

**WORKERS REHABILITATION AND COMPENSATION
LEGISLATION FOR
TASMANIAN MEDICAL PRACTITIONERS
READING GUIDE**

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READING GUIDE

WORKERS REHABILITATION AND COMPENSATION LEGISLATION FOR TASMANIAN MEDICAL PRACTITIONERS

BACKGROUND

This reading guide on the Tasmanian *Workers Rehabilitation and Compensation Act 1988* ('the Act') will help medical practitioners understand their role and functions under the Act.

HOW TO USE THE READING GUIDE

Relevant sections of legislation have been highlighted in this document so that you may consider how to apply them to issues, which may arise in the course of your duties.

Case studies are used as sample scenarios to illustrate how a situation might arise and how it might be interpreted under the Act.

*The examples quoted in this reading guide are provided as a general guide **only**. They must not be relied on as a firm interpretation of the Act.*

THE MEDICAL PRACTITIONER'S ROLE IN INJURY MANAGEMENT

Tasmanian medical practitioners play a crucial role in a worker's recovery from injury, their successful return-to-work and remaining in work without aggravating or impeding the healing of their injury.

The terms "medical practitioner" and "primary treating medical practitioner" are used interchangeably. All medical practitioners must be accredited by the WorkCover Tasmania Board (the Board) for the purposes of issuing workers compensation medical certificates or assessing the degree of a worker's permanent impairment.

The term "primary treating medical practitioner" arose from the introduction of *Part XI – Injury Management* to the Act and refers to the medical practitioner chosen by the worker to provide primary medical care in relation to the worker's injury and other functions as specified in s.143(G)(1) of the Act.

Medical practitioners are a source of important information; for example, diagnosis of the workplace injury, work restrictions, the certification of incapacity, and the co-ordination of treatment.

While injured workers are in the early stages of treatment, they will be seeking accurate and honest information from their medical practitioner regarding their rights and responsibilities under the Act.

A number of amendments to the Act took effect on 1 July 2010; in particular the introduction of *Part XI – Injury Management*. It is essential that medical practitioners are aware of and familiar with the requirements of this part of the Act.

The following issues are of significance to Tasmanian medical practitioners:

- *Part XI – Injury Management*: the functions of a primary treating medical practitioner in relation to an injured worker.¹

¹ Section 143G(4) of the Act.

- The Act requires that the worker's primary treating medical practitioner be consulted during the preparation of and on any amendments to the worker's return-to-work or injury management plan. The Act stipulates the timeframe in which return-to-work and injury management plans must be prepared.²
- Injury management is to begin as soon as possible after a worker suffers an injury and wherever possible to enable the injured worker to continue to be employed by the employer who was the worker's employer when the worker was injured.
- Involvement in return-to-work plans and injury management plans should not disadvantage an injured worker.
- Early assessment is essential for work-related injury to determine medical treatment, injury management and work capacity.
- There should be close co-operation between the injured worker, primary treating medical practitioner, worker's employer, injury management coordinator, return-to-work co-ordinator, worker's workplace rehabilitation provider and employer's insurer in the preparation of and administration of return-to-work and injury management plans.
- Strongly embedded in the Act is the right of each worker to have a choice and some control over their own recovery. For obvious medical reasons, workers are encouraged to take a role in their own injury management and return-to-work plans.
- Workers are entitled to clear information regarding the steps and stages in their rehabilitation and to know the name of their employer's insurer. The worker also has a right to examine the insurance policy document.
- The employer is also required to provide injured workers with particulars regarding their injury management and return-to-work practices.
- An injury management coordinator will involve the primary treating medical practitioner and other treating medical practitioners in the management of the worker's injury and return-to-work.³
- The worker's primary treating medical practitioner is to be consulted when the worker's approved return-to-work or injury management plans are reviewed by the worker's injury management coordinator and if found to be ineffective or inappropriate, should be redrafted.
- Workers are entitled to return to work to undertake suitable alternative duties.⁴
- To remain effective and involved in the recovery process, it may be necessary for medical practitioners to gather accurate information regarding work tasks and work procedures in individuals' workplaces.

Rehabilitation is defined as:

*The combined and coordinated use of medical, psychological, social, educational and vocational measures to restore function or achieve the highest possible level of function of persons at work following injury or illness.*⁵

² Section 143E of the Act.

³ Section 143C(2)(f)(ii) of the Act.

⁴ Section 143M of the Act.

