1. Title: Mental or physical incapacity – Part 7 of the *Public Service Act 2008*

(previously section 85 of the Public Service Act 1996)

2. Effective Date: November 2006

3. Purpose:

These Guidelines provide advice on how to apply section 174 of the *Public Service Act 2008 (Qld)* (*formerly section 85 of the Public Service Act 1996*) regarding the mental or physical illness or disability of public service employees.

Section 174 of the *Public Service Act 2008* provides the following:

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This part applies to a public service employee if:

(a) the employee is absent from duty or the employee's chief executive is reasonably satisfied the employee is not performing his or her duties satisfactorily; and

(b) the chief executive reasonably suspects that the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability.

175 Chief executive may require medical examination

The chief executive may:

(a) appoint a doctor to examine the employee and give the chief executive a written report on the examination; and

(b) require the employee to submit to the medical examination.

176 Employee not to be given sick leave if requirement not complied with

The employee must not be given sick leave for any period during which the employee fails to comply with the requirement.

177 Medical examination report

(1) The report on the medical examination must include the examining doctor's opinion as to whether the employee has a mental or physical illness or disability that may adversely affect the employee's performance.

(2) If the doctor considers the employee has an illness or disability mentioned in subsection (1), the report must also include the doctor's opinion as to the following:

(a) the likely direct or indirect effect of the illness or disability on the employee's performance;

(b) an estimate of how long the illness or disability or its effects are likely to last;

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(c) whether or not disclosing the information in the report to the employee might be prejudicial to the employee's mental or physical health or wellbeing.

(3) If the doctor's opinion is that the disclosure will not be prejudicial to the employee's mental or physical health or wellbeing, the chief executive must give the employee a copy of the report as soon as practicable after receiving it.

(4) If the doctor's opinion is that the disclosure might be prejudicial to the employee's mental or physical health or wellbeing, the chief executive must not disclose the contents of the report to the employee.

(5) However, if asked by the employee in writing, the chief executive must make the disclosure to another doctor nominated by the employee in the request.

178 Action following report

(1) If, after considering the report of the medical examination, the chief executive is reasonably satisfied the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability, the chief executive may:

(a) transfer or redeploy the employee; or

(b) if it is not reasonably practicable to transfer or redeploy the employee—retire the employee from the public service.

(2) Subsection (1) does not limit the action that may be taken relating to the employee.

179 Record of requirement and report

(1) The chief executive must keep a record of:

(a) the requirement; and

(b) the report on the medical examination.

(2) If the chief executive considers it necessary to protect the employee's interests, the chief executive may keep the record separate from other records about the employee.

4. Application:

The Guidelines apply to public service employees, including Senior Executive Service and Senior Officers of an agency. Where appropriate, the guidelines also apply to those employees to whom section 174 of the *Public Service Act 2008* applies via *Public Service Regulation 1997*.

The Guidelines do not apply to employees who have elected to voluntarily retire because they have turned age 55 (section 136(a) of the *Public Service Act 2008 (formerly section 86 (a) of the Public Service Act 1996)*), or employees permitted to retire under a directive (section 136(b) of the *Public Service Act 2008 (formerly section 86 (b) of the Public Service Act 1996)*).

The Guidelines are intended to assist agencies to sensitively and respectfully manage public service employees whose attendance and performance may be affected by mental or physical illness or disability.

As they are intended to be a guide to the section 174 process, non-compliance with the Guidelines does not necessarily have the effect that the section 174 process is invalid or that the process should be recommenced. However, use of the Guidelines may assist agencies to minimise the potential for poor decisions, and complaints about those decisions, in relation to the application of section 174 to the agency's public service employees.

5. Relevant legislation

This guideline should be read in conjunction with the following:

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- *Public Service Act 2008 (Qld)*
- *Public Service Regulation 2008 (Qld)*
- *Industrial Relations Act 1999 (Qld)*
- *Industrial Relations Regulation 2000 (Qld)*
- *Workers' Compensation and Rehabilitation Act 2003 (Qld)*
- *Workplace Relations Regulations 2006 (Cwlth)*
- *Anti-Discrimination Act 1991 (Qld)*
- *Disability Discrimination Act 1992 (Cwlth)*
- *Mental Health Act 2000 (Qld)*

6. Principles

6.1 Sensitivity

Referring an employee for a medical examination under section 174 of the *Public Service Act 2008*, can be distressing for the employee and other staff members of the agency.

