



Commission Chief Executive guideline

**Managing employee health, safety and wellbeing – independent medical examinations
(*Public Service Act 2008*)**

February 2019

Contents

1. Purpose	2
2. Effective date	2
3. Supersedes.....	2
4. Legislative authority	2
5. Application	2
6. Related information.....	3
7. Principles	3
8. What are the first steps towards an IME?	4
9. Decision making – applying sections 174-179 of the PS Act	5
10. The IME process.....	7
11. Complaints, appeals and rights of review	13
12. Glossary.....	14

1. Purpose

This guideline supports the Queensland Government's commitment to workplace health, safety and wellbeing for all its employees, and its commitment to continuing employment.

This guideline is intended to assist managers and employees in early discussions and guide steps to support employees where their workplace performance is affected or they are absent from work, and where there is a reasonable suspicion it is the result of a mental or physical illness or disability. All employees are to be supported with sensitivity and respect.

This guideline should be read with Independent medical examinations Directive (10/20) under the *Public Service Act 2008*.

2. Effective date

11 February 2019

3. Supersedes

Commission Chief Executive Guideline 03/13: Mental or physical incapacity

4. Legislative authority

Sections 25(1)(a), (d) and (e), 25(2)(a) and (b)(i), 46(1)(a) – (b), 47, 53(a), sections 174-179AA and Chapter 7 of the *Public Service Act 2008* (PS Act).

5. Application

This guideline applies to public service employees and their chief executives (and delegates) in relation to actions and decisions made under sections 174 to 179 of the PS Act. Where appropriate, the guidelines also apply to those employees to whom section 174 of the PS Act applies by operation of the *Public Service Regulation 2018*.

The guideline does not apply where there is an accepted WorkCover claim and WorkCover has provided, or is responsible to provide, a return to work plan for an ill or injured employee. In that case, an IME is not required as management of the medical condition and any medical examination is through WorkCover.

The guideline does not apply, and a requirement to submit to an IME is not appropriate, where a person in a participating agency has applied for a voluntary medical retirement under the [Voluntary Medical Retirement \(VMR\) Scheme \(Directive 22/16\)](#).

6. Related information

- *Public Service Act 2008*
- *Public Service Regulation 2018*
- *Anti-Discrimination Act 1991, Disability Discrimination Act 1992* (Commonwealth)
- *Workers' Compensation and Rehabilitation Act 2003*
- *Industrial Relations Act 2016 and Industrial Relations Regulation 2018*
- *Mental Health Act 2016*
- [Independent medical examinations under the Public Service Act 2008 \(Directive 10/20\)](#)
- [Voluntary Medical Retirement \(VMR\) Scheme \(Directive 22/16\) for participating agencies.](#)

7. Principles

- 7.1 **Lawful requirement** – a requirement to submit to an IME is an exercise of a statutory power and requires active participation in the medical examination, rather than just attending the appointment. An employee who complies with the requirement to submit to an IME is following a lawful direction. An employee cannot be requested to consent to any part of the medical examination. Agencies should advise independent medical examiners that requesting an employee to complete a standard consent form is not supported by sections 174-179AA of the PS Act.
- 7.2 **Reciprocity** – both the employer and employee have a responsibility to work together constructively, in good faith.
- 7.3 **Sensitivity** – managing the impacts of unsatisfactory performance or a current absence can be a distressing time for the employee involved, and for other staff members, particularly if mental or physical illness or disability is suspected. Agencies should consider how their processes, communication and language can demonstrate support for their people and engage staff to resolve issues in a positive way.
- 7.4 **Early and open communication** – early discussions between the agency and the employee and the employee's doctor (**only** with the employee's consent) may resolve any performance or current absence concerns without a formal process. It also provides an avenue for the employer to address any issues with the employee and their doctor (**only** with the employee's consent), be it with reasonable adjustments, flexible work, redeployment or other strategies. Agencies and employees are encouraged to communicate openly with each other, sharing information in a timely, respectful and appropriate manner to maximise the likelihood of a positive outcome.