⁵ *Australian College of Occupational Medicine and Australian College of Rehabilitation Medicine 1987.*

KEY POINTS OF THE ACT

- A worker is entitled to common law damages if the degree of whole person impairment (WPI) is not less than 20%.⁶ A medical practitioner is to certify the worker's degree of permanent impairment. An assessment of the degree of impairment is to be determined using the relevant impairment guidelines in accordance with sections 72 and 73 of the Act. Certification of the degree of permanent impairment must be done by a medical practitioner accredited by the Board.
- The Act requires the worker's primary treating medical practitioner to be provided with copies of any medical report relating to a worker's claim, irrespective of whether the report is relied upon in assessing liability and incapacity. The party who initiated the medical report must provide the worker's primary treating medical practitioner with a copy of the examining practitioner's report within a specified period. This requirement is aimed at ensuring that a worker's treating practitioner has access to all relevant medical information. The worker's primary treating medical practitioner, if served with a report prepared after an independent medical review of the worker, is to provide the report to the worker.⁷
- Medical practitioners who reside outside Tasmania are not required to be accredited in Tasmania to issue medical certificates for Tasmanian workers.
- For a medical practitioner to issue a certificate in accordance with the Act they must be accredited by the Board.⁸
- The Board has the discretion to set the period of accreditation.⁹
- Provision is made in the Act for codes of practice as a means of providing practical guidance to service providers.¹⁰
- An employer is allowed to dispute liability for weekly payments where a medical certificate is served on the employer more than 14 days after the previous certificate has expired.¹¹
- A claim for medical or other expenses is to be paid or referred to the Tribunal within 28 days of receipt by the employer. If the expense is referred to the Tribunal then the employer is to notify the service provider in writing outlining the reasons why the expense is disputed.¹²
- The definition of "injury" covers the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease.
- For compensation to be paid in respect of a disease, a worker's employment must be the major or most significant contributing factor to that disease.¹³

⁶ Section 138AB of the Act.

⁷ Section 90B of the Act.

⁸ Sections 77A, 34(1) and 69(1) of the Act.

⁹ Section 77D of the Act.

¹⁰ Section 161B of the Act.

¹¹ Section 69(13) of the Act.

¹² Section 77A of the Act.

¹³ Section 3(2A) of the Act.

SECTIONS OF THE ACT RELEVANT TO MEDICAL PRACTITIONERS

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REGULATIONS RELEVANT TO MEDICAL PRACTITIONERS

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For full details of the above sections of legislation refer to *Extracts from the Workers Rehabilitation and Compensation Act 1988 & Workers Rehabilitation and Compensation Regulations 2001*

Sections 77A, 77C, 90A, 90B and 90D

The Medical Practitioner's role

A medical practitioner has the role of substantiating the injury.

The medical practitioner completes the medical certificate and provides an accurate diagnosis and prognosis regarding the nature of the injury and its consistency with the stated cause.

Sections 143C, 143E and 143G

The Primary Treating Medical Practitioner's role

A primary treating medical practitioner is the medical practitioner (usually the injured worker's general practitioner) chosen by an injured worker to participate in the injury management process.¹⁴

The primary treating medical practitioner performs a central role in the primary care, recovery and medical management of an injured worker. The primary treating medical practitioner is part of the injury management framework and has continuing contact with the injured worker throughout the injury management process and return-to-work process.

The primary treating medical practitioner is a source of important information; for example, diagnosis of the workplace injury, about work restrictions, the certification of incapacity, and the co-ordination of treatment.

Primary treating medical practitioners can play a positive role in facilitating co-operation between the injured worker, the employer, the insurer, the return-to-work co-ordinator, injury management co-ordinator and workplace rehabilitation provider. They also play an important role in co-ordinating and delivering specialist medical care.

The primary treating medical practitioner is responsible for:

- providing medical certificates
- diagnosing the nature of a worker's workplace injury
- providing primary medical care for the worker's workplace injury
- co-ordinating medical treatment for the worker's workplace injury, including referring the worker to those who may deliver specialist medical care and by co-ordinating the delivery of any specialist medical care
- monitoring, reviewing and advising on the worker's condition and treatment
- advising on the suitability of the work that the worker may be expected to perform, and specifying any restrictions on this work
- taking part in the development of return-to-work plans and injury management plans.

A timely response to requests for information by all participants involved in an injured worker's return-to-work reduces delays in the injury management process.

¹⁴ Sections 141 & 143G(1) of the Act.

The more familiar a primary treating medical practitioner is with the worker's workplace and with the processes in place for return-to-work, the better the treatment and outcome for the injured worker.

Co-operating and communicating with the employer, insurer, return-to-work co-ordinator, injury management co-ordinator and workplace rehabilitation provider can help achieve this. Maintaining regular contact with these parties, and responding promptly to phone calls and requests for information, are ways the primary treating medical practitioner can do this.

The primary treating medical practitioner should receive a copy of a return-to-work or injury management plan. Further, the worker's primary treating medical practitioner is to be consulted on the development of, and any amendments to, such plans.

The worker's primary treating medical practitioner must be provided with copies of any medical reports relating to the worker's claim, irrespective if the report is relied upon in assessing liability and incapacity. This means that the worker's medical practitioner has available all of the medical evidence required to make an informed decision about the future treatment of his/her patient.

Examples:

Jack has been off work for a couple of days. He reports to his medical practitioner that his injury happened while he was repairing a machine that week.	On the certificate, the medical practitioner confirms that the injury is consistent with the stated cause.
Joe has been off work for six days with a muscle strain injury. He is feeling awkward about gradual return to work. He reports to his medical practitioner that he feels he is being blamed at work for his injury.	The medical practitioner should contact the workplace to open a dialogue. The employer has a responsibility to ensure that workers are treated fairly during recovery.

