 60 days after the Medical Panel receives from the Convenor the documents relating to the medical question, unless an extension of time is agreed by the referrer;<sup>8</sup> and
  - that a Medical Panel gives a Certificate of its written opinion within 7 days of forming its opinion and must also provide a written statement of reasons for that opinion.<sup>9</sup>
25. If a Medical Panel requests, but a referrer does not agree, to an extension of time for the Panel to form its opinion on a medical question, the Panel shall, as the circumstances allow, endeavour to form its opinion. However, a Medical Panel is not obliged to form an opinion if it considers that to do so would hinder proper consideration of the medical question, and, the Panel will notify the parties accordingly.

### **Medical Panel Examination**

26. In convening a Medical Panel, the Convenor will provide facilities and support for the nominated presiding member and the members which include consideration by the Convenor of:
- the number of examinations that are necessary, and which members of the Panel should be present;
  - whether or not the Panel requires any clarification, or further clarification, of the meaning of a medical question contained in the referral;
  - generally whether any further information, or advice, is needed; and
  - when, and by what means, the Panel will confer to form its opinion.
27. The Convenor will arrange examinations by a Medical Panel as are considered appropriate. The Convenor will also arrange for professional interpreter services when required or requested by the worker, and, where necessary, for a chaperone to be present during examinations.
28. The Convenor will notify the worker of the examination appointments, and will provide that the notification is accompanied by:-
- information relating to Medical Panels (which explains, amongst other things, the relevant procedures of Medical Panels and the legal status of opinions);

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<sup>7</sup> Section 303(2)

<sup>8</sup> Section 313(1)(a) and (b)

<sup>9</sup> Section 313(2) and (3)

- 
- a list of all documents relating to the referral in the Medical Panel's possession;
  - a request (except in relation to a referral received from a Court) that the worker supply to the Convenor, for distribution to the Medical Panel prior to any examination (unless it is impractical to do so), copies of any additional documents in the worker's possession (including documents in the possession of the worker's legal representative) that relate to the medical question/s referred;
  - a request that the worker make available at the Medical Panel's examination any imaging and other investigation results in his/her possession and details of medications;
  - a request that any surveillance information submitted as part of the referral documents must be viewed by the worker prior to any Medical Panel examinations; and
  - advice as to the possible implications of a failure to attend a Medical Panel appointment or a failure to supply documents or answer questions.
29. The Convenor will advise the referring party and the other parties of the examination appointments and send confirmation of all appointments to each member of the Medical Panel.
30. The Act provides that a worker's attendance for examination must be in private, unless the Medical Panel considers that it is necessary for another person to be present.<sup>10</sup> If a worker is a minor or a person under a disability, the Panel must permit a representative of the worker to be present.<sup>11</sup> In an examination (other than a psychiatric examination), the Convenor will provide for a chaperone from the Office of the Convenor to be present as necessary. In any examination, a Panel may allow a person such as a family member or friend to attend during an examination to support the worker, but any such person will not be allowed to speak on the worker's behalf or act as an interpreter. The Panel can require that a person leaves the examination if the Panel considers he/she is intruding into or obstructing the examination.
31. A Medical Panel will, in having regard to recorded surveillance information, view the recorded information in the presence of the worker and seek comments of the worker in relation to the content. If the worker has previously seen the surveillance information, then the Panel may note the worker's comment and the Panel is not required to view the recorded information in the presence of the worker unless it considers comment and/or clarification is required about any aspect of the information.

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<sup>10</sup> Section 310(1)

<sup>11</sup> Section 310(2)



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32. Where a member of a Medical Panel examining a worker is or becomes aware of any information, circumstance or consideration that is contrary to anything the worker says to the member, the member should inform the worker of the matter and invite the worker to make any desired comment on it within a specified time, and, subject to statutory time limits, the Panel's opinion should not be concluded until such comment has been received or the specified time has expired, as the case may be. The worker's comment should be taken into consideration by the member and the Panel.
  33. Each member of the Medical Panel should make and retain such notes and any other relevant records of the history taken from the worker of the findings on clinical examination and of any test results obtained that he or she, in consultation with any other Panel member/s, considers necessary for the purpose of answering the medical question.

### **Worksite Inspections**

34. If the Medical Panel considers a worksite inspection is necessary, it will only be undertaken with the consent of the employer. The Panel will invite the worker to attend. The Panel may proceed with the inspection whether or not the worker attends.
35. During a worksite inspection, the Medical Panel should not converse with any person other than the worker, save and except for matters relevant to the inspection, and should only converse with other persons in the presence of the worker, if he/she is present at the worksite inspection. Where the worker does not attend the inspection or declines to be present for any relevant conversation and where any statement or information adverse to the worker's position relevant to the medical question/s is made or provided to the Panel in the course of the worksite inspection, the Panel should communicate the statement or information to the worker and the worker should be invited to make any desired comment on it within a specified time and, subject to statutory time-limits, the Panel's opinion should not be concluded until such comment has been received or the specified time has expired, as the case may be.