The agency should appoint a case manager (this could be a rehabilitation coordinator) and ensure the employee is treated sensitively and with respect throughout the section 174 process.

6.2 Early and informal intervention

Informal and timely discussions between the agency and the employee may resolve concerns about the employee's attendance or performance. Consultation with the employee and the employee's doctor (with the employee's consent) may provide information to enable effective management of the employee's absence or performance. In this case, formal intervention under section 174 of the *Public Service Act 2008*, may not be necessary.

6.3 Open communication

The agency is to communicate openly with the employee. Information should be shared in a respectful, timely and appropriate manner.

Where appropriate, the employee is to be informed of 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 well-being (refer to section 10 of the *Public Service Regulation 2008*).

6.4 Procedural fairness

The agency should provide the employee with:

- the opportunity to comment on any adverse attendance or performance information that is raised during informal discussions between the agency and the employee
- the information provided to the agency appointed doctor, prior to the employee attending the medical examination
- the medical examination report (except, where the doctor has indicated that the report should not be provided to the employee), and

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- the opportunity to respond to the course of action proposed by the agency in response to the outcome of the medical examination.

The employee may wish to include a support person of their choice during the formal section 174 process.

The agency is to be fair, just and act without bias. The agency is to maintain impartiality at all times.

Anti-discrimination legislation makes it possible for agencies to be held liable for unlawful discrimination in the workplace. An agency must not unfairly discriminate against an individual with a disability because of their disability.

6.5 Retirement as the last resort

Section 174 of the *Public Service Act 2008* is not focussed on termination of employment.

It allows workplace solutions to be developed to address the impact of mental or physical illness or disability on an employee and its effect on their attendance or performance. The employer is able to gain an informed understanding of the limits of an employee's abilities, what modifications would assist the employee to continue in their job, and to make a decision regarding ongoing employment in the position or elsewhere in the agency.

Retirement may be considered for those employees it is not reasonably practicable to transfer or redeploy. Whether or not it is reasonably practicable to transfer or redeploy the employee depends on the circumstances of each case.

7. When does section 174 apply?

Employees are entitled to be absent from work on sick leave with full pay, and may be absent on sick leave without pay at the discretion of the chief executive officer. Extended absences are to be supported by medical certificates or other evidence of illness acceptable to the employer.

Section 174 of the *Public Service Act 2008* may be applied only when two conditions are met.

First, a public service employee must be (a) absent from duty or (b) not performing their duties satisfactorily.

If the agency is reasonably satisfied that a public service employee is not performing their duties satisfactorily, it is appropriate for the agency to refer to a performance agreement or work plan previously agreed with the employee, or other documentation relevant to the employee's performance of their duties.

Second, the employing agency must reasonably suspect that the absence or poor performance is caused by mental or physical illness or disability.

The suspicion that poor performance or absence is caused by mental or physical illness or disability must be reasonably held. Signs and evidence may include (but are not limited to) a significant change in behaviour or demeanour (including unacceptable behaviour), apparent physical difficulties, excessive or frequent absence, threats to self-harm, emotional outbursts, prolonged erratic attendance, and verbal or documented information provided by the employee.

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Before commencing a formal section 174 process, the agency should ensure there is sufficient information to indicate that the employee is absent or performing poorly, and that, on the balance of probabilities, the agency reasonably suspects that this is due to mental or physical illness or disability.

The section 174 process is not to be used as a substitute for standard performance management strategies. Supervisors and managers are to make every effort to identify the causes of poor performance and to resolve poor performance issues through appraisal, guidance, counselling, coaching, training and development, and where practicable, temporary variations to working arrangements and workloads.

8. What is the process to be followed?

8.1 Begin with an informal approach

Where an employee's manager has concerns about the employee's performance or attendance and reasonably believes that the person's performance or attendance issues may relate to a physical or mental illness or disability, an informal approach (i.e. informal discussions between the agency and the employee) should generally be considered as a first step. This approach may provide an opportunity for the employee to volunteer information about their absence from duty or performance and any medical or other condition. Such information may assist in determining whether there is a problem, and if so, developing a mutually satisfactory workplace solution (e.g. reasonable adjustment, suitable duties plan, etc).