- 7.5 **Procedural fairness** – the agency is to ensure that processes are fair and without bias. A fair and open process will provide for impartiality at all times and inform and involve the employee. This includes providing the employee with:
- a) the opportunity to comment on adverse information that is raised during discussions between the agency and the employee about performance, or about a current absence
 - b) the information and questions provided to the agency appointed doctor prior to the employee attending the medical examination, (unless there are reasonable grounds not to provide all, or part, of the information and questions), including where there is a reasonably held concern regarding reprisal against others
 - c) the medical examination report (except where the doctor has indicated the report should not be provided to the employee in accordance with section 177(4) of the PS Act)
 - d) information, as early as possible, about the steps that will be taken if the agency appointed doctor considers that disclosing the information in the medical report to the employee might be prejudicial to the employee’s mental or physical health or wellbeing
 - e) the opportunity to respond to the action proposed by the agency based on the outcome of the medical examination.
- 7.6 **Retirement as the last resort** – sections 174 to 179 of the PS Act enable the employer to obtain independent advice to understand an employee’s capabilities and what would assist them to continue in their job, and to make a decision regarding ongoing employment in the position, within the agency or another public sector agency. Retirement is only to be used as a last resort, as set out in the PS Act.

8. What are the first steps towards an IME?

- 8.1 Managers should discuss concerns about employee performance, and question whether there is anything impacting on the employee’s ability to carry out the duties of their substantive role¹. Where an employee is currently absent², contact should be supportive and seek to understand what support, if any, the employee may need to return to work. An employee may not indicate illness or disability is affecting them but may identify other issues for which they need support (e.g. training, role clarification, flexible working hours to support a sick family member or to seek domestic and family violence (DFV) help). Support may be reasonably incorporated into arrangements within the work unit or through a performance development agreement between the manager and employee. Alternatively, an employee may indicate no additional support is required.

¹ There may be some cases where immediate action rather than a performance discussion is required in response to an extreme or threatening incident.

² Depending on the circumstances, some of this may be addressed through WorkCover return to work plans, rather than management action or IME.

- 8.2 Where the employee discloses that a mental or physical illness or disability is affecting their performance or their current absence, the discussion may include:
- a) exploring options for workplace rehabilitation arrangements or reasonable workplace adjustment
 - b) asking for existing medical information from the employee, or for consent to contact their treating doctor.

Managers are encouraged to seek human resources support or guidance on how to approach conversations and how to appropriately refer employees to support services, who disclose matters requiring professional guidance or support (e.g. medical issues, counselling needs, DFV).

- 8.3 There may be benefits to both the employee and the agency if the employee's treating doctor is able to provide information which sets out the impact of the employee's condition on their capacity to carry out the genuine occupational requirements of their role.
- If the employee does not volunteer this information, then the agency can ask the employee what, if any, additional support would assist them to improve their performance, or return to work from their current absence.
- 8.4 If there is no information to support a reasonable suspicion that a mental or physical illness or disability is affecting performance or causing a current absence, concerns about those matters would need to be addressed in a performance management context.
- 8.5 In the course of these discussions, any material or information adverse to the employee should be brought to their attention and the employee should be given a reasonable opportunity to comment on that material before a decision is made based on the adverse information.
- 8.6 The process in sections 174-178 of the PS Act is not to be used as a substitute for standard performance management strategies. Every manager has an obligation to identify the causes of unsatisfactory performance and to resolve performance issues through appraisal, guidance, counselling, coaching, training and development, and where practicable, temporary variations to working arrangements and workloads.

9. Decision making – applying sections 174-179 of the PS Act

- 9.1 The purpose of an IME under the PS Act is to provide the decision maker with a doctor's opinion on whether an employee has a mental or physical illness or disability that may adversely affect the employee's performance or current absence. The report must contain that opinion and additional information describing the impacts of the illness or disability, if any, on the employee's performance, and whether disclosure of the report information to the employee might be prejudicial to the employee's mental or physical wellbeing.

- 9.2 Section 174 of the PS Act applies only when **both** of the following conditions are met:
- a) the public service employee is **absent** from duty, **OR** the chief executive is **reasonably satisfied** they are not performing their duties satisfactorily;
AND
 - b) the chief executive **reasonably suspects** that the absence or unsatisfactory performance is caused by mental or physical illness, or disability.
- 9.3 **Current absence OR unsatisfactory performance** – the absence identified in section 174 is a current absence. It does not refer to frequent, intermittent absences whether due to illness or other reasons. Evidence of frequent absences is not of itself evidence of poor performance; the performance impact must still be shown.