### **Consultants**

36. The Convenor will ensure a Medical Panel may, where necessary, receive advice from a suitably qualified and experienced person who is engaged as a consultant – (for example: from a medical practitioner, an allied health professional, a psychologist or a provider of occupational rehabilitation services) as appropriate to the nature of the referral.
37. If the Convenor or a Medical Panel requires a consultant to provide advice in relation to the referral, the Convenor will arrange for the consultant to examine the worker with a Panel member, where possible or practicable.
38. Advice received from a consultant will be considered by the Medical Panel, in reaching its opinion and noted in the Reasons for Opinion.

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## Further Information requested by Medical Panel

39. Subsections (1) and (2) of section 312 provide:-

### **“312 Medical Panel may request further information**

- (1) If a medical question has been referred to a Medical Panel and the Medical Panel considers that further information is required to enable it to form a medical opinion on the question-
  - (a) the Medical Panel may request the worker, or the person or body referring the medical question, to provide the information within the period specified in the request, not being a period less than 14 days after the date on which the worker last attended for examination by the Medical Panel; and
  - (b) the Medical Panel must consider the information provided; and
  - (c) the time limit specified in section 313(1) is suspended from the date on which the request under paragraph (a) is made until the end of the period specified in the request.
- (2) The Medical Panel may accept any further information requested under subsection (1)(a) which is provided after the period specified in the request under subsection (1).”

40. If, during the course of its examination/s, the Medical Panel requires further information because it becomes aware of a matter which has not been canvassed in the referral documents or submissions and the matter is integral to the Panel’s deliberations, the Panel will inform the worker of this fact and request the Convenor to write to the parties, including the referring party or body, informing them of the matter and request them to respond within a specified time limit. The Panel’s opinion should not be concluded until all responses have been received or the time limit has expired.

41. Where a worker unreasonably does not attend an examination by the Medical Panel or a medical examination by the member/s of the Panel, or hinders an examination or refuses to answer questions, the presiding member will notify the Convenor. The Convenor may write to the worker seeking an explanation of his/her actions and give him/her the opportunity to rectify his/her failure to attend and/or answer questions about his/her hindrance of the Panel’s examination.<sup>12</sup> If the worker continues to unreasonably fail to attend and/or answer questions and/or hinder the Panel’s examination, the Panel may issue a Certificate of Opinion that it is unable to give an opinion in answer to the medical questions.

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<sup>12</sup> Section 309

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### **Additional Information provided to the Medical Panel**

42. A party to the referral wishing to provide additional information to the Medical Panel after receipt of the initial referral must also provide a copy of such information to all other parties in the referral. The Convenor and/or the Panel will record receipt of the information and if the additional information is recorded surveillance information it will be managed in accordance with the procedure set out in clauses 15-16. In the case of a referral from a Court, the Panel may, if it considers appropriate, request prior approval from the Court to record or view any additional information.
43. In relation to any additional information received from a party to the referral after receipt of the initial referral, the Convenor and/or the Medical Panel will, where necessary, request all other parties in the referral make within 14 days any comment or submission in response, for consideration by the Panel.

### **Medical Panel to Form Opinion**

44. A Medical Panel will proceed to form its opinion on a medical question having regard to all of the information held in the Panel's possession as at the date of the last examination of the worker.
45. Where there is more than one member of the Medical Panel, the members should confer or consult with each other to form the Panel's opinion on each medical question contained in the referral. The presiding member should coordinate the process of conferring or consulting. If there is a disagreement between the members of the Panel on the answer to a medical question, the Panel shall decide how it resolves such disagreement.
46. In reaching its opinion, the Medical Panel may seek any advice as it deems fit from the Convenor and/or the legal advisers appointed by the Convenor for its assistance.

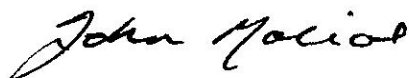
### **Certificate of Opinion and Reasons for Opinion**

47. After the Medical Panel has formed its opinion on each medical question, the presiding member should prepare, and circulate to the other Panel members, a draft certificate of opinion and draft written reasons, in the form similar to that set out in **SCHEDULE 1** and **SCHEDULE 2** respectively, for settling. Once settled by the Panel, the Certificate of Opinion and Reasons for Opinion are to be forwarded to the Convenor for sending to the referrer and/or parties involved in the referral.
48. All documents which form part of the referral are to be listed in a schedule of attachments in the form of 'Enclosure A', set out in **SCHEDULE 3**, which must specify the precise details of the title, nature, date and number of pages of each document and forms part of the Reasons for Opinion. The Panel must confirm that it had regard to the information in the documents in forming the opinion

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and 'Enclosure A' must be forwarded to the Convenor for sending to the referrer and/or parties involved in the referral.