For further information on the role of the primary treating medical practitioner please read *The Role of the Primary Treating Medical Practitioner* (GB257). For your free copy call WorkCover Tasmania on 1300 776 572 or go to www.workcover.tas.gov.au and search for GB257.

Sections 25(1), 34 and 69(13)

Worker Eligibility

All workers (as defined in the Act) are eligible for compensation if they suffer a work-related injury or disease. A 'worker' is defined as any person who has entered into a contract of service or training agreement with an employer.

Workers are entitled to compensation if, in the course of their employment:

- they suffer an injury, which is not a disease, which has arisen out of or in the course of their employment; or
- they suffer an injury which is a disease arising out of or in the course of their employment, and to which the employment has contributed to a substantial degree, within the meaning of section 3(2A) of the Act.

"Injury" is defined as:

- (a) a disease; and
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease where the employment was the major or most significant contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration.

The claim for compensation

The employer must accept a claim from the injured worker. A claim for compensation is not valid unless it consists of a Workers Compensation Claim Form together with an Initial Workers Compensation Medical Certificate. The employer has 84 calendar days from receipt of the claim to dispute liability for the claim; otherwise it is deemed to be accepted.

An employer can dispute liability for weekly payments where there is a gap of more than fourteen days between medical certificates.

An employer is required to commence weekly payments on a 'without prejudice' basis from the date of the claim until liability is accepted or a 'reasonably arguable case' finding is made by the Tribunal.

It is an offence for an employer to hinder, prevent, or attempt to hinder or prevent a worker from obtaining a claim form or making or pursuing a claim for compensation.

The medical practitioner's role

The medical practitioner treats the injury but does not engage in offering advice to the injured worker regarding their claim for compensation other than imparting general information, which appears above.

Example:

In the course of a surgery consultation, Jim says that his injury occurred at work, due to a faulty machine. He asks his medical practitioner if he should see a lawyer and sue his employer for negligence.

The treating medical practitioner reports that the injury is consistent with the stated cause and resists giving the patient advice concerning his claim for compensation or information concerning the legal process of injury compensation.

The medical practitioner should advise Jim to contact WorkCover Tasmania.

Section 25

Injury caused by work circumstances

Workers may be eligible for compensation when they suffer an injury (within the meaning of s.3(2A)) in or out of the course of their work.

The presumption of cause

The Act provides 'no fault' compensation; however, compensation is not payable when the injury is the result of serious and wilful misconduct of the worker or when the injury is intentional or self-inflicted.

Compensation is also not payable in situations where:

- workers suffer a disease, which arises substantially from reasonable action by an employer taken in a reasonable manner with regard to changes to a worker's work circumstances, such as being demoted, disciplined, transferred or counselled. However, the employer still has a legal responsibility to ensure not only the health and safety of workers, but to actively support rehabilitation and return-to-work.

Compensation is also not payable where:

- workers are absent from their place of employment during a recess, unless that absence was at the request or direction of the employer
- workers are absent at a social or sporting activity that takes them away from their job and where clear consent has not been given from their employer, unless they were attending or participating in that event at the request or direction of their employer.

Example

Jeff tells his medical practitioner that he sustained an ankle injury by doing monkey bar tricks on scaffolding at work.

The treating medical practitioner does not question the cause of the injury; he/she simply records the history as stated by the patient and treats the injury. The medical practitioner must also judge whether the injury is consistent with the stated cause.

While injuries, which are the result of serious and wilful misconduct are generally not compensable, the medical practitioner should not question the circumstances or express an opinion at that time.

Section 25(6)(a) and (b)

Conditions of claim

The Act states that an injury is not compensable if it occurs when a worker is travelling in either direction between his/her place of residence and his/her place of employment, except when:

- the journey is at the request or direction of their employer
- the journey is work related, with the authority (express or implied) of the employer.

An injury also is not compensable if it occurs when the worker is travelling between two jobs (for two different employers).

Example:

While on her way to work, Jenny deviates from her usual journey to collect some computer disks for her employer and has a car crash resulting in a broken leg.

The worker must be travelling at the request or direction of their employer, or the journey must be work-related, for the injury to be compensable.

However, the medical practitioner should treat the injury and make a professional judgment about whether it is consistent with the stated cause.

NOTICE OF INJURY AND CLAIM FOR COMPENSATION

Sections 32, 33 and 38

Notification

Workers must give formal notice of an injury to their employer as soon as practicable after the occurrence of the injury and before they have voluntarily left the employment in which they suffered the injury.

They may give that notice orally or in writing but it should include their:

- name
- address
- date of injury
- nature of injury
- cause of injury.

Workers must make a claim for compensation within six months of an injury (from the date of injury). However, claims after this time may be acceptable if the failure to do so was occasioned by mistake, absence from the State or other reasonable cause.

Example:

Jane presents at surgery on a Friday afternoon with lower back pain, which she claims is employment related. Her medical practitioner encourages her to take her certificate back to work that day or to phone her employer straight away and report her injury and treatment.