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.

There may be benefits to both the employee and the agency if the employee's treating doctor is able to provide a report which sets out the implications of the employee's condition on their capacity to carry out the genuine occupational requirements of their position.

If the employee does not volunteer any such information, then the agency should enquire of the employee, what, if any, additional support would assist them to improve their attendance or performance.

8.2 Initiate a formal approach under section 174

Section 174 of the *Public Service Act 2008* may be used when an employee's attendance or performance does not improve, and informal discussions have occurred during which the employee was notified of the agency's concerns about the absence or performance issues and the agency's suspicion that the employee's absence or poor performance is caused by mental or physical illness or disability.

8.2.1 Appoint and brief a relevant doctor

Under section 175 (a) of the *Public Service Act 2008 (formerly section 85 (2) (a) of the Public Service Act 1996)*, 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 an independent doctor for the employee to visit for the purposes of the medical examination.

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The doctor chosen to conduct the examination should have expertise in the relevant area of mental or physical illness or disability.

The agency should ensure that the employee is not a current or past patient of the doctor to undertake the medical assessment in order to eliminate a real or perceived conflict of interest.

The doctor should 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. However, each case will be different and each may require a different approach and different supporting documentation. The documents identified above are not a comprehensive list, and are provided only as examples.

The request to the appointed doctor should be made in writing and should seek advice on the effect of a mental or physical illness or disability on an employee's attendance or work performance, including:

- 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) *Public Service Act 2008)*
- the likely direct or indirect effect of the illness or disability on the employee's performance (section 177(2)(a) *Public Service Act 2008*)
- an estimate of how long the illness or disability or its effects are likely to last (section 177 (2)(b) *Public Service Act 2008*), and
- 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) *Public Service Act 2008*).

It may also be useful to provide the appointed doctor with a copy (or summary) of section 174 of the *Public Service Act 2008* so that the doctor fully understands the purpose and possible consequences of the medical examination.

The doctor may need to seek broad information from the employee in order to provide advice to the agency (e.g. whether special services or facilities could be provided to assist the employee to continue in their substantive position).

In some cases it may be appropriate for the agency appointed doctor to seek the employee's consent to obtain a report on the employee's medical condition from the employee's treating doctor.

Information that is not directly relevant to the effect of a mental or physical illness or disability on attendance or work performance should not be requested by, or provided to, the agency.

The agency should liaise with QSuper to ensure coordination of effort. This would assist in ensuring that the employee's eligibility to receive a superannuation benefit is assessed in a timely manner.

The doctor appointed by the agency to examine the employee and provide a written report for the purposes of section 174, could also be requested to provide QSuper with the information necessary for assessing the employee's eligibility to receive a superannuation benefit. This process is subject to the employee's written consent. Agencies are advised to contact QSuper for further information.

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8.2.2 Advise the employee in writing of the medical examination

Under section 175 (b) of the *Public Service Act 2008 (formerly section 85 (2) (b) of the Public Service Act 1996)*, the agency can require the employee to submit to a medical examination by the agency appointed doctor.

The costs of the medical examination are to be met by the agency.

The agency should advise the employee in writing of the requirement, pursuant to section 174 of the *Public Service Act 2008*, to submit to a medical examination by the appointed doctor.

It is suggested that the direction to attend the examination is identified as being pursuant to sections 174(1)(a) and (b) of the *Public Service Act 2008 (formerly section 85 (1) (a) and (b) of the Public Service Act 1996)*.

The employee is to be given the name of the doctor, and the time and location of the examination. The employee should be able to negotiate the examination time if there is a valid reason for doing so.

At agency discretion, the employee could be provided with a list of agency appointed doctors with relevant expertise and a mutually acceptable decision made as to which doctor the employee is to attend for a medical examination.

Where there is initial disagreement about the doctor to whom the employee has been referred, the agency may consider appointing an alternative doctor who is suitably qualified to examine the employee and provide a written report.

If there is still disagreement, the agency should make the final decision on which doctor is to be used and the timing of the appointment.

The employee should be given adequate notice of the medical appointment arrangements (a minimum of five working days notice is suggested).

