

# Medical Assessment Tribunal members

Code of conduct

## **1. Introduction**

- 1.1 Medical assessment tribunals are established under Chapter 11 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act). The object of Chapter 11 is to provide for an independent and non-adversarial system of medical review and assessment within the workers' compensation scheme in Queensland.
- 1.2 The purpose of the Medical Assessment Tribunal members Code of conduct (this code) is to ensure:
- the effective operation of, and public confidence in, the medical assessment tribunal system
  - that persons appearing before medical assessment tribunals are treated with fairness and respect.
- 1.3 This code describes the standards of ethical and professional conduct expected of tribunal members when undertaking duties as a tribunal member. Where specified, this code also describes the standard of conduct expected of tribunal members in their private life, in order to maintain public confidence in the medical assessment tribunal system.

## **2. Source of power**

- 2.1 Section 495 of the Act provides that an appointee to a medical assessment tribunal holds office on the conditions, not otherwise provided for under the Act, decided by the Governor in Council.
- 2.2 This code comprises part of the conditions of appointment decided by the Governor in Council for the purposes of section 495 of the Act.

## **3. Respect for the law**

- 3.1 Tribunal members will demonstrate respect for the law in the performance of their tribunal duties. In addition, tribunal members will demonstrate respect for the law in their private life in order to maintain public confidence in the medical assessment tribunal system.

## **4. Conflicts of interest and impartiality**

- 4.1 A tribunal member will perform their tribunal responsibilities independently, impartially and free from external influence.
- 4.2 A tribunal member must, as soon as reasonably practicable after receiving documentation in relation to an assessment panel, review the documentation and inform the tribunal secretariat of any conflict or potential conflict of interest. A conflict or potential conflict of interest will arise where:
- a. the person being assessed is a member of the tribunal member's family
  - b. the tribunal member has a close personal or business relationship with the person being assessed
  - c. the tribunal member has a close personal or business relationship with the spouse or a family member of the person
  - d. the tribunal member has previously treated the person being assessed (for any reason) or a spouse or family member of the person being assessed
  - e. the tribunal member has undertaken an independent medical examination of the person, including file review, for a third party.

- 4.3 In addition, at all times a tribunal member will be proactive in recognising and immediately disclosing to the tribunal secretariat a conflict or potential conflict of interest that may arise in relation to a person being, or to be, assessed by the tribunal member.
- 4.4 A tribunal member must not undertake a tribunal assessment of:
- a member of the tribunal member's family
  - a person with whom the tribunal member has a close personal or business relationship
  - a person, if the tribunal member has a close personal or business relationship with the spouse or a family member of the person.
- 4.5 Unless the person being assessed agrees, tribunal members will not undertake tribunal assessments of any person if they have previously treated that person (for any reason).
- 4.6 If a tribunal member is aware that they have treated a spouse or family member of the person being assessed, the tribunal member will disclose the interest to the person being assessed immediately.
- 4.7 A tribunal member will not engage in activities, interests and associations which will impact on the impartial and efficient performance of their tribunal responsibilities.
- 4.8 A tribunal member will not accept gifts of more than trivial value, and in any event, will not accept gifts of any kind where this could reasonably be perceived to compromise the impartiality of the member.

## **5. Respect for persons**

- 5.1 A tribunal member will always conduct and present himself or herself in a professional manner.
- 5.2 A tribunal member will treat all persons with respect and courtesy, including:
- persons being assessed
  - a person's representative or support person
  - fellow tribunal members
  - tribunal secretariat staff
  - others with whom the member deals in the course of their tribunal duties.
- 5.3 A tribunal member will not bully, harass or unlawfully discriminate against any person.
- 5.4 A tribunal member will endeavour to understand and be sensitive to the needs of persons involved in proceedings before the tribunal.
- 5.5 Examples of appropriate, professional behaviour include but are not limited to:
- punctual arrival at tribunal hearings, or notifying tribunal staff of delays in arrival
  - introducing themselves by name and specialty to the persons appearing before the tribunal
  - explaining the process that will be undertaken to make their assessment
  - assuring persons that the tribunal is impartial and that the tribunal's report will record the tribunal members' objective clinical assessment
  - answering clearly any questions about the purpose or relevance of any questions or procedures
  - forewarning persons where part of the examination process may cause some discomfort, explaining why it is necessary and assuring them that it will not worsen the condition
  - attending, with due care and diligence, for the duration of the tribunal session
  - being respectful, tactful and sensitive to and about persons in verbal and written communications.