Injured workers have a responsibility to formally inform their employer of an injury or accident as soon as is practicable.

Sections 50(1) to 55B

Medical Panels

The Tribunal will keep a register of medical practitioners who have indicated their willingness to be selected to sit on a medical panel. Where there is some dispute as to a medical question, and one of the parties wishes to proceed, the Tribunal will select two or three practitioners from the register to form a panel. At least one member of the panel is to be a general practitioner and one is to have particular expertise in the medical field being examined. No member of a panel can have been involved in the examination or treatment of, or have provided any medical service, (including any assessment of impairment) to the worker in respect to the injury in question.

Medical questions that may be determined by a medical panel:

- The existence, nature or extent of an injury.
- Whether an injury is, or is likely to be, permanent or temporary.
- A worker's capacity for work or specific work duties.
- The loss, or the degree of loss, of any of the parts or faculties of the body.
- The permanent loss of the effective use of a part of the body.
- The assessment of the degree of permanent impairment, including whether the impairment is permanent.

A medical panel is not bound by the rules of evidence; the panel may inform itself on any matter relating to the medical question before it. The decision of a medical panel is final and binding on all parties.

A medical panel can examine a worker; require the worker to answer questions and to produce any relevant documents. If the worker fails or refuses to attend before a panel, refuses to be examined or answer questions or produce documents, the Tribunal may suspend the worker's right to compensation until he/she complies.

A worker cannot be represented by another person before a medical panel unless it appears to the panel that the worker should be represented. The worker is allowed to be accompanied by a person of his/her choice before a medical panel.

Example:

As a result of a dispute as to the level of his impairment/incapacity, Ivan has been told he has to attend a medical panel for examination. He wonders if he has to attend, and what it's all about.

If Ivan fails to attend the panel, answer questions, produce any documents or refuses an examination, his entitlement to compensation may be suspended.

The medical panel is the final arbitrator on medical questions and its findings are final and binding on all parties.

PERIOD FOR WHICH BENEFITS ARE PAYABLE: WEEKLY PAYMENT - 'STEP DOWN'

Section 69B and 87

There is no 'salary cap' on weekly payments.

Section 87 of the Act provides that a worker's entitlement to weekly payments of compensation will cease:

- If the injury occurs before the worker is 64 years, then when the worker attains the age of 65 years; or
- If the injury occurs after the worker turned 64 years, on the date one year after the injury occurs.

Expiry of a worker's entitlement to weekly payments under section 69, subject to section 87:

Worker's permanent impairment, at a percentage of the whole person	Expiration of weekly payments
less than 15% or is not assessed	9 years after the date of the initial incapacity
assessed at 15% or more but less than 20%	12 years after the date of the initial incapacity
assessed at 20% or more but less than 30%	20 years after the date of the initial incapacity
assessed at 30% or more	when the worker attains the age of 65 years, of if the worker is 64 years of age on the date one year after the injury occurred

Under the Act, a worker's weekly earnings are 'stepped down' after a period of incapacity. Weekly payments to injured workers are paid on the following schedule:

% of weekly payment	% when worker unable to perform usual or alternative duties ¹⁵	Period of incapacity
100%	-	first 26 weeks of the period of incapacity following the date of initial incapacity
90%	95%	exceeding 26 weeks but not exceeding 78 weeks from the date of initial incapacity
80%	85%	of the weekly payment for the period of incapacity exceeding 78 weeks but not exceeding – <ul style="list-style-type: none"> ○ 9 years from the date of initial incapacity, if the worker's permanent impairment (if any), at a percentage of the whole person, is less than 15% or is not assessed; or ○ 12 years from the date of the initial incapacity, if the worker's permanent impairment, assessed at a percentage of the whole person, is 15% or more but less than 20%; or ○ 20 years from the date of the initial incapacity, if the worker's permanent impairment, assessed at a percentage of the whole person, is 20% or more but less than 30%; or ○ the period extending from the date of the initial incapacity to the day on which the entitlement of the worker ceases in accordance with section 87, if the worker's permanent impairment, assessed at a percentage of the whole person, is 30% or more.

¹⁵ Where there is medical evidence that the worker is unable to perform their usual duties or suitable alternative duties or where the employer does not enable the worker to undertake suitable alternative duties.

A worker's weekly payment will not be reduced by the percentage specified above in respect of any week where the worker engages in work, for 50% or more of the worker's normal weekly hours, under the worker's approved return-to-work or injury management plan.

A safety net of 70% of the basic salary for low-income workers is now provided or the weekly rate payment determined under section 69, whichever is the lesser.

Workers should be made aware that, if they are eligible for compensation under the Act, their employer is legally obliged to pay them.

Normal Weekly Earnings

Broadly, normal weekly earnings could include ordinary pay plus regular overtime and allowances except travel and accommodation. Normal Weekly Earnings (NWE) is calculated as the average earnings over the 12 months prior to the date of incapacity.