The chief executive must be reasonably satisfied that a public service employee is not performing their duties satisfactorily, whether this is due to frequent absence or other performance aspects. This requires evidence that supports a conclusion that a particular fact is more likely, than not, true. The evidence relied upon must be detailed in the requirement to submit to the independent medical examination.

Relevant evidence may include:

- a) a performance agreement or work plan previously agreed with the employee
 - b) notes of performance discussions, a performance improvement plan (PIP), or a performance report. Performance issues must have been discussed with the employee before an IME can occur other than in exceptional circumstances³
 - c) documented instances of inappropriate conduct or impacts on the health and safety of the employee or others, and any actions that were taken by the agency.
- 9.4 **A reasonable suspicion of mental or physical illness or disability** – the suspicion that unsatisfactory performance or the current absence is caused by mental or physical illness or disability *must be reasonably held*. There must be information that suggests there is an illness or disability that is causing the unsatisfactory performance or current absence, and this information must be explained to the employee in the letter requiring them to attend an IME, by referring to factual workplace observations or documents.

Such information may include (but is not limited to):

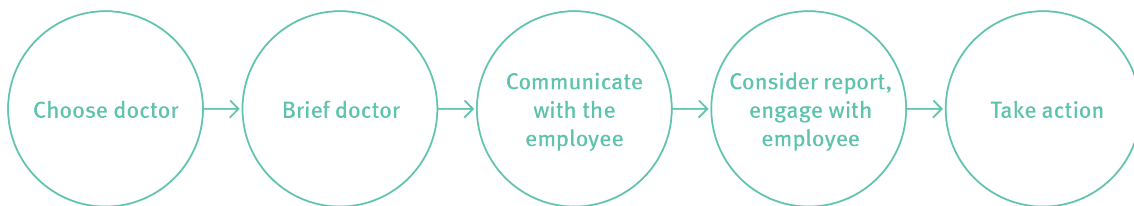
- a) a significant change in behaviour or demeanour (including unacceptable behaviour)
- b) apparent physical, functional and/or cognitive difficulties

³ There may be some cases where immediate action rather than a performance discussion is required in response to an extreme or threatening incident.

- c) emotional outbursts
- d) verbal or documented information provided by the employee e.g. disclosure of mental or physical illness or disability, physical capabilities assessment provided by a medical practitioner or other information from the employee's treating doctor.

Note: some of these signs may indicate other non-work related issues and should be considered as signs for a check in and asking "R u ok?" It may also be appropriate to provide the employee with information about relevant referral services, including the Employee Assistance Service (EAS) or DFV support.

10. The IME process



10.1 **Choose a doctor** – under section 175(a) of the PS Act, the agency may appoint a doctor to examine the employee and provide a written report on the results of the examination. The agency should choose a doctor who:

- a) is independent
- b) has expertise in the relevant area of the suspected mental or physical illness or disability (see Glossary)
- c) is not currently treating or has previously treated the employee – this is to eliminate a real or perceived conflict of interest. (There may be some instances where, with the agreement of the employee, a more informed decision can be made by seeking an opinion from a doctor who has knowledge of the employee's medical history.)

Where the employee raises reasonable concerns about the doctor to which they have been directed (e.g. gender, location) the agency may consider appointing an alternative doctor who is suitably qualified to examine the employee and provide a written report. The agency has the final decision on which doctor is to be used and the timing of the appointment.

10.2 **Brief the doctor** – the doctor must be properly briefed in writing and given a copy of relevant supporting documentation, such as a description of the employee's role, duties and responsibilities, an outline of the work environment (if relevant) and a chronology of events (e.g. absence history, diagnosis from treating practitioner, performance issues and management response). Each case requires its own approach and supporting documentation relevant to the particular circumstances. Only information relevant to the current medical examination should be provided to the employing agency.

It should be made clear to the doctor that the employee is following a lawful requirement to submit to the medical examination. The employee cannot be requested to consent to medical procedures or provide their medical history because they are already acting under a legal direction.