Prior to attending the medical examination, the agency is to provide the employee in writing with:

- the process to be undertaken following the receipt of the medical report by the agency
- the steps the agency will take to ensure confidentiality/privacy of the information contained in the medical report
- 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, and
- any information provided to the appointed doctor. This may help the employee to address absence or performance concerns raised by the agency and assist them to engage more meaningfully in discussion regarding suitable duties. It may also help to minimise anxiety associated with the medical examination.

The employee should also be provided with advice about their appeal rights (refer to the section on *What are the employee's appeal rights?* for further information).

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The employee should also be advised that the agency can assist with travel arrangements and that the agency will meet the cost of the medical examination and reasonable expenses incurred in attending the appointment.

8.2.3 Consider the medical examination report and other relevant material, propose a course of action and provide natural justice

The agency must ensure the privacy of the information contained in the report of the medical examination. Only officers with legitimate reasons to consider the report should be allowed access to it (i.e. officers who are or will be involved in the decision making process).

The agency should provide the employee with the medical examination report (as per section 177 (3) *Public Service Act 2008*) and any other material relied upon by the doctor or the agency in proposing a course of action to be taken, unless there are compelling reasons why this is not possible or appropriate.

In circumstances where the agency's appointed doctor has indicated that the report should not be provided to the employee (as per section 177 (4) *Public Service Act 2008*), the agency may disclose the report to another doctor (as per section 177 (5) *Public Service Act 2008*). In this case, the agency should:

- 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
- advise the employee that they can write to the agency seeking to have the report disclosed to another doctor and asking the employee to nominate that doctor
- ask the employee to obtain the nominated doctor's consent to this process
- send correspondence to the nominated doctor, providing the report and outlining the assessing doctor's decision that release of the report directly to the employee might be prejudicial to the employee's mental or physical health or wellbeing, and
- send the employee a copy of the correspondence sent to the nominated doctor (without the report).

The agency should consider the medical examination report and other relevant material and propose a course of action to be taken.

In proposing a course of action to be taken, the agency should give particular consideration to:

- whether the provision of special services or facilities to accommodate the employee's mental or physical illness or disability would genuinely impose unjustifiable hardship on the agency[1], and
- whether the employee can perform the genuine occupational or inherent requirements[2] of their substantive position.

Options for the proposed action to be taken may include:

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[1] Refer to sections 5 and 35 of the *Anti-Discrimination Act 1991,* section 11 of the *Disability Discrimination Act 1992* and the Frequently Asked Questions for further information.

[2] Refer to section 25(1) of the *Anti-Discrimination Act 1991.*

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- Take **no action** (e.g. in the event the assessment indicates that an illness is temporary and the employee can return to full duties at a later date)
- **Continue or initiate action** to manage unsatisfactory work performance or attendance, if there is no medical reason for the unsatisfactory performance or attendance
- **Continue or commence action** to manage the employee and their illness, disability or injury (e.g. provide ongoing rehabilitation support)
- Unless it would cause unjustifiable hardship for the agency to do so, **provide special services or facilities** or **reasonable adjustment** to enable the employee to continue in their substantive position (e.g. modify work tasks or the workplace, implement graduated return to work arrangements or a change to working hours, or consider other action such as retraining, if practicable)
- **Conduct an internal search for a suitable role and transfer**[3] or **redeploy** the employee to a suitable position within the work group or the agency on the basis that the employee is medically incapable of performing the genuine occupational or inherent requirements of their substantive position for the foreseeable future[4]
- **Deploy** or **redeploy** the employee. Register the employee with the Public Service Commission for service-wide deployment or redeployment on the basis that the employee is medically incapable of performing the genuine occupational or inherent requirements of their substantive position for the foreseeable future but they could perform required duties elsewhere in the Queensland public service[5], or
- **Retire** the employee. Retirement may be considered for those employees it is not reasonably practicable to transfer or redeploy. Whether or not it is reasonably practicable to transfer or redeploy the employee depends on the circumstances of each case.

Further to the above, in considering the action to retire an employee, the agency should consider the definitions of temporary absence in section 73 of the *Industrial Relations Act 1999*, section 5 of the *Industrial Relations Regulation 2000*, and regulation 12.8 of the *Commonwealth Workplace Relations Regulations 2006*. That is, retirement may be considered for those employees who are medically incapable of performing the genuine occupational or inherent requirements of their substantive position, and it is not reasonably practicable for the agency to transfer or redeploy the employee.