## **6. Diligence and efficiency**

- 6.1 Tribunal members will perform their duties at a standard expected of medical practitioners in the relevant specialty.
- 6.2 A tribunal member will be diligent and timely in the performance of their tribunal responsibilities. This includes undertaking the preparation necessary for the tribunal hearing to operate effectively and to the highest standard.
- 6.3 Tribunal members must peruse and review the reference material relating to each person being assessed by the tribunal prior to the person's tribunal hearing.
- 6.4 A tribunal member will take reasonable steps to maintain and improve the knowledge, skills and personal qualities necessary to the performance of their tribunal responsibilities.
- 6.5 A tribunal member will attend mandatory training as provided by the tribunal secretariat from time to time.
- 6.6 A tribunal member must maintain their registration with the Australian Health Practitioner Regulation Agency (AHPRA) as a specialist in the specialty for which they were appointed as a tribunal member.

## **7. Integrity and confidentiality**

- 7.1 A tribunal member will act honestly and truthfully in the performance of their tribunal responsibilities.
- 7.2 All information regarding a person referred to a tribunal is to be treated as confidential and will not be disclosed for purposes other than in respect of the tribunal proceedings.
- 7.3 A tribunal member will not knowingly take advantage of, or benefit from, information not generally available to the public obtained in the course of the performance of their tribunal responsibilities.
- 7.4 A tribunal member will not use their position as a member to improperly obtain, or seek to obtain, benefits, preferential treatment or advantage for the member or for any other person or body.
- 7.5 A tribunal member will use tribunal resources economically and appropriately. Examples of inappropriate use of tribunal resources (including an iPad or other device provided to the member by the tribunal secretariat) include but are not limited to:
  - a. downloading, storing or distributing pornography
  - b. taking inappropriate and/or pornographic photographs
  - c. forwarding inappropriate jokes and graphics, particularly any material of a sexually explicit, racist, defamatory, indecent, obscene, profane or offensive nature
  - d. maintaining or supporting a personal private business (including the member's own business or a family/friend's business), including fee-based or subscription services or stock trading
  - e. creating or maintaining personal websites
  - f. knowingly accessing or downloading website material that is defamatory, harassing or discriminatory or sending messages that are defamatory, harassing or discriminatory
  - g. online gambling, stock trading or accessing dating services online
  - h. sending and/or downloading material such as chain letters or letters relating to pyramid schemes or in any way participating in such activities

- i. knowingly downloading, sending and/or broadcasting material from the internet or email containing viruses, worms, time bombs, cancel bots, trojan horses, spyware or any other contaminating or destructive features
- j. knowingly accessing internet sites and activities which a reasonable person would find offensive in the workplace or contain unlawful practices (e.g. bomb making instructions), except where related to an approved genuine tribunal business requirement.

7.6 In private life, a tribunal member will behave in a way that upholds the integrity and good reputation of the tribunal and maintains the member's ability to perform their duties as a tribunal member.

## 8. Accountability and transparency

8.1 A tribunal member is accountable for decisions and actions taken as a tribunal member and will fully participate in all applicable scrutiny regimes (including legislative, judicial and administrative scrutiny).

8.2 A tribunal member will ensure tribunal hearings and decisions comply with the principles of natural justice and that tribunal decisions are made according to law. This includes but is not limited to:

- a. ensuring that persons appearing before the tribunal are afforded a reasonable opportunity to put their case
- b. considering any submissions made by, or on behalf of, the person being assessed before making a decision
- c. ensuring that a tribunal member's actions and comments in the performance of tribunal duties demonstrate the member's impartiality and do not give rise to an apprehension of bias, or actual bias
- d. making, and appropriately storing, accurate notes of the tribunal hearing
- e. providing adequate written reasons for decisions.

