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Guideline for Arranging Joint Independent Medical Assessments

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1. Purpose

During the Compulsory Third Party Insurance (CTP) claim process, the opinion of an independent expert can assist the injured person with a CTP claim (claimant) to progress their recovery and their claim.

This guideline is intended to assist claimants and CTP Insurers to arrange objective, timely and appropriate assessments that minimise impact on a claimant's wellbeing, and support recovery and a return to usual activity.

This guideline promotes the use of a joint independent medical assessment (JIMA), where the injured person (either directly or through their legal representative) and the CTP Insurer agree for one expert to conduct the assessment and prepare the assessment report.

For injured people with CTP claims, this means:

- ✓ Assessments are arranged at the right time.
- ✓ Assessments are conducted by the right expert speciality or discipline.
- ✓ One set of questions are answered.
- ✓ Multiple assessments are avoided.
- ✓ Treatment, therapies and return to usual activities (including work) progress without impact.
- ✓ Their CTP claim progresses without delay.

Joint independent medical assessments also positively impact the CTP Scheme, by reducing unnecessary expenses associated with assessments, disputes and administrative costs, which are ultimately paid for by motor vehicle owners through their CTP Insurance premium.

The JIMA model aligns to the paramount duty of experts under the Uniform Civil Rules 2020 (UCR). Under UCR 74.5, an expert is not an advocate for a party and has a paramount duty, overriding any duty to the party or person retaining them, to assist the Court impartially on matters relevant to their area of expertise.

While compliance with this guideline is voluntary, the purpose of this publication is for the benefit of the claimant by outlining a process to reduce the number of assessments the injured person is required to attend.

This guideline has been developed in consultation with practicing personal injury lawyers in South Australia, CTP Insurers, the South Australian Law Society and the Australian Lawyers Alliance.

2. Application

This guideline:

- may be applied to all independent assessments undertaken by experts (medical practitioners, health professionals and Accredited Medical Practitioners),
- does not override or substitute any parties' obligations under legislation, UCRs or obligations of CTP Insurers under the Regulator Rules, and
- has no application to reports prepared by treating medical practitioners or other treating health professionals.

3. Definitions

Accredited Medical Practitioner (AMP) means an Accredited Health Professional as described in the *Civil Liability Regulations 2013 (SA)*; accredited to undertake ISV Medical Assessments;

Business day means any day except Saturdays, Sundays and declared public holidays in South Australia;

Claimant means an individual who makes a CTP claim or on whose behalf a claim is made, including their properly appointed representative, agent or their lawyer where applicable;

Expert means an AMP, health professional, medical specialist;

Health professional means a legally qualified medical practitioner, registered occupational therapist, registered physiotherapist, registered chiropractor, or health practitioner designated under section 4 of the *Return To Work Act 2014*;

IME means an independent medical examination undertaken by a medical practitioner, or health professional, who has not previously been and is not currently the claimant's treating practitioner;

ISV medical assessment means an assessment undertaken by an AMP described in the *Civil Liability Regulations 2013*;

Joint independent medical assessment means either an IME or an ISV medical assessment, where both parties agree for one expert in the relevant field, to provide their expert opinion;

LSA means the Lifetime Support Authority of South Australia established under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*;

Medical report/report means either an IME report prepared by a medical practitioner or health professional; or an ISV medical assessment report prepared by an AMP;

Parties means the claimant or the CTP Insurer or their legal representatives;

Regulator Rules means the Regulator Rules for CTP Insurers for accidents occurring on or after 1 July 2016, and published at ctp.sa.gov.au;

UCR means the *Uniform Civil Rules 2020*, as amended and replaced from time to time.

4. Why arrange a JIMA

Treatment decisions

A JIMA may be beneficial when there are disputes that cannot be resolved based on the treating health professional's opinion and recommendations to determine whether the treatment, rehabilitation or service provided or to be provided are:

- a) reasonable and necessary, and
- b) arise from the motor vehicle accident.

The SA CTP Injury Recovery and Early Intervention Framework, section 4.2 *Reasonable and Necessary Injury Recovery Interventions* outlines the factors that the CTP Regulator expects CTP Insurers to consider when assessing whether the intervention is reasonable and necessary. The Injury Recovery and Early Intervention Framework is available on the CTP Regulator website.

