Supporting employees affected by illness and disability: a practical guide to independent medical examinations for the Queensland public sector

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Queensland Government

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1. Overview

The Queensland Government is committed to supporting public sector employees with mental or physical illness or disability to maintain their employment, including through the application of reasonable adjustments, where appropriate. All employees will be supported with sensitivity and respect.

In the majority of instances, early discussions between the manager, the employee and the employee's treating doctor (only with the employee's consent) may resolve any performance or absence concerns caused by mental or physical illness or disability without a formal process. Managers 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.

Sections 103 to 109 of the *Public Sector Act 2022* (the Act) provide a formal process to obtain medical advice from an examining doctor appointed by the public sector entity where the conditions in section 103 of the Act are met and set out how action may be taken following receipt of a medical examination report.

1.1. Purpose of this guideline

This guideline supports the Independent medical examinations directive (the directive). In accordance with the directive, chief executives of public sector entities must consider this guideline when considering and directing an employee to submit to a medical examination, and when making any decision about the action to be taken following the medical examination under the Act and the directive.

This guideline is a practical resource to assist chief executives, managers, human resource practitioners and employees in early discussions and guide steps to support employees where there is a reasonable suspicion, that because of a mental or physical illness or disability, their workplace performance has been affected, or they are absent from the workplace.

The guideline is structured chronologically to assist public sector entities and their chief executives (and delegates) when considering requiring an employee to submit to a medical examination.

1.2. The legislative framework

Medical examinations are to be carried out in accordance with the Queensland public sector employment framework which is structured around the:

- *Public Sector Act 2022*
- *Public Sector Ethics Act 1994*
- *Industrial Relations Act 2016*
- *Industrial Relations Regulation 2018*
- *Human Rights Act 2019*
- *Information Privacy Act 2009*
- *Anti-Discrimination Act 1991*
- *Disability Discrimination Act 1992* (Cth)
- *Workers' Compensation and Rehabilitation Act 2003*
- *Work Health and Safety Act 2011*
- *Managing the risk of psychosocial hazards at Work Code of Practice 2022*
- Code of Conduct for the Queensland public service (Code of Conduct) (or an entity's relevant Code of Conduct in accordance with the requirements under the *Public Sector Ethics Act 1994*)
- subordinate legislation, directives, and guidelines.

The guideline is to be read in conjunction with:

- *Public Sector Act 2022* chapter 1, part 3 – Reframing of the State's relationship with Aboriginal peoples and Torres Strait Islander peoples
- *Public Sector Act 2022* chapter 2 – Equity, diversity, respect and inclusion
- *Public Sector Act 2022* chapter 3, part 2 - Principles
- *Public Sector Act 2022* chapter 3, part 8, division 5 – Mental or physical incapacity
- Public Sector Commissioner (Commissioner) directives relating to:
  - independent medical examinations
  - positive performance management
  - the voluntary medical retirement (VMR) scheme
- any equivalent legislation relating to a public sector entity and its employees.

2. Principles

2.1. Early and open communication

Early discussions between the manager, the employee and the employee's treating doctor (only with the employee's written consent) may resolve any performance or absence concerns without a formal process. It provides an avenue for the manager to address any issues with the employee and their treating doctor through reasonable adjustments, flexible work, transfer, redeployment or other employment opportunities, or other strategies. Managers and employees are to communicate openly with each other, sharing information in a timely, respectful and appropriate manner to maximise the likelihood of a positive outcome.

2.2. Sensitivity

Managing the impacts of unsatisfactory work performance or an absence can be a distressing time for the employee involved, and for other employees, particularly if mental or physical illness or disability is suspected. Entities should consider how their processes, communication and language can demonstrate support for their employees and engage employees to resolve issues in a positive way. Chief executives should consider their obligations under the *Managing the risk of psychosocial hazards at work Code of Practice 2022*.

2.3. Reciprocity

Both the manager and the employee have a responsibility to work together constructively and in good faith.

2.4. Lawful requirement

A requirement to submit to a medical examination 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 a medical examination is following a lawful direction and therefore employee consent is not required. An employee cannot be requested to consent to any part of the medical examination. Chief executives should advise the examining doctor that they cannot request an employee to complete a standard consent form as it is not supported by sections 103 – 109 of the Act.

2.5. Procedural fairness

Chief executives are to ensure that processes are fair and without bias. Such a 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 information that is raised during discussions between the manager and the employee about performance or absence that may be considered adverse to the employee's interests before a decision is made based on this information[2]
b. the information provided to the examining doctor
c. the medical examination report (except where the doctor has indicated the report should not be provided to the employee in accordance with section 106(4) of the Act, however the report may be disclosed to another nominated doctor in accordance with section 106(5) of the Act)
d. information, as early as possible, about the steps that will be taken if the examining 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 chief executive based on the outcome of the medical examination.

2.6. Retirement as a last resort

Sections 103 – 109 of the Act enable the chief executive to obtain medical 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 entity or another public sector entity. All reasonably practicable options for continuing employment must be considered. Retirement of the employee should be considered as a last resort.