In addition, the agency should consider the relevant legislation regarding work-related injury (i.e. an injury for which compensation is payable). In particular, 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.

The agency should provide the employee with:

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[3] Refer to section 133 and 134 of the *Public Service Act 2008 (formerly sections 79 and section 80 of the Public Service Act 1996.*)
[4] The definition of foreseeable future may depend on the circumstances of each case. Medical reports may assist the agency to make a decision in relation to this issue.
[5] Refer to the directive relating to the placement of deployees.

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- written information detailing the agency's proposed course of action to be taken in response to the outcome of the medical examination, and
- the opportunity to respond to this proposed course of action.

The agency should advise the employee that as part of their response, the employee may submit any material that they consider relevant, such as a medical report from the employee's treating doctor or a QSuper report. Employees who wish to seek such additional advice will meet all costs associated with obtaining this advice.

As a general rule, the employee should not require longer than 14 days to provide a response to the agency's proposed course of action. However, the agency may determine the time allowed and should be prepared to extend that timeframe if the employee wishes to obtain additional medical or other reports.

8.2.4 Make a final 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 as soon as practicable all relevant material, including the medical examination report and any information submitted by the employee.

The objective is to decide whether the agency is satisfied that the employee's absence or poor performance is caused by mental or physical illness or disability.

The agency must also make a final decision on the course of action to be taken and clearly document the reasons for their decision.

The final decision detailing the action to be taken as an outcome of the medical examination, and the reasons for this decision, should be communicated in writing to the employee.

Further to the above, the agency should only proceed to transfer, redeploy or retire the employee where the agency has evidence, and can argue with confidence, that the provision of services or facilities to accommodate the employee's mental or physical illness or disability would genuinely impose unjustifiable hardship on the agency, or that the employee can no longer perform the genuine occupational requirements of their substantive position for the foreseeable future.

The agency should provide the employee with advice about their options to challenge or appeal the final decision on the course of action to be taken (refer to the section on *What are the employee's appeal rights?* for further information).

The agency should also advise the employee to contact QSuper for information about potential superannuation entitlements. Superannuation benefits do not automatically follow a section 174 decision. The question of superannuation entitlements is one for QSuper to determine.

The agency may also need to consider whether notification of an employee's retirement on the grounds of ill-health should be referred to the relevant registration board or council (e.g. nurses, allied health professionals, teachers etc.). Negotiations between the agency and the relevant board would need to ensure that privacy provisions applicable to the employee were preserved.

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9. What are the employee's appeal rights?

The employee may lodge a grievance in accordance with the directive relating to grievance resolution.

If the grievance is not resolved by mediation or other appropriate action as determined by the agency chief executive, the employee may appeal to the Commission Chief Executive. That is, an appeal may be lodged in accordance with the fair treatment appeal provisions of the directive relating to appeals.

The employee is not eligible to lodge a grievance, and subsequently appeal, a decision to retire the employee in accordance with section 178 (1) (b) of the *Public Service Act 2008 (formerly section 85 (3)(b) of the Public Service Act 1996)*.

If an agency decides to retire the employee, the agency should have given the employee an opportunity to respond to this proposed action and produce relevant medical (and other) evidence, as outlined in these Guidelines.

A public service employee retired in accordance with section 178 (1) (b) of the *Public Service Act 2008* (*formerly section 85 (3)(b) of the Public Service Act 1996*) may seek a hearing before the Queensland Industrial Relations Commission.

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Frequently asked questions

Q: What if the employee denies they have any health or performance issues?

A: If the employee is at work, their performance should be managed through the usual processes which include discussion of work expectations (including behaviour) and documenting agreed actions, learning activities and timeframes.

If the employee appears to be significantly unwell or erratic and their manager reasonably suspects that the employee's attendance or performance will not improve without further medical information, then section 174 may be applied.

Q: How can an agency minimise the level of stress or distress for an employee when a section 174 process is enacted?

A: Ill-health can place a great deal of stress on an employee. Stress is often associated with situations that people find difficult to handle, and discussing performance issues with management is likely to increase an employee's stress levels.