The medical examiner is engaged by the employer to provide an opinion under the PS Act; they are not engaged to provide a diagnosis or treatment information. The medical examiner should be advised that the opinion and a report, where one is given, may be provided to the employee either directly or through their nominated doctor, and cannot place restrictions on third party release.

The written request to the appointed doctor should seek an opinion as to whether the employee has a mental or physical illness or disability that may adversely affect the employee's performance (section 177(1) PS Act) or cause a current absence.

[See an example of a letter to the IME doctor \(DOCX\).](#)

Information from the doctor

Where the doctor advises that in their opinion there is no mental or physical illness or disability that may adversely affect the employee's performance or cause a current absence, no further action can be taken in relation to that opinion and a medical report under s177(2) of the PS Act cannot be provided. Once there is medical advice that there is no medical, further medical opinions should not be sought using the same direction. Any performance issues or continuing absences should be addressed through performance management.

If the doctor concludes there is such an illness or disability, their report should provide advice on:

- a) the likely direct or indirect effect of the illness or disability on the employee's performance (section 177(2)(a) PS Act)
- b) an estimate of how long the illness or disability or its effects are likely to last (section 177 (2)(b) PS Act); and
- c) whether disclosing the information in the report to the employee might be prejudicial to the employee's mental or physical health or well-being (section 177(2)(c) PS Act).

Information that is not directly relevant to the effect of a mental or physical illness or disability on work performance or current absence should not be requested by the agency. The doctor is to be advised not to provide information that is not directly relevant.

10.3 **Communicate with the employee** – the agency must advise the employee in writing of the requirement to submit to a medical examination by the appointed doctor. The agency is to meet all reasonable costs of the employee attending the IME and this should be included in the written advice. The employee should also be advised that they can change the appointment time with a valid reason.

The advice to the employee should include the statutory basis for the requirement and the information that is relied on. The employee should also be advised of what will happen if they fail to submit to the IME. Submitting to an IME requires more than mere attendance at the IME appointment.

Submitting to an IME requires the employee to actively participate in the medical examination, co-operate with the IME doctor and provide honest responses to questions about their relevant medical history. Submitting to an IME does not require the employee to hand over all past medical records.

The written direction should not be the first time the employer communicates with the employee in relation to the medical examination. The method of communication may vary depending on the employee's circumstances but in all cases should be done sensitively and with regard for their wellbeing.

The employee should also be provided with the name and contact details of the doctor, the time and location of the examination (including any travel arrangements made by the agency), the information provided to the doctor, and any information they need to take with them to the appointment (e.g. x-rays). Timing of the appointment should consider the employee's work hours, any approved recreation leave and any travel that may be required, especially in regional and remote areas.

The employee should generally be given a minimum of two weeks' (10 working days') notice of the medical appointment. Shorter notice can be given with the agreement of the employee where, for example, an earlier appointment becomes available.

Before the employee attends the medical examination, the agency is to advise them of their appeal rights, and that the agency will meet the cost of the medical examination and reasonable associated expenses. The employee should also be advised of the process to be undertaken after the agency receives the medical report, the steps the agency will take to ensure confidentiality of the report information, and the steps that will be taken if the doctor considers that disclosing the information in the report to the employee might be prejudicial to the employee's mental or physical health or wellbeing.

[See an example of a letter to the employee \(DOCX\).](#)

- 10.4 **Consider the IME report and engage with the employee** – to afford the employee procedural fairness, they must be given relevant information to enable them to challenge the proposed actions and to provide their own further relevant information if they wish.

Use of existing medical reports

Where an employee provides a medical report or consents to the agency being provided with a medical report from a third party (e.g. QSuper) the agency can consider the information provided in determining what actions (if any) are required to manage the impact of the employee's illness or disability in the workplace. Clear written consent for the use of the report should be obtained from the employee.

Workers' Compensation documents including WorkCover medical reports **cannot** be used or paraphrased where action under s178 of the PS Act is or will be considered as it is contrary to section 572A of the *Workers Compensation and Rehabilitation Act 2003*.