3. What to do when a work performance or absence matter arises relating to illness or disability

Managers should consider their obligations under the Commissioner directive about positive performance management and discuss with an employee any concerns about the employee's performance or absence, including whether there is anything impacting on the employee's ability to carry out the duties of their role[3]. Communication with the employee should be supportive and seek to understand the needs of the employee and what support, if any, the employee may need to improve their performance or return to the workplace.

Where the employee shares that a mental or physical illness or disability is affecting their performance or the reason for their absence, an entity must consider their legislative obligation to implement reasonable adjustments, to protect against unlawful discrimination in the workplace and facilitate equal access to the workforce.

Other options to address mental or physical illness or disability impacting an employee's performance or absence (other than requiring the employee to submit to a medical examination) may include:

a. exploring options for temporary workplace rehabilitation arrangements such as a graduated return to work
b. use of existing medical reports that have been provided to the entity by the employee or a third party with the employee's consent (for example, a medical certificate or report from the employee's treating doctor, or a work capability assessment from an occupational therapist or a report from QSuper) to inform actions to manage the employee's mental or physical illness or disability in the workplace (note this is distinct from action taken under section 107 of the Act). Consideration should be given to whether this information is current and relevant to the specific circumstances.

[2] There may be some cases where immediate action rather than a performance discussion is required in response to an extreme or threatening incident.
[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. where an employee has an accepted WorkCover claim, the entity should refer to any information relevant to the claim such as a return-to-work plan to inform the support required. WorkCover may require the employee to attend a medical examination, however this is distinct to a medical examination required under the Act.
d. seek information from the employee's treating doctor. There may be benefits to both the employee and the entity if the employee's treating doctor is able to provide current information which sets out the impact of the employee's mental or physical illness or disability on their capacity to carry out the genuine occupational requirements of their role. The employee's written consent must be obtained. Where the employee does not have a treating doctor, the entity may consider encouraging the employee to seek this type of support.
e. if the employee does not consent to the release of this information or does not consent to the entity contacting their treating doctor, then the entity can ask the employee what, if any, additional support would assist the employee to improve their performance or return to work from their absence. The entity will then need to consider whether this information is sufficient in consideration of the circumstances.

There may be instances where an employee advises that mental or physical illness or disability is not affecting their performance, however observations of the employee's behaviour indicate otherwise. A chief executive may then consider whether this information supports a reasonable suspicion that a mental or physical illness or disability is affecting the employee's performance, and whether it is appropriate to require the employee to submit to a medical examination where the conditions in section 103 of the Act are met.

Support for managers
Where employees share matters requiring professional guidance or support (e.g. medical issues, counselling needs, domestic and family violence), managers are encouraged to seek support and guidance from their human resources area on how to appropriately refer employees to support services (e.g. the entity's Employee Assistance Service (EAS) or domestic and family violence support). Manager assistance services may be available through the entity's EAS.

4. Deciding whether to require an employee to submit to a medical examination

The process in section 103 – 109 of the Act is not to be used as a substitute for performance management strategies. Every manager has an obligation to proactively manage an employee's work performance and conduct and address performance issues through appraisal, guidance, counselling, coaching, training and development, and where practicable, temporary variations to working arrangements and workloads. The Commissioner directive relating to positive performance management should be referred to. Legislative obligations relating to reasonable adjustment must also be considered.

The purpose of a medical examination under the Act and the directive is to provide the chief executive with medical information advising whether an employee has a mental or physical illness or disability, to inform the chief executive when determining how best to support an employee to maintain their employment.

The report must contain that opinion and additional information describing the impacts of the illness or disability, if any, on the employee's ability to perform the role, and whether disclosure of the report to the employee might be prejudicial to the employee's mental or physical wellbeing.

Where an employee in a participating public sector entity has applied for medical retirement under the Commissioner directive relating to the voluntary medical retirement scheme and the request is being considered or has been approved, this guideline does not apply, and a medical examination under section 104 of the Act is not required. However, an employee cannot apply for a voluntary retirement package after the employee has been required to submit to a medical examination, unless invited to do so by the chief executive.

Chapter 3, part 8, division 5 (mental or physical incapacity) of the Act, only applies when both conditions established in section 103 of the Act are met. These conditions are:

a. the public sector 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.

4.1. Absent from duty OR unsatisfactory performance

Being absent from duty under section 103(a) of the Act refers to a current absence from the workplace and it is a question of fact that the employee is absent. It does not refer to frequent, intermittent absences or prior absences, whether due to mental or physical illness or disability or other reasons. It is not limited to a voluntary absence such as sick leave and may include involuntary absence such as suspension in the context of a genuine workplace health or safety concern. However, a chief executive cannot direct an employee not to attend the workplace for the purpose of requiring an employee to submit to a medical examination.

Evidence of absence may include, but is not limited to:

a. leave forms or a leave history report
b. copies of medical certificates.

Frequent absences (supported by evidence) may be considered as part of unsatisfactory performance referred to in section 103(a) of the Act but is not itself evidence of poor performance. The performance impact of the frequent absences must still be shown. Alternatively, unsatisfactory performance may be unrelated to frequent absence. The chief executive must be reasonably satisfied that the evidence supports a conclusion that a public sector employee is not performing their duties satisfactorily. The evidence relied upon must be detailed in the requirement to submit to the independent medical examination.

