

MINOR INJURY GUIDE



What is a Minor Injury?

DEFINITIONS:

Motor Accident Injuries Act 2017
Motor Accident Injuries Regulation 2017

PHYSICAL MINOR INJURIES

Section 1.6(2) of the Act defines a physical minor injury as soft tissue injury (STI). It also provides that:

- an STI is an injury to “tissue that connects, supports or surrounds other structures or organs” and includes muscles, tendons, ligaments etc.
- an injury to nerves or a complete or partial rupture of tendons, ligaments, menisci or cartilage is not an STI.

Section 1.6 (4) provides that the Regulations may exclude or include an injury from being an STI.

Under Section 4 (1) of the Regulations a nerve injury manifesting in radiculopathy is excluded from the definition of STI.

A nerve injury manifesting in neurological signs other than radiculopathy is an STI.

PSYCHOLOGICAL & PSYCHIATRIC MINOR INJURIES

Section 1.6 of the Act defines psychological and psychiatric minor injuries as those that are not a recognised psychiatric illness.

Section 1.6 (4) provides that the Regulations may exclude or include an injury from being a minor psychological or minor psychiatric injury.

Section 4(2) of the Regulations provides that the following injuries are minor psychiatric injuries:

- Acute Stress Disorder
- Adjustment Disorder

A psychological or psychiatric illness under DSM-5 other than the above two injuries are non-minor injuries. Some examples include:

- Post-Traumatic Stress Disorder
- Major Depressive Disorder
- Specific Phobia of Driving

Minor Injury Disputes

PROCEDURE:

Part 5 of the Motor Accident Guidelines outline the procedure for assessment of Minor Injury Disputes

General Provisions

Clauses 5.3 to 5.6

- The assessment will determine whether the subject injury is a soft tissue injury or a minor psychological or psychiatric injury caused by the motor accident.
- Diagnostic imaging is not essential to the assessment. If imaging findings are used to support the diagnosis they must correspond with symptoms and findings on examination.
- The diagnosis is to be based on a clinical assessment undertaken by a medical practitioner or other suitably qualified person who is independent from the insurer.
- The Assessment is to be based on the evidence available and should include relevant findings from an accurate history from the injured person, review of all relevant records and a thorough examination.

MINOR INJURY DISPUTES PROCEDURE (CONTINUES):

Physical Injury Provisions

Clauses 5.7 -5.9

- Any assessment involving the neck or spine must address whether radiculopathy is present or not.
- A finding of radiculopathy must be made in accordance with Clause 5.8 which requires that two or more of the following clinical signs are found on examination:
 - Loss or asymmetry of reflexes
 - Positive sciatic nerve root tension signs
 - Muscle atrophy
 - Muscle weakness that is anatomically localised to an appropriate spinal nerve root distribution.
 - Reproducible sensory loss that is anatomically localised to an appropriate spinal nerve root distribution.

Psychological Injury Provisions

Clauses 5.10 – 5.12

- The assessment must determine whether a psychiatric illness is present using the Statistical Manual of Mental Disorders (DSM-5), Fifth Edition, 2013, published by the American Psychiatric Association. If the symptoms do not meet the diagnostic criteria for a recognised psychiatric illness, except for an Acute Stress Disorder or Adjustment Disorder, the injury will be found to be a minor injury.

REVIEW PANEL DECISIONS

Talevska v AAI Limited t/as AAMI [2022] NSWPICMP 82 (12 April 2022)

- General importance of Minor/Non-Minor Injury Findings.

David v Allianz Australia Insurance Ltd [2021] NSWPICMP 227 (25 November 2021)

- Radiculopathy does not need to be present at the time of the Assessment. It is sufficient that radiculopathy is confirmed as per Clause 5.8 of the Guidelines at any time following the accident.
- Annular tears will not be attributed to an accident merely because there is no history of back pain or pre-existing pathology.

Muradi v QBE Insurance (Australia) Ltd [2022] NSWPICMP 59 (24 March 2022)

- The Review Panel had regard to various studies addressing annular tears and determined that although the accident could have caused an annular tear, it did not cause the Claimant's annular tear.
- The Review Panel considered that the Claimant's symptoms were more likely attributable to damage to other musculoskeletal structures and psychological distress than the annular tears identified.

Venizelou v AAI Ltd [2021] NSW PICMP 215 (11 November 2021)

- The Panel accepted that further tearing of an already degenerate lateral meniscus caused by the accident was a partial rupture of the meniscus and such injury was not a minor injury for the purposes of the Act.

GIO Insurance(Australia) Ltd v Taouk [2021] NSWPICMP 193 (20 September 2021)

- Where the examination findings of the initial Assessor are not in dispute, a physical re-examination of the Claimant is not necessary and is consistent with the objects of the PIC to “resolve the real issues in proceedings justly, quickly, cost effectively and with as little formality as possible”.
- Although not determinative of causation, lack of contemporaneous records of an injury will be a relevant factor, particularly if the contemporaneous records are detailed and are suggestive of “precision in questioning and recording”.

REVIEW PANEL DECISIONS (CONTINUES):

[Lynch v AAI Limited t/as AAMI \[2022\] NSW PICMP 6 \(13 January 2022\)](#)

- A diagnosis of an Adjustment Disorder cannot be made if the stress related disturbance meets the criteria for another mental disorder.
- A psychiatric diagnosis in remission may be a non-minor injury.
- The Claimant bears the onus of establishing that their injury is a non-minor injury.

[Cho v Insurance Australia Limited t/as NRMA Insurance \[2022\] NSWPICMP 107 \(9 May 2022\)](#)

- Review Panel applied the findings in Lynch v AAI Ltd as to the timing of the diagnosis.
- Review Panel did not diagnose PTSD as the accident was not experienced as a threat of serious injury or death.

[Vuong v NRMA \[2022\] NSWPICMP 55 \(22 March 2022\)](#)

- The panel found that the Claimant’s mother’s cancer diagnosis, although unrelated to the subject accident, had not “severed the chain of causation” and the subject MVA remained a significant causal factor in her current psychological injury.

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