Example:

<p>Jason and his medical practitioner work together on a suitable return-to-work plan, bearing in mind that a 'step-down' will apply. (Jason will soon drop in salary from 100% to 90%).</p>	<p>Weekly benefits are reduced from 100% to 90% after 26 weeks, and to 80% after 78 weeks.</p> <p>Jason's medical practitioner advises him that graduated return-to-work will lessen the financial impact, and works with Jason and his employer to explore ways for Jason to return-to-work in some capacity.</p>
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Sections 74 and 75

Medical Services

'Medical services' are defined in the Act as:

- Attendance, examination or treatment of any kind by, or under the supervision of a medical practitioner, chiropractor, dentist, optometrist, osteopath, physiotherapist, podiatrist or psychologist;
- The provision, maintenance, repair, adjustment, or replacement of artificial limbs, eyes or teeth, crutches, splints, spectacles, and other medical and surgical aids and curative appliances or apparatus;
- The repair or replacement of artificial limbs, eyes or teeth, crutches, splints, spectacles or other medical or surgical aids or curative appliances or apparatus destroyed or damaged at the time of an injury;
- The provision by a pharmaceutical chemist of medicines or materials; or
- Any examination, test, or analysis carried out on, or in relation to, a worker at the request or direction of a medical practitioner, chiropractor, dentist, optometrist, osteopath, physiotherapist, or podiatrist and the provision of a report or certificate in respect of such an examination, test, or analysis.

Advice on individual treatment is the responsibility of treating medical practitioners. However, injured workers have the right to choose their primary treating medical practitioner. For a variety of reasons the injured worker might choose one practitioner over another.

If the injured worker decides to change their primary treating medical practitioner, they must authorise the previous primary treating medical practitioner to release relevant medical records to the new primary treating medical practitioner.

Services Referred to in the Legislation (section 75)

If section 75 applies to an employer of a worker, the employer is liable to pay as 'additional' compensation to the worker, or their dependants, the reasonable expenses for: Ambulance Services, Constant Attendance Services, Hospital Services, Medical Services, Nursing Services, Rehabilitation Services, household services and road accident rescue services.

Examples:

<p>Jane injured her back at work and her medical practitioner referred her to a physiotherapist for treatment. She has had a good response from a chiropractor for a previous injury, and wants to try that sort of treatment again.</p>	<p>Although the treating medical practitioner can recommend a course of treatment, the injured worker can choose which 'professional' they see for treatment, i.e.: chiropractor, physiotherapist or others.</p>
<p>Michael has been on compensation for three years and is worried about the continuing cost of medical, physio and other treatments.</p>	<p>Michael's entitlement to compensation for reasonable medical, rehabilitation and other services in relation to his injury ceases 52 weeks after the lawful termination of his weekly payments. Notwithstanding this, the Act provides that the Tribunal may order that the worker is entitled to further "additional" compensation.</p>

ADDITIONAL COMPENSATION FOR TRAVELLING EXPENSES

Section 76

Travel

An employer is liable to pay to the worker or his/her dependants the reasonable expenses necessarily incurred by the worker for travelling and maintenance in connection with all or any of the following purposes:

- To undergo any medical examination under Division 1A of Part VII
- To obtain the medical, hospital or rehabilitation services in respect of which he or she is entitled to compensation; or
- Such amount as may be prescribed.

An employer is also liable to pay the reasonable expenses for a person who goes with the worker while the worker is travelling for the purpose of a medical examination or to obtain medical and/or other services. A medical practitioner must certify, in writing, that it is necessary in the circumstances that the worker be accompanied by another person whilst travelling.

Examples:

<p>Jemima travels to see a specialist from her home in Penguin to Launceston. She is worried about the cost of these trips.</p>	<p>Travel (local, rural or interstate) and associated costs to receive a medical examination and/or treatment or rehabilitation services are claimable from the employer.</p>
<p>Jocelyn is being sent by her employer to see a specialist in Melbourne in connection with her claim. She has a back injury and feels she cannot make the journey alone.</p>	<p>If her medical practitioner certifies in writing that it is necessary for Jocelyn to be accompanied on the journey, the employer is required to pay the costs of another person to accompany her.</p>

Sections 77A to 77H

Accreditation

A medical practitioner who resides or is providing a medical service in Tasmania is not to issue a Workers Compensation Medical Certificate unless the medical practitioner has been accredited by the Board.

Medical practitioners who do not reside in Tasmania are not required to be accredited to issue Tasmanian Workers Compensation Medical Certificates.

Accreditation is gained by registering with the Board, after the medical practitioner:

- has undertaken a course of training approved by the Board
- has fulfilled the prescribed requirements, if any
- agrees to comply with the relevant requirement of the Act and any relevant regulations, guidelines and rules of practice and procedure issued under the Act.

The Board may grant accreditation subject to the conditions or restrictions it thinks fit. If the Board refuses to grant accreditation it will provide written reason for the refusal.

Accreditation remains in force for a period such as the Board determines unless it is revoked or suspended.

The Board has no jurisdiction in respect of the medical practitioner's professional competence; its powers relate only to the way in which medical practitioner's treat injured workers.