People may experience physical or emotional symptoms brought on by stress, or they may experience difficulties in effectively managing their work relationships with colleagues. Symptoms of stress can include being unable to think clearly; poor concentration or memory and increased conflict or withdrawal from others.

Communicating regularly throughout the section 174 process, and displaying sensitivity to the employee's situation, are simple, effective ways of minimising stress. The importance of effective listening skills cannot be overestimated. Listening to an employee – rather than simply hearing them – and displaying genuineness, respect, availability and honesty are critical to effectively managing distressing circumstances.

The case manager appointed by the agency may be of assistance in ensuring the employee is treated sensitively and with respect. It may also be helpful to encourage the employee to include a support person (of the employee's choice) in meetings between the agency and the employee.

The agency must, of course, maintain their impartiality. However, it is still possible to show empathy for the employee's situation, and this can help to minimise some of the fear and anxiety such situations can engender. It may also be useful to provide the employee with information about the agency's Employee Assistance Service and where appropriate, advise them to seek further information from Centrelink and QSuper in relation to the financial assistance that may be available if they have a reduced capacity to work.

Q: What happens if an employee refuses a medical examination (or parts of the examination)?

A: A direction to attend a medical examination is a lawful direction in terms of section 175 (b) of the *Public Service Act 2008 (formerly section 87 (d) of the Public Service Act 1996).* Failure to comply with such a direction without reasonable excuse could render the employee liable to disciplinary action.

If an employee refuses to attend a medical examination, the agency should advise the employee in writing that failure to attend the medical examination as directed may result in disciplinary action.

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As per section 176 of the *Public Service Act 2008*, an agency is prohibited from approving sick leave for an employee who has refused to attend a medical examination.

If an employee refuses to participate in certain aspects of a medical examination on the grounds of legitimate religious or cultural reasons, the doctor should note the subsequent limitations to their assessment in their report to the agency. With the employee's consent, it may be appropriate for the agency to seek further information by alternative means (e.g. via a submission from the employee's doctor).

Q: Can an agency use the employee's doctor rather than appointing their own doctor to examine the employee and provide a written report on the examination?

A: The agency should choose an independent doctor for the employee to visit for the purposes of the medical examination. The doctor chosen to conduct the examination should have expertise in the relevant area of mental or physical illness or disability.

The agency should ensure that the employee is not a current or past patient of the doctor to undertake the medical assessment in order to eliminate a real or perceived conflict of interest.

At agency discretion, the employee could be provided with a short list of agency appointed doctors with relevant expertise and a mutually acceptable decision made as to which doctor the employee is to attend for a medical examination.

Where there is initial disagreement about the doctor to whom the employee has been referred, the agency may consider appointing an alternative doctor who is suitably qualified to examine the employee and provide a written report. If there is still disagreement, the agency should make the final decision on the doctor to be used.

The agency should also consider any submissions made by the employee's doctor together with the independent report of the medical examination. An agency can obtain a report from the employee's doctor only with the employee's written consent.

If there is a conflict between opinions of the employee's doctor and the doctor appointed by the agency, with the employee's consent, it may be appropriate for the agency to seek further comment and advice from both doctors. Alternatively, it may be necessary to seek a further opinion from a suitably qualified doctor.

Q: Can an agency use a QSuper or WorkCover medical report rather than appointing their own doctor to examine the employee and provide a written report on the examination?

A: For the purposes of determining the impact of mental or physical illness or disability on an employee and its effect on their attendance or performance, the agency will generally be required to appoint an independent doctor to examine the employee and obtain a written report on the results of the examination.

This process is designed to provide the employee with natural justice, and encourages the agency to consider a range of potential solutions in response to an ill-health employee.

Where appropriate, the agency may, with the agreement of the employee, appoint the same medical practitioner that was used by QSuper.

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Alternatively, at agency discretion, it may be reasonable in some cases for the agency to use a QSuper report to determine whether the employee's absence or poor performance is caused by mental or physical illness or disability and a proposed course of action in response.

This is acceptable subject to:

- employee consent to the release of the medical report by QSuper to the agency
- employee consent to the medical report being used by the agency for the purposes of section 174 of the *Public Service Act 2008 (formerly section 85 of the Public Service Act 1996)*, and
- the medical report addressing the matters listed in section 177 of the *Public Service Act 2008*.