8.3 A tribunal member must advise the Minister in writing of any changes in status in the following areas immediately on becoming aware of such changes at any time during the term of appointment:

- a. conflicts of interest, that is, any private interests that may affect or appear to affect the tribunal member's public duty, for example, employment, directorships, partnerships, assets or liabilities
- b. being affected by bankruptcy action, that is where the tribunal member is bankrupt, has compounded with creditors or, as a debtor has otherwise taken, or applied to take, advantage of any law about bankruptcy
- c. being otherwise prevented from managing a corporation because of the *Corporations Act 2001*, part 2D.6
- d. disclosable criminal convictions, that is, convictions as an adult that form part of a person's criminal history and which have not been rehabilitated under the *Criminal Law (Rehabilitation of Offenders) Act 1986*
- e. any criminal charges pending, or any matters involving offences which are under investigation and which may involve the tribunal member
- f. the tribunal member or the tribunal member's company being listed on the Register of Lobbyists
- g. being the subject of a complaint to a professional body in Australia which has been substantiated or sanctions imposed, including but not limited to:
  - i. the Australian Health Practitioner Regulation Agency
  - ii. the Office of the Health Ombudsman
- h. being the subject of an investigation undertaken by the Crime and Corruption Commission

- i. the tribunal member's registration with AHPRA, including but not limited to the imposition of restrictions or sanctions on the member's registration.

## **9. Responsibility of tribunal chairperson**

- 9.1 A tribunal chairperson will assist tribunal members to perform their tribunal responsibilities and to comply with this code, through the provision of appropriate leadership, training and support.

## **10. Procedure for alleged breach of this code**

- 10.1 An allegation of a breach of this code will be assessed by an officer of the Office of Industrial Relations, as nominated by the Workers' Compensation Regulator from time to time (nominated officer).
- 10.2 The nominated officer may undertake, or cause to be undertaken, an investigation into the allegation. The tribunal member will be informed of any investigation being undertaken and will be afforded an opportunity, at any stage of the investigation or during consideration by the panel, of the right to be represented by a person of their choice.
- 10.3 If the nominated officer assesses an allegation as being unsubstantiated, no further action will be taken and the tribunal member will be advised of the outcome.
- 10.4 If the nominated officer assesses an allegation as unintentional or less than a serious breach of this code, the officer will, with the chairperson of the relevant medical assessment tribunal, counsel the member regarding the breach and make a record of the breach and actions taken.
- 10.5 If the nominated officer assesses an allegation as alleging an intentional or serious breach of this code, the officer will refer the allegation to a panel comprising:
  - a. the Workers' Compensation Regulator
  - b. the chairperson of the relevant medical assessment tribunal (or, if the person the subject of the alleged breach is the chairperson, a chairperson of another medical assessment tribunal)
  - c. the Executive Director, Workers' Compensation Policy and Services, Office of Industrial Relations.
- 10.6 A tribunal member will be given notice in writing of any alleged breach of this code which is referred to the panel.
- 10.7 A tribunal member may within such period of time as stated in the notice, which must not state a period of less than fourteen (14) days after receipt of the notice, respond to the alleged breach in accordance with any directions stated in the notice.
- 10.8 The panel will determine whether there is a breach of this code.

## **11. Procedure for breach of this code**

- 11.1 When a panel determines that a tribunal member has breached this code, the panel may:
  - a. counsel the member regarding the breach
  - b. take any action the panel considers appropriate
  - c. where the panel considers that the breach is sufficiently serious to warrant removal, recommend to the Minister that the member be removed from office.

## Removal

- 11.2 Where a tribunal member has been found by a panel to have breached this code and the panel has recommended to the Minister that the member be removed from office, the Minister may remove the tribunal member from office by giving the member a signed notice from the Minister (removal notice).
- 11.3 If the Minister proposes to remove a tribunal member from office under paragraph 11.2, the Minister must give the tribunal member at least one months' notice (proposed removal notice) of the proposed removal.
- 11.4 The tribunal member may, not more than 14 days after receipt of the removal notice, submit in writing to the Minister reasons why the tribunal member should not be so removed.
- 11.5 The Minister must consider any submission made by a tribunal member, prior to removing the tribunal member under paragraph 11.2.
- 11.6 If the Minister decides not to remove a tribunal member from office, the Minister may refer the matter back to the panel, in which case the panel may counsel the member regarding the breach of this code and/or take any action the panel considers appropriate.
- 11.7 The Minister's decision is final and cannot be appealed. This provision has no effect on the *Judicial Review Act 1991*.