Example:

In welcoming Dr James as a locum to his practice, the first question Dr Jones asked was 'Are you accredited by WorkCover Tasmania?'	All medical practitioners must be accredited to provide a certification in relation to a workers compensation claim.
Sarah has a back injury, is severely incapacitated and feels that the Queensland heat will help her pain levels, so packs up and moves over there. She still needs to provide medical certificates to maintain her claim.	Sarah will need to register with a GP in her new location and ask him/her to contact WorkCover Tasmania to request a Tasmanian Workers Compensation Medical Certificate. The Board will then send the medical practitioner the necessary medical certificate pads for Sarah's claim. The interstate medical practitioner is not required to be accredited to issue Tasmanian Workers Compensation Medical Certificates.

Section 78

Gradual Process

When an injury occurs gradually, compensation is payable by:

- the employer who employed the worker when he/she was injured, if the injury was due to the nature of his/her employment with that employer; or
- the employer who last employed the worker, where the type of work may have caused the injury.

Example:

<p>John is a council groundsperson who has a progressively worsening knee complaint. He has been to see his medical practitioner and reported his condition to his employer.</p>	<p>The medical practitioner states his or her opinion that the injury is likely to have occurred from the nature of the worker's employment and has been exacerbated by continuous working conditions.</p>
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Section 86

Circumstances for reduction of payment

With the exception of the Tribunal making a determination to reduce weekly payments, an employer may only reduce or terminate payments to workers in circumstances where:

- an accredited medical practitioner certifies that the worker has wholly or substantially recovered from the injury or that the worker's incapacity is no longer wholly or substantially due to the injury
- the payment is for total incapacity and the worker has returned to work
- the worker receives weekly payments for partial incapacity and is receiving weekly earnings in excess of the amount upon which the amount of such weekly payments was determined
- a worker's entitlement to weekly payments for the period of incapacity, with regard to the percentage of the worker's permanent impairment percentage, under the Act expires

Examples:

<p>Jacinta is fully recovered from her injury and receives an 'all-clear' to return to work from her medical practitioner. She is reluctant to return to work, although she has a certificate confirming her health and fitness. Her earnings will become affected by her decision not to return to work.</p>	<p>Jacinta's earnings will be affected if she has been certified capable by her medical practitioner and refuses to return to work.</p>
<p>Janice is sent to an employer's medical practitioner for an opinion and receives a clearance to return to normal duty. Her treating medical practitioner disagrees and gives her a certificate for a further four weeks of total incapacity.</p>	<p>In the first instance, the two medical practitioners confer. If they do not reach an agreement, a resolution may be sought from the Tribunal. The workplace may terminate weekly benefits based on its examining medical practitioner's report after giving the worker ten (10) days notice in writing.</p>

WORKERS' AGE LIMITATIONS

Section 87

Worker age eligibility

Employers are required to pay compensation to workers:

- if an injury occurs on or before the date on which the worker reaches the age of 64 years, then weekly benefits will cease once the worker reaches the age of 65
- If the injury occurs when the worker is aged 64, weekly benefits will cease 12 months after the injury occurred.

Where an injured worker can demonstrate that he/she would have continued in his or her employment beyond the age of 65, the Workers Rehabilitation and Compensation Tribunal may determine that weekly benefits be continued and also determine the duration of weekly benefits.

Example:

Joe, who is 64, was injured at work. He was informed by his medical practitioner that weekly payments of compensation for injury may not apply to him after he turns 65.

Joe's payment of weekly benefits may cease once he turns 65; however, the medical and rehabilitation costs of the claim will still be paid regardless of Joe's age.

Section 90A – 90D

Independent Medical Reviews

If a worker claims compensation or is in receipt of receiving weekly payments then the employer or insurer can require the worker to undergo a medical review which will be conducted by a medical practitioner chosen by their employer.

Before a worker submits to an independent medical review the worker's employer or the employer's insurer must have:

- discussed with the worker's primary treating medical practitioner the reasons why the review is to be conducted
- informed the worker, in writing, of the reasons why the review is to be conducted.

A worker required to submit to an independent medical review by a medical practitioner is to:

- attend at a reasonable time and place for the review
- be taken to have given consent to providing to the medical practitioner nominated by the worker's employer of any medical reports or records relating to the worker's injury.

A worker is not required to undergo more than one independent medical review in any 3 month period unless:

- the worker has suffered multiple injuries or the worker's injuries require consideration by specialist medical practitioners in different fields or aspects of the injury
- the review is conducted by a medical practitioner specialising in a different injury, or field or aspect of the injury to the practitioner who has conducted a review of the worker in the 3 month period.

The Act provides that if an independent medical review report states that any medical or surgical treatment will terminate or shorten the period of incapacity for the worker then the worker must submit to that treatment. However, if a worker, after consultation with his/her primary treating medical practitioner, is not satisfied with the independent medical review report, then the worker must submit to an examination by another medical practitioner. The worker can select the medical practitioner to conduct the examination and may choose their primary treating medical practitioner. If the second examination confirms that the worker should submit to the treatment specified then the worker must, as soon as practicable, submit to that treatment.