49. All relevant documents obtained or received by the Medical Panel additional to those provided to the Panel with the referral are to be listed in a schedule of attachments in the form of 'Enclosure B', set out in **SCHEDULE 4**, and forms part of the Reasons for Opinion. The Panel must confirm that it had regard to the information in the documents in forming the opinion and 'Enclosure B' must be forwarded to the Convenor for sending to the referrer and/or parties involved in the referral.
50. The Convenor will ensure that the Medical Panel provides the Certificate of Opinion and the Reasons for Opinion in the appropriate form and that the medical questions have been answered. In performance of this task, the Convenor may seek advice from the legal advisers he/she has appointed for the Panel's assistance.
51. If the Convenor believes there is any deficiency in relation to the form of the answers to the medical questions on the face of the Certificate of Opinion or the Reasons for Opinion are not clear then he/she will communicate his/her concerns to the presiding member of the Medical Panel in a manner that does not undermine the independence of the Panel in the exercise of its functions.
52. On receiving details of the concerns of the Convenor, the presiding member will communicate with the other Medical Panel members with a view to deciding whether or not to take any further action in relation to the opinion and the reasons, and to redrafting Certificate of Opinion and/or Reasons for Opinion.
53. After the Medical Panel resolves the concerns over the form of the Certificate of Opinion and/or the clarity of the Reasons for Opinion, the presiding member will forward the settled documents to the Convenor.
54. On receiving the settled Certificate of Opinion and settled Reasons for Opinion from a Medical Panel, the Convenor will forward the Certificate of Opinion and Reasons for Opinion to the referrer. Where the referral was received from a Court, the Convenor will, where necessary and/or appropriate, also forward the Certificate of Opinion and Reasons for Opinion to the respective parties. Where the referral was received from WorkSafe Victoria (WSV), a WSV Agent, or a Self-Insurer, a copy of the Certificate of Opinion and Reasons for Opinion will also be forwarded to the worker.



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MBBS, FRACGP, MACLM

**CONVENOR OF MEDICAL PANELS**

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**ASSOC. PROF. PETER GIBBONS**  
MBBS, DO, DM-SMED, MHSC

**DEPUTY CONVENOR OF MEDICAL PANELS**



**ASSOC. PROF. DAVID ERNEST**  
MBBS, MHLTHMEDLAW, FRACP, FCICM, FACLM

**DEPUTY CONVENOR OF MEDICAL PANELS**

**Date:** 30 June 2015

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**SCHEDULE 1**

**CERTIFICATE OF OPINION**

**Re: [Worker's Name]**

**Medical Panel Ref. No: M /**

The Medical Panel formed its opinion in response to a referral received from [referrer] lodged on [date] pursuant to Victorian workers compensation legislation.

The Panel comprised the following members:

**Dr One**

**Dr Two**

**Dr Three**

[The Panel consulted with **Dr**..... (specialty) prior to forming its opinion.]

I, Dr One, as Presiding Member of this Panel, have discussed the answers herein with the other Panel Member(s) and this is the opinion of the Panel on the medical questions set out below.

**Question 1. Text of question one?**

Answer: Answer to question one.

**Question 2. Text of question two?**

Answer: Answer to question two.

**Question 3. Text of question three?**

Answer: Answer to question three.

**Date of Opinion:**

[NOTE: This form may change from time to time as considered necessary]

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**SCHEDULE 2**

**REASONS FOR OPINION**

**Re: [Worker's name]**

**Medical Panel Ref. No: M /**

1. The referral to the Medical Panel was lodged on [date]. The documents considered by the Panel are described in Enclosure A [and B].
2. The worker was examined by the Panel members [and Consultant/s] on the following date(s):

<b>Member:</b>	<b>Specialty:</b>	<b>Examination:</b>
Dr. One	Specialty One	date month year
Dr. Two	Specialty Two	date month year
Dr. Three	Specialty Three	date month year
<b>Consultant:</b>	<b>Specialty:</b>	<b>Examination:</b>
Dr/Mr/Ms	Specialty	date month year

3. The Panel formed its opinion with regard to -
  - (a) the documents and information referred to in Enclosure A [and B]; and
  - (b) the history provided by the worker and the examination findings elicited by the Panel at the abovementioned examination(s) of the worker.
  - [(c) the guidance provided by the Consultant(s)]
4. The reasons for the Panel's opinion are as follows:

(Reasons should be written succinctly and in plain language. They should clearly reveal the Panel's reasoning. They should include the core clinical and other findings. In the case of a multi-member Panel, the reasons (including the core clinical and other findings) should be those of the Panel as a whole arising from the consultative process.)

**Date of Reasons:**

[NOTE: This form may change from time to time as considered necessary]

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**SCHEDULE 3**

[Worker's name]

**Medical Panel Ref:**

**Enclosure A**

**SCHEDULE OF ATTACHMENTS**

	<b><i>DOCUMENT:</i></b>	<b><i>DATE:</i></b>	<b><i>PAGES:</i></b>
1.	<b>Referral and Questions</b>		
2.	Employee Claim Form	12/05/2010	2
3.	Notice of Entitlement	04/07/2014	7
4.			
5.			
6.			
7.			
<b>Total number of pages:</b>			

EXAMPLE ONLY



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**SCHEDULE 4**

[Worker's name]

**Medical Panel Ref:**

**Enclosure B**

**SCHEDULE OF ATTACHMENTS**

	<b><i>DOCUMENT:</i></b>	<b><i>DATE:</i></b>	<b><i>PAGES:</i></b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
<b>Total number of pages:</b>			