10.4.1 Access to the medical examination report

The agency is required to provide the employee with the medical examination report (section 177 PS Act) and any other material relied upon by the doctor or the agency in proposing a course of action to be taken.

If the appointed doctor indicates it might be prejudicial to the employee's mental or physical health or wellbeing to provide them with the report, the chief executive must not disclose the contents of the report to the employee (section 177(4) PS Act). However, if asked by the employee in writing, the chief executive must disclose the report to another doctor nominated by the employee in the request (section 177(5) PS Act). In practice, this is usually the employee's treating doctor, and where this occurs, the agency should pay the reasonable costs of the employee's visit to their nominated practitioner.

In this case, the agency must:

- a) advise the employee in writing that the doctor has concluded that the disclosure of the report might be prejudicial to the employee's mental or physical health or wellbeing
- b) advise the employee that they may ask in writing for the report to be disclosed to a nominated doctor
- c) write to the nominated doctor, provide the report and outline the assessing doctor's decision that release of the report directly to the employee might be prejudicial to their mental or physical health or wellbeing
- d) send the employee a copy of the correspondence sent to the nominated doctor (without the report).

Where the IME doctor considers the employee should not be directly provided with a copy of the report, and the employee does not nominate a doctor to receive the report, the agency will need to consider appropriate actions based

on the report. The agency is to engage with the employee to enable them to participate meaningfully in that process. How that is done can vary depending on the particular circumstances.

10.4.2 Consider the medical report and determine the action that may be taken

The agency should consider the IME report and other relevant material and either propose no further action or a course of action to be taken.

- a) **Continue or initiate action** – to manage unsatisfactory work performance or a return to work from a current absence if there is no medical reason for the unsatisfactory performance or current absence.
- b) **Continue or commence action** – to manage the employee and their illness, disability or injury.
- c) **Provide reasonable adjustment** – to enable the employee to continue in their substantive position (e.g. provide specialised equipment, modify work tasks or the workplace, or consider other action such as retraining, if practicable).

This may not be possible where there are genuine occupational requirements of a role that are inconsistent with proposed adjustments or the proposed adjustments would cause unjustifiable hardship for the employer.

- d) **Search for a suitable role and transfer or redeploy** – to a suitable position within the work group, agency or the Queensland public service on the basis that the employee is medically incapable of performing the genuine occupational requirements of their substantive position for the foreseeable future, but they could perform required duties elsewhere.
- e) **Consider retiring the employee** – for those employees it is not reasonably practicable to transfer or redeploy, and where reasonable adjustment has also not been possible. Whether or not transfer or redeployment is reasonably practicable depends on the circumstances of each case, but this option should always be explored before retirement is considered.

10.4.3 Provide procedural fairness

The agency should provide the employee with:

- a) written details of any action proposed in response to the IME report (e.g. permanent change to workstation, adjustment to hours of work, transfer within the agency or sector, or ill health retirement), and an explanation of why that action is proposed
- b) the opportunity to respond to any proposed action, within a minimum period of 14 days (an agreed longer period to respond may be appropriate particularly where the employee is seeking additional advice)
- c) written advice that as part of their response, the employee may submit any additional material they consider relevant e.g. a medical report from their treating doctor or a QSuper report. These reports will be most useful where

it is clear the report provider understood the job requirements. Employees who seek such additional advice are to meet associated costs.

The agency must ensure the privacy of information contained in the IME report and related documents. Only officers with legitimate reasons to consider the report should access it (i.e. officers who are or will be involved in or advising on the decision-making process).

In deciding the action to be taken, the agency should also consider statutory protections for injured employees. Section 297 of the *Industrial Relations Act 2016* provides that an employer must not dismiss an employee because the employee is temporarily absent from work because of a prescribed illness or injury. Section 8 of the *Industrial Relations Regulation 2018* (the Regulation) defines a prescribed illness or prescribed injury. An employee may be directed to an independent medical examination where this protection applies but the agency cannot consider retirement of the employee, if that is the recommendation of the doctor, until the conditions in section 8(4) of the Regulation are met.

Section 232B of the *Workers' Compensation and Rehabilitation Act 2003* prohibits the dismissal of an employee within 12 months of the date of a work-related injury if the dismissal is solely or mainly because the employee is not fit for employment in a position because of the injury.