Reports in relation to Reviews

A medical practitioner (other than a practitioner chosen by the worker) who conducts an independent medical review on a worker must:

- prepare a report on the review
- provide the report to the person who required the worker to submit to the review
- not provide the report to the worker.

If a medical practitioner conducts an independent medical review of the worker and reports that any particular medical or surgical treatment particularised will terminate or shorten the worker's period of incapacity, then the medical practitioner must:

- provide the report to the person who required the worker to submit to the review
- not provide the report to the worker, unless the medical practitioner is the worker's primary treating medical practitioner.

Unless the person who conducted the review was the worker's primary treating medical practitioner, the person who was provided with the report of the worker's review must,

within seven days, serve a copy of the report on the worker's primary treating medical practitioner. A penalty applies for non-compliance with this requirement of the Act.

The Act requires that, after an independent medical review report has been served on the worker's primary treating medical practitioner, the primary treating medical practitioner is to provide to the worker the report. The worker is provided with medical review reports via their primary treating medical practitioner.

The availability of the independent medical review reports to the primary treating medical practitioner ensures that the medical practitioner has all the information available to him/her to best manage the worker's recovery and return-to-work.

It is important that communication between a worker and his/her primary treating medical practitioner is open and transparent. The discussion of the worker's independent medical review or examination reports encourages and facilitates dialogue in respect of the worker's injury management.

Examples:

<p>While the company has a preferred medical practitioner, Julie chose to go to her own medical practitioner after the initial injury and for follow-up treatment. The company then sent Julie to its own specialist for an independent medical review.</p> <p>Julie is also interested to know what the practitioner who conducted the independent medical review has said in their report regarding her injury.</p>	<p>Julie has a choice of medical practitioners, but her employer (or the employer's insurer) has the right to require her to be examined by a medical practitioner of the employer's choice.</p> <p>Julie may only be required to submit to an independent medical review if her employer, or the employer's insurer, have discussed the reasons for conducting the review with Julie's primary treating medical practitioner and have informed her, in writing, why the review is to be conducted.</p> <p>Subject to exceptions in the Act, Julie is not required to submit to more than one review in any three month period.</p> <p>It is important that all review reports are provided within the timeframes specified in the Act. Julie's primary treating medical practitioner is to provide her with the report. Julie's primary treating medical practitioner is best placed to understand the report and to discuss with her any sensitive issues or medical terms.</p>
<p>Joseph was injured at work three weeks ago and submitted a claim for compensation to his employer. The employer has requested a medical report from the treating medical practitioner. Joseph calls his GP as he is concerned about the time the report is taking. He has been told by the company that it will not accept a claim from a worker without a medical report.</p>	<p>Providing Joseph has given a valid claim to his employer, the employer is obliged to accept it. The employer, within 28 days, must notify Joseph in writing whether the employer has either accepted or not accepted liability for his injury.</p> <p>The medical practitioner who conducted the independent medical review or examination must prepare a report.</p> <p>If a report from a review or examination is to be relied upon as evidence in the claim, a copy of the report must be served on either the worker or worker's employer.</p>

Sections 139 – 143Q

Effective injury management and return-to-work rely on the efficient flow of information and the effective participation and cooperation of all parties, particularly the injured worker, employer and medical practitioner.

Medical practitioners have a number of roles and responsibilities in the management of a worker's injury and the Act gives rise to an expectation that medical practitioners will be very much involved in a worker's treatment, recovery from injury and their return to work.

Injury management and return-to-work plans will assist injured workers to feel confident that their particular situation is being attended to in a professional and reliable manner.

Return-to-work Plan	Injury Management Plan
A clear-cut injury management plan for a worker who is totally or partially incapacitated for work for more than 5 working days but less than 28 days	A detailed injury management plan for an injured worker who is totally or partially incapacitated for work for 28 days or more

The Act requires insurers have:

- an injury management program in place for workers who suffer workplace injuries; and,
- an injury management coordinator who coordinates and oversees the management of the worker's injury.

Once a worker has being assigned to an injury management coordinator the injury management coordinator is required to contact the worker's primary treating medical practitioner. The worker's primary treating medical practitioner and any other treating medical practitioners are to be involved in the management of the worker's injury and return-to-work.

An injury management coordinator is to ensure the preparation of the following:

- a return-to-work plan within 5 days after the worker is incapacitated, either totally or partially, for work for more than 5 working days but less than 28; or,
- an injury management plan within 5 days after the worker is incapacitated, either totally or partially, for work for 28 days or more.

The worker's primary treating medical practitioner is to be consulted on:

- the preparation;
 - any amendments; and,
 - the review
- of either an injury management or return-to-work plan.

Medical treatment and the primary treating medical practitioner

The role of a medical practitioner, within the plans, will vary from time to time and from case to case. A medical practitioner may be very involved in the selection of alternative duties, or may make recommendations regarding the suitability of work. It is important for a medical practitioner to determine clearly the duties, which an injured worker is capable of performing. To be involved in the selection of alternative duties it is important that the medical practitioner have a close working relationship with the workplace and have a working knowledge of the functions of the organisation and the

work performed. Medical practitioners are strongly encouraged to contact employers within their practice area.

