

# 2005 Policy document



## Medical Assessment Panels

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Medical assessment panels (MAPs) are groups of doctors brought together to assess degree of injury in disputed personal injury claims. The Medical Indemnity Policy Review Panel in December 2003, and the Ipp *Review of the Law of Negligence* in September 2002, both recommended increased use of MAPs.

MAPs are already in use in a number of Australian jurisdictions. The WA workers' compensation and NSW motor accidents schemes are two examples. In NSW, the medical determination of an injured person's rights is made by a single doctor rather than a panel.

Fiona Tito, principal consultant to the Australian Health Ministers' Advisory Council, reported on MAPs for the Australian Consumers Association:

*"Setting up yet another formal determination body staffed by doctors without any protection of the rights of an injured patient is another administratively costly exercise, which will simply add costs, adversarial elements and delays to an already tortuous system. If it can decide whether or not a claim can proceed, it would need to be more independent and appealable to avoid accusations of doctors being judges in their own courts."*

The Australian Lawyers Alliance opposes the use of MAPs for the following reasons:

1. MAPs take decisions affecting the rights of injured people away from the courts and place them in the hands of doctors. Whereas the judicial system is subject to open and accessible systems of review and appeal, MAPs wholly or partly remove these rights. Transferring these decisions from the judicial system undermines our system of justice.
2. MAPs can require doctors to decide questions of causation and therefore liability. Established legal tests are subverted by doctors who apply medical standards of causation that are inconsistent with current law.
3. There are serious concerns about the independence of the doctors appointed to MAPs. For example, doctors retained by the WA WorkCover Authority are employed without public consultation, on confidential contracts, and are subject to summary dismissal. Doctors are effectively under pressure to make medical assessments that favour the interests of the WorkCover Authority, contrary to the interests of the injured.

Similar concerns have been echoed in NSW, where a district court judge has held that interference by the Motor Accidents Authority with a medical assessment report constituted 'an absence of procedural fairness', went 'beyond power and [was] unauthorised', and was 'suggestive of bias on the part of the MAA'.

4. Concerns about independence are more acute where doctors are asked to assess cases of alleged medical negligence, particularly as specialists are likely to be close colleagues if not friends. The recent Walker Inquiry into NSW Hospitals has shown that it is not efficient, safe or reliable for medical practitioners to assess their own colleagues' conduct.

5. MAPs add another layer of bureaucracy and delay to court proceedings. In NSW, a medical assessment takes a minimum of six months with delays often extending this to ten months.

The Australian Lawyers Alliance opposes the further introduction of MAPs and will lobby to remove MAPs in jurisdictions where they already operate.

Where MAPs are in already in operation we support the following principles to maximise the independence and fairness of a medical assessment process:

- i. Stakeholders should be consulted in the appointment of doctors.
- ii. Treating clinicians should be appointed in preference to medico-legal consultants.
- iii. Assessors should be guaranteed independence from regulatory authorities, just as judicial officers are independent of the legislature.
- iv. Communications between regulatory authorities and doctors should be public and transparent.
- v. Clearly defined rights of review and appeal should be readily available.
- vi. Ultimate rights of review should rest with a court.
- vii. Legal questions of causation should be decided according to established legal principles by legal experts, rather than by medical experts operating in a medical paradigm.

Where there is a major conflict of medical opinion, the issue should not be determined by a single doctor.