While it is appropriate to discuss with an employee their mental or physical illness or disability, the impact it is having on their performance or current absence and the options available to them, they cannot be asked to resign or retire.

An employee who is considering resigning or retiring because of a mental or physical illness or disability should be provided with information about their entitlements and advised to seek advice prior to any action. Under the Voluntary Medical Retirement (VMR) Scheme (Directive 22/16 – applies to participating agencies only), an employee cannot apply for a voluntary retirement package after the employee has been required to submit to an independent medical examination, unless invited to do so by the chief executive or the chief executive has decided under section 178 of the PS Act to continue an employee's employment with or without reasonable adjustment.

- 10.5 **Make a decision and advise the employee in writing** – once the employee's response is received, (or the nominated period has passed without an agreed extension and the employee has not provided a response) the agency should consider all relevant material, including the IME report and any information submitted by the employee as soon as possible.

Before taking action under section 178, the chief executive, after considering the IME report, must decide if they are reasonably satisfied that the employee's current absence or unsatisfactory performance is caused by a mental or physical illness or disability and, if so, the action that will be taken. Reasons for the decision must be clearly documented. The decision and the reasons for the decision must be communicated in writing to the employee, and the employee advised of their rights of review.

Where the action to be taken is retirement, it is good practice for the agency to advise the employee to contact their superannuation fund for information about potential superannuation entitlements. The agency will also need to identify any obligations it has to notify a registration board or council (e.g. nurses, allied

health professionals, teachers etc.) of an employee's retirement on the grounds of ill-health, subject to employee privacy protections.

Where an illness or disability is ongoing, and the employee remains within the agency after consideration of the IME report, the action taken should be monitored, reviewed and adjusted as required by any changes in the employee's condition.

11. Complaints, appeals and rights of review

- 11.1 **Employee right to appeal a decision to direct them to an IME** – an employee may, within 21 days of receiving a direction to attend an IME, appeal the decision to direct them to an IME on the basis that the conditions in section 174 of the PS Act were not met. The Queensland Industrial Relations Commission (QIRC) may stop the IME process while the appeal is considered. Information about how to appeal is in the [Appeals Guide](#) available from the QIRC. This is an appeal under s194(1)(a) of the PS Act.
- 11.2 **Rights of review available in relation to the outcome of an IME report** – an employee who is or is to be transferred as the outcome of an IME may appeal the transfer decision under s194(1)(d) of the PS Act. An employee who is retired as the outcome of an IME may bring an action for unfair dismissal in the QIRC, under the *Industrial Relations Act 2016*.
- 11.3 **Complaints** – early resolution of any complaint is in the interests of all parties, so agencies should seek to address the complaint as soon as practicable and in accordance with their complaints process. The Managing Employee Complaints (Directive 02/17) also provides instruction as to the employee complaints process.

Employees may also lodge complaints with external bodies, such as the Anti-Discrimination Commission of Queensland, in relation to proposed action under section 178 PS Act. If a complaint is lodged, managers should notify their human resources and/or legal services area to discuss appropriate actions, including the continued provision of support to all parties.