Medical certificates

To certify a worker totally incapacitated from more than 14 days a medical practitioner must specify in the medical certificate:

- the reasons why the period of incapacity is longer than 14 days; and,
- a date when a review will be undertaken to see whether the worker remains totally incapacitated for work

A medical practitioner must, when issuing a medical certificate for a worker in either of the following situation, specify the opinion, the period and the reasons for why the worker is unlikely for a limited or indefinite period to be able to resume:

- work for the same number of hours per week prior to the injury; or,
- some or all of the duties the worker performed prior to the injury.

Workers Compensation Certificates and the Primary Treating Medical Practitioner - Section 34 and 69

To make a claim for compensation, an injured worker must obtain a Workers Compensation Medical Certificate from an accredited medical practitioner.

The medical certificate is the first step of the return-to-work process. How an injured worker is certified will determine if they will stay at work after an injury at normal capacity or reduced capacity, or if they will be off work.

There are two medical certificates; the Initial and the Continuing/Final. They are designed to establish a worker's capacity for work, expedite their return to work, and reduce the need for the insurer or employer to request medical reports.

Initial Workers Compensation Medical Certificate

An Initial Certificate validates a new workers compensation claim. An Initial Certificate should only be completed upon the worker's first consultation, and may also be used as a clearance certificate where the worker's injury is minor and no further intervention is required.

Continuing/Final Workers Compensation Medical Certificate

A Continuing/Final Certificate supports an ongoing entitlement to workers compensation. A Continuing/Final Certificate should only be completed upon visits subsequent to the worker's initial consultation.

For more information, refer to the guidelines on *Completing the Initial Workers Compensation Medical Certificate* and *Completing the Continuing/Final Workers Compensation Medical Certificate*, available at www.workcover.tas.gov.au.

The guideline *Medical Certificate — Certification of Workplace Injuries* helps medical practitioners in their certification practices so that early, safe and durable return-to-work may be achieved for injured workers.

For further information, refer to the *Medical Certificate — Certification of Workplace Injuries* guideline, available at www.workcover.tas.gov.au.

Full disclosure

A worker who wilfully fails to fully disclose to any treating medical practitioner any information that the worker knows or ought to know is relevant to either the diagnosis or treatment of their injury may be subject to a penalty under the Act.

Medical advisory and mentoring service

A medical advisory and mentoring service may be formed by the Board to provide advice in respect of the following:

- applying evidence-based medical treatment guidelines
- identifying appropriate treatment options
- identifying the work capacity (including alternative duties) of injured workers
- issuing certificates and medical report
- obtaining second opinions regarding the diagnosis or treatment of an injured worker
- the compensation scheme established by the Act.

Example:

<p>Jenny breaks down crying during a surgery visit for attention to a work-related injury to her knee and shoulder. Jenny was certified as totally incapacitated for work by her medical practitioner for a period of 2 months. She explains to her medical practitioner that she is worried about the costs of her treatment and being able to perform her usual duties when she returns to work.</p> <p>Her medical practitioner tells her that if her claim is accepted, her employer will cover her salary as well as medical and rehabilitation expenses during her recovery.</p> <p>Jenny's medical practitioner also explains to her that she will be provided with an injury management plan and that her employer has a nominated injury management coordinator who will keep in contact with her, and coordinate and oversee her injury management program. Jenny's medical practitioner also explains that they will be closely involved in the selection of alternative suitable duties, and advises that they will be in contact with her injury management coordinator at her workplace to discuss appropriate alternative duties, and confirms to Jenny that she will have a say in the actual process of her injury management plan.</p>	<p>Employers are liable for fees for medical treatment of injured workers, but a medical practitioner may not charge more for a workers compensation treatment than if it were a non workers compensation matter (including any discounts).</p> <p>A workers positions must be held open for to 12 months while workers are incapacitated, unless it is highly improbable that Jenny will be able to perform her duties or if the reason for the position no longer exists.</p> <p>Employers must provide suitable alternate duties for injured workers to perform if reasonably practicable.</p> <p>Workers have the right to open and free information regarding their treatment, injury management plan and return-to-work status and their workplace's insurer.</p> <p>Jenny's medical practitioner has to include in the certificate the reasons for why Jenny's period of incapacity is longer than 14 days and a date on which the incapacity will be reviewed.</p>
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Section 153

An accredited Medical practitioner may be liable for a penalty fine if they knowingly provide a medical certificate, which contains false or misleading information.

Example:

<p>A medical practitioner in a large suburban practice was becoming well known for the ease with which workers could obtain medical certificates and extensions to certificates.</p>	<p>It is an offence to make misleading or false statements on medical certificates.</p> <p>The Board can revoke the accreditation of medical practitioners who fail in their responsibilities under the Act.</p> <p>The medical certificate should record both the stated date of the accident/incident and also the date the medical practitioner conducted the examination.</p>
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