Claims decisions

A JIMA may be beneficial when additional information from an independent expert would help progress the CTP claim to settlement. Asking specific questions, assessing whole person impairment and undertaking an ISV medical assessment are examples of these benefits.

5. When to arrange a JIMA

The timing of the independent assessment can significantly impact the injured person's rehabilitation, recovery and their return to usual activities including work. The parties should consider these impacts, be sure on the reasons why an assessment is required, consider the timing of the assessment, and that all relevant information is provided to the health professional.

These are some key factors to consider when arranging a JIMA at the following stages:



During the treatment phase

A JIMA should be considered at any time to determine whether a request for treatment or rehabilitation is reasonable and necessary. If an assessment is needed to determine treatment, it should be conducted as soon as possible so as not to impact the claimant's recovery.



When determining causation

A JIMA should be considered at any time and as soon as necessary to determine whether the claimant's clinical presentation is directly related to the motor vehicle accident.



If children are involved

The assessment of children should only proceed after having considered the necessity of the assessment, what benefit the assessment will provide to settling the claim and the impact on the child. Along with considering distress to the child by undergoing the assessment, timing of the assessment should be scheduled to avoid disrupting educational activities and rehabilitation.



For a neuropsychological assessment

When assessments for cognitive ability and function are required, the parties should only arrange a neuropsychological assessment after discussion with the treating health professionals. The treating health professionals should also provide guidance on the timing of an assessment. Assessments conducted more frequently than recommended by the treating health professionals may impact the validity of the results and interfere with rehabilitation. In the first instance, the parties should rely on the treating health professional's most recent assessment or confirm when the next assessment is scheduled. The treating health professionals may be able to provide a separate report addressing specific questions, rather than requiring an additional neuropsychological assessment.



When injuries have stabilised

For assessments relating to progressing the CTP claim to settlement, the claimant's injuries are to have stabilised within the meaning of the *Civil Liability Regulations 2013*.

6. What to agree on to arrange a JIMA

The following steps should be undertaken when either party reaches the view that an independent assessment may be beneficial for the claimant:

Step 1: Come to an agreement

- ✓ Agree with the other party to proceed with a jointly referred assessment.
- ✓ Agree on the purpose of the assessment.
- ✓ Agree on the timing.
- ✓ Agree on the questions to be asked of the expert.
- ✓ Agree on the materials to be provided with the assessment referral letter.
- ✓ Agree to the arranging party.

Step 2: Select the expert

It may be useful for each party to nominate up to two experts taking care to:

- ✓ Select an appropriately qualified and experienced expert suitably skilled for the purpose of the assessment.

- ✓ Consider their availability for appointments relating to the reason for assessment and urgency for deciding reasonable and necessary treatment and rehabilitation and settling the claim. Generally, this should be no later than six weeks following the request.
- ✓ Consider any special needs of the claimant, such as a preference for a male or female expert or any cultural or religious requirements.
- ✓ Agree to the funding of the expert assessment and report.
- ✓ Minimise disruption to the claimant's recovery, rehabilitation and work commitments.
- ✓ Consider the travel arrangements for the claimant to attend the assessment.
- ✓ Minimise disruption to education for claimants who are children or students.

Step 3: Send agreed materials to the expert

The arranging party will send the proposed referral letter with a list (not copies) of all agreed materials to the other party at least ten business days prior to the assessment.

Once the list of materials has been agreed on, the arranging party will seek copies of any materials not in their possession from the other party.

Without limiting or prescribing the materials to be included in the list of supporting materials, consideration should be given to the inclusion of the following material (where appropriate and relevant for the purpose of the assessment):

- > The claimant's Injury Claim Form
- > Police reports
- > Hospital notes (admission and emergency department records)
- > Ambulance service notes
- > Notes/reports of treating medical practitioners or health professionals
- > Any other independent medical reports/ISV medical reports
- > Medical certificates, including RTWSA (or other workers' compensation schemes)
- > Work capacity certificates
- > Film and reports of diagnostic investigations
- > Photographs of injuries sustained from the motor vehicle accident
- > Photographs of vehicle damage
- > School and other education reports and results.

7. How to proceed with a JIMA

Once the expert has been selected, the questions and materials to be provided should be agreed by both parties for the joint referral letter.