12. Glossary

Doctor	<p>'Medical practitioner' registered under the Health Practitioner Regulation National Law to practice in the medical profession (other than a student).</p> <p>The Medical Board of Australia defines the scope of the different types of medical practitioners. Only people who practise as one of these types of medical practitioners may be appointed to examine an employee. Examples include:</p> <p><i>Psychiatrist</i> – diagnoses and treats mental, emotional and behavioural disorders and prescribes medications and treatment to promote or restore mental health.</p> <p><i>Occupational Physician</i> – assess, treat and prevent musculoskeletal disorders and determine whether the condition is related to work. Trained to assess a person's capacity for work.</p> <p><i>Orthopaedic Surgeon</i> – specialist surgeon who diagnoses and provides surgical treatment of conditions of the musculoskeletal system including conditions of bones, joints, ligaments, tendons, muscles and nerves.</p> <p><i>Rheumatologist</i> – specialises in the diagnosis and management of inflammatory conditions of joints, muscles and soft tissues.</p> <p><i>Neurologist</i> – diagnoses and provides non-surgical management of conditions of the brain, spine and peripheral nerves. Neurologists can assess all neurological conditions and cognitive deficits.</p> <p><i>Neurosurgeon</i> – specialist surgeon who specialises in conditions and surgery of the brain and spine.</p> <p>A list of medical practitioners on the WorkCover Queensland "Independent medical examinations panel" is available at: https://www.worksafe.qld.gov.au/service-providers/medical-services/independent-opinion/independent-medical-examinations-panel</p>
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<p>Genuine occupational requirement</p>	<p>An employer is required to make reasonable adjustments to the workplace to support an employee with an illness or disability to meet the genuine occupational requirements of the role. Failure to do so may be discrimination.</p> <p>However, it may not be unlawful if the person is unable to carry out, with reasonable adjustment, the genuine occupational, or inherent, requirements of the role. The inherent requirements of the role may include:</p> <ul style="list-style-type: none"> • the ability to perform tasks which are essential to perform a job productively and to the required quality • the ability to work effectively in a team or other organisation • the ability to work safely. <p>(Australian Human Rights Commission)</p>
<p>Health professional</p>	<p>An individual accredited by a professional body upon completing a course of study, and usually licensed by a government agency to practice a health related profession, such as physiotherapy, occupational therapy or radiology.</p>
<p>Medical condition</p>	<p>A generic term for <i>mental or physical illness or disability</i> in section 174 PS Act.</p>
<p>Unjustifiable hardship</p>	<p>Determined by reference to all the relevant circumstances, including the nature of the special services or facilities, the cost and number of people who would be advantaged, the financial circumstances of the employer, the disruption caused and the nature of any benefit or detriment to all people involved. With the resources available to government, cost or other adverse impact would need to be significant to find unjustifiable hardship for an agency.</p>
<p>Unsatisfactory performance</p>	<p>Conduct or work performance that does not meet the standard required of the position.</p>

FAQs for managers

How long does an employee have to be absent before they can be directed to submit to a medical examination?

The PS Act does not prescribe a timeframe for absence before a medical examination can occur, only that the decision maker reasonably suspects that the current absence is caused by mental or physical illness or disability. The employee must be currently absent to be required to attend an IME for absence in section 174 of the PS Act.

How can agencies manage the impact of a medical examination process?

It is important that the process be implemented in a reasonable and respectful manner. A key feature of this is to ensure appropriate communication between the parties. Clear information about steps to be taken and reasons for them should be provided to the employee. It is also important that information about the purpose of the examination is provided to the employee (i.e. the starting point is making informed decisions to support continued safe and productive employment where possible **not** medical retirement).

Managers also need to consider what impact the employee's condition and the process is having on other employees in the work area and ensure appropriate steps are put in place to support all employees (e.g. workload management).

What happens if an employee is performing the technical aspect of their role satisfactorily, but their conduct is below the required standard?

Sections 174 to 179 PS Act apply where a decision maker reasonably suspects that an employee's absence or unsatisfactory performance is caused by a mental or physical illness or disability. Technical skills, hours of work, participation in rosters, safety performance, workplace behaviour and conduct, including participation as part of a team and respectful communication, are all components of an employee's overall performance of their role.

What happens if an employee refuses or fails to submit to the medical examination?

Employees are required to comply with reasonable and lawful directions. If an employee refuses to submit to a medical examination, the agency should advise the employee in writing that failure to submit to the medical examination as directed may result in disciplinary action. This notice has been included in the template letter directing an employee to submit to an IME. Under section 176 PS Act, an employee must not be given sick leave for any period that the employee fails to comply with the requirement.

What happens if the IME opinion is different from an opinion or medical information provided by the employee's treating doctor?

Differences in opinion may be due to a number of different factors, including the time when the opinion was given (the employee's condition may have subsequently improved or deteriorated) and the information available to the doctor in giving their opinion. Determining the most supportive approach for the employee will involve an

exercise of judgement based on all the available facts. A useful step in this process is to ask both doctors to explain or clarify the basis for their opinion and why the opinions differ. Failure to make reasonable enquiries and efforts to resolve differences of medical opinion may prove problematic if the employee is later retired for medical reasons.

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