In this circumstance, the agency should also provide the employee with information on the process to be undertaken following the receipt of the medical report by the agency.

WorkCover medical reports cannot be used for the purposes of retirement under section 174 of the *Public Service Act 2008* as it is contrary to section 572A of the *Workers Compensation and Rehabilitation Act 2003*.

However, where appropriate, the agency may, with the agreement of the employee, appoint the same medical practitioner that was used by WorkCover.

Where there is initial disagreement about the doctor to whom the employee has been referred, the agency may consider appointing an alternative doctor who is suitably qualified to examine the employee and provide a written report. If there is still disagreement, the agency should make the final decision on the doctor to be used.

Q: What are special services and facilities (or reasonable adjustment) and unjustifiable hardship?

A: The supply of special services or facilities or reasonable adjustment is the modification of a job, employment practice or the work environment to enable an employee with a medical condition or disability to carry out the inherent requirements of the job. It is not a "one off" process but should be considered throughout the employment relationship.

Reasonable adjustment can include altering access to the workplace, the design of the workplace, provision of equipment or job redesign. It may also include provision of training to allow employees to perform altered or new work tasks.

Employers are required to make reasonable adjustments to the workplace unless it would cause unjustifiable hardship to do so. Whether the supply of special services or facilities would impose unjustifiable hardship on the agency depends on the circumstances of the case, including:

- the nature of the special services or facilities
- the cost of supplying the special services or facilities and the number of people who would benefit or be disadvantaged
- the financial circumstances of the agency
- the disruption that supplying the special services or facilities might cause, and
- the nature of any benefit or detriment to the agency and the employee.

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For further information refer to the *Guide to working with people with diverse abilities* available on the Public Service Commission website at www.psc.qld.gov.au.

Q: What should an agency do if someone in the workplace threatens to self-harm or harm others?

A: In the first instance, the employee should be encouraged to contact the agency's Employee Assistance Service or their own doctor for assessment and support. The Employee Assistance Service or doctor may then be able to assist the agency to respond appropriately. With the employee's consent, an emergency contact (usually a significant other) could be asked to provide support.

In accordance with the agency's obligations under the *Workplace Health and Safety Act 1995*, the agency should also consider what action, if any, needs to be taken to ensure that the working environment is safe for both the employee and their colleagues.

If the employee refuses informal assistance and the agency believes there is imminent risk of harm, consideration could be given to using emergency provisions under sections 33-35 of the *Mental Health Act 2000*. Police Officers or Ambulance Officers who reasonably believe a person has a mental illness and is at imminent risk of harm to self or others, can take the person to an authorised mental health service and use an Emergency Examination Order to get the person medically assessed.

At a later stage, if concerns continue, section 174 of the *Public Service Act 2008* may be used by the agency to assess the employee's fitness for employment.

Q: Should an employee who knows they are too unwell to continue work be asked to resign?

A: If an employee indicates they are too unwell to continue working, the agency should ask the employee to submit a statement in writing and any other relevant documentation (e.g. medical reports) to this effect. It may also be appropriate for the employee to submit an indication of their future intentions with regards to their continuing employment.

The agency may then commence a section 174 process, which may include giving consideration to directing the employee to attend a medical examination.

Alternatively, at agency discretion, it may be reasonable for the agency to use a QSuper (or other suitable) report for the purposes of determining a proposed course of action to be taken in accordance with section 174 of the *Public Service Act 2008*. This is acceptable subject to:

- employee consent to the release of the medical report by QSuper (or the doctor) to the agency
- employee consent to the medical report being used by the agency for the purposes of section 174 of the *Public Service Act 2008*, and
- the medical report addressing the matters listed in section 177 of the *Public Service Act 2008*.

Retirement should only be considered by the agency for those employees it is not reasonably practicable to transfer or redeploy. Whether it is reasonably practicable or not to transfer or redeploy the employee depends on the circumstances of each case.

Alternatively, the employee may elect to resign.

Superseded by Guideline 03/13

The agency should advise the employee to contact QSuper for information about potential superannuation entitlements.

Superseded by Guideline 03/13