The arranging party will:

- Arrange the assessment time and location. Consideration must be given to the suitability of the time and location for the claimant.
- Send the agreed referral letter and materials to the expert.
- Confirm with the other party the appointment time, location, details of the expert and the reason for the assessment, and that the referral has been sent.
- Provide to the other party a copy of the referral letter and list of materials provided to the expert.
- Notify the other party should there be any change in the appointment time, location or availability of the claimant to attend.



The referral letter should clearly state:

- That the request for a joint independent assessment, with questions contained in the referral letter, are agreed by the parties.
- The purpose of the assessment and report. The requirements of the expert should be outlined to provide guidance by detailing specific and appropriate questions.
- The timeframe within which the report is required.
- The arrangement for payment.
- Whether an interpreter is required and confirmation of any arrangements which have been made or agreed to.
- A separate list detailing the supporting materials (see below).
- That the report is sought under the requirements for experts in the UCR.



Attachments to the referral letter should include:

- All agreed materials (ensuring copies are clear and legible).
- A copy of the requirements for expert reports under Chapter 7, Part 14, of the UCR.

8. Obligations under the Regulator Rules

If the party arranging the JIMA is the CTP Insurer or their legal representative, they must comply with their obligations under Regulator Rule 8 'Independent Assessments' or Regulator Rule 9 'ISV Medical Assessments and Reports'.

If a claimant's legal representative arranges the JIMA, they should consider the requirements in Regulator Rules 8.4 and 9.4 when making the arrangements.

9. Funding the assessment

Any agreement to a JIMA must include an agreement on the costs for the assessment and report, reasonable travel, accommodation or out-of-pocket expenses of the claimant and arrangements for an interpreter with the interpreter's fees to be paid by the CTP Insurer under Regulator Rule 7.9, if relevant.

If the joint referral is agreed to, the parties must consider the requirements of Regulator Rules 8.6 and 9.6 where the referring party is the CTP Insurer.

10. Once the joint report is received



The arranging party will:

- ✓ Check that the report is accurate and complete.
- ✓ Follow-up with the expert if deficits are identified.
- ✓ Send a copy of the report to the other party within seven business days.
- ✓ Pay for the assessment and report when satisfied that the report is complete.



On receipt of a joint report, the arranging party checks:

- ✓ That the report is prepared in accordance with the obligations of the expert under the UCR.
- ✓ All questions in the referral letter have been addressed.
- ✓ That the report is referred back to the expert if there are any identifiable factual errors that are not matters of medical opinion.
- ✓ In the case of an ISV medical assessment, that the AMP has prepared the report using the correct ISV medical assessment template and answered all questions template.
- ✓ If the ISV medical assessment report does not comply with the MAIAS Rules, the report is referred back to the AMP to request a compliant report.

The other party is notified of any of the above steps within seven business days of receipt of the report.

It is important that the other party is kept up to date on the status of the report. The report is to be provided to the other party as soon as possible after receipt by the arranging party.



Supplementary reports:

When the parties agree that a supplementary report is necessary, the same process outlined in "7. How to proceed with a JIMA" is followed.

11. When there is no agreement

When there is no agreement, the parties should work to identify the reason so the same benefits for the claimant can be achieved. Working through why there is a failure to agree might include considering each of the following elements:



Timing

Consider the reasons why an assessment needs to be conducted sooner or later. For example, is it for the purpose of determining funding for treatment or for when injuries stabilise?



Expert

Is the issue within the capability of the specialist's discipline or previous experiences with a particular expert? Effort should be exhausted to agree on having another expert for the purpose of reducing the impact of multiple assessments on the injured person.






Questions

It is expected that both parties contribute to finalising the questions for the expert to address in the report. Both parties can agree to prepare their preferred questions. All questions can be included in the referral, however both parties should ensure questions are not contradictory.

If genuine attempts to reach an agreement for a JIMA fail, for any reason, both parties can arrange their own assessments. If a supplementary report is considered necessary by one party, and there is no joint agreement to proceed; either party can proceed to seek the supplementary report. However, the party seeking the supplementary report must inform the expert that it is no longer a joint referral and confirm who will be funding the report with the expert.

12. Useful contacts

| | The CTP Regulator: | Motor Accident Injury Accreditation Scheme (MAIAS): |
|---|--|--|
|  | www.ctp.sa.gov.au | www.maias.sa.gov.au |
|  | 1300 303 558 | 1300 303 558 |
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