Evidence of unsatisfactory performance may include, but is not limited to:

a. documented performance concerns in a performance agreement or work plan, notes of performance discussions, a performance improvement plan (PIP) or a performance report
b. documented instances of inappropriate conduct or impacts on the health, safety and wellbeing of the employee or others, and any actions that were taken by the entity.

4.2. A reasonable suspicion of mental or physical illness or disability

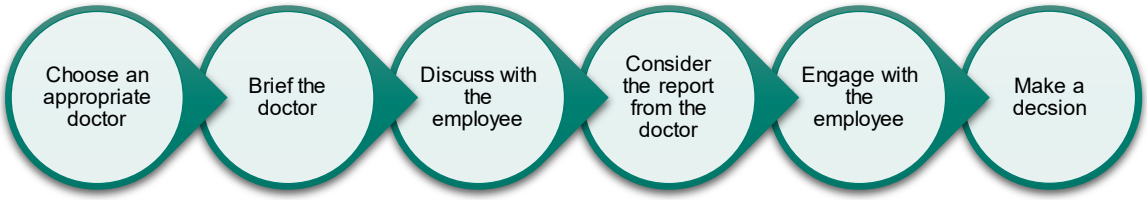
The suspicion that unsatisfactory performance or absence is caused by mental or physical illness or disability must be reasonably held. There must be sufficient grounds which have been documented, that suggests a mental or physical illness or disability is causing the unsatisfactory performance or absence from the workplace. This evidence must be presented and explained to the employee in the letter requiring them to submit to the medical examination, by referring to factual observations or documents.

Such observations or documents 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
c. emotional outbursts
d. verbal or documented information provided by the employee e.g. sharing that they live with mental or physical illness or disability
e. physical capabilities assessment provided by a medical practitioner or other information from the employee's treating doctor.

5. The medical examination process

Once the chief executive is satisfied that the conditions of section 103 of the Act have been met and consideration has been given to reasonable adjustment obligations and whether there is a more appropriate option in the circumstances to attempt to resolve the employee's unsatisfactory performance or absence, the chief executive may direct the employee to attend a medical examination. The medical examination process is as follows:



5.1. Choosing an appropriate examining doctor

The Act and the directive allow for the chief executive to appoint a doctor to examine the employee and provide a written report on the results of the medical examination. The chief executive must choose an examining doctor who:

a. is independent to eliminate any actual or perceived conflict of interest. For example, not currently treating or has not previously treated the employee, or not known to the chief executive or manager. However, where it is determined that a more informed decision can be made by seeking an opinion from an examining doctor who has knowledge of the employee's medical history, this may occur so long as the employee has agreed to this arrangement
b. has expertise in the relevant area of the suspected mental or physical illness or disability (see Glossary).

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

5.2. Briefing the examining doctor

Once the chief executive has chosen an appropriate examining doctor, the doctor must be properly briefed in writing. The written request to the examining doctor should seek their professional opinion as to whether the employee has a mental or physical illness or disability that may adversely affect the employee's performance or cause their absence.

The examining doctor must be given a copy of any relevant supporting documentation (excluding workers' compensation documentation). This may include, but is not limited to:

a. a description of the employee's role, duties and responsibilities (e.g. an employee role description)
b. an outline of the work environment
c. a chronology of events (e.g. absence history, performance issues and management response(s)
d. any existing medical report from a third party that provides relevant background information (excluding workers' compensation documentation).

The supporting documentation relevant to the circumstances will vary from case to case. Only the information relevant to the current medical examination should be provided to the examining doctor.

It should be made clear to the examining 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 relevant medical history, because this is required of them by the lawful direction.

It is important to note that a chief executive engages a medical examiner to provide an opinion as to whether the employee has a mental or physical illness or disability that may adversely affect the employee's ability to perform their role. They are not engaged to provide a diagnosis or treatment information to the employee or the chief executive. The examining doctor should be advised that the report must contain only relevant information as stipulated in the directive, may be provided to the employee either directly or through their nominated doctor, and they cannot place restrictions on third party release.

See an example of a letter to the examining doctor (Template letter – to an examining doctor conducting a medical examination (docx, 55 KB)).

5.3. Communicate with the employee

The chief executive must advise the employee in writing of the requirement to submit to a medical examination by the appointed examining doctor. The employee should be aware of the concerns held by the entity prior to receiving the written direction. The written direction should not be the first time the entity communicates with the employee in relation to the medical examination direction. The method of communication may vary depending on the employee's circumstances but in all cases, it should be done with sensitivity, respect and with regard for the employee's wellbeing.

The employee must be given a minimum of 28 calendar days' notice of the medical appointment. Shorter notice may be given with the agreement of the employee where, for example, an earlier appointment becomes available.

The directive stipulates what must be included in the written correspondence to the employee, and includes the reasons and evidence relied upon for the direction. In addition to the minimum requirements outlined in the directive, the written correspondence to the employee should also include:

a. that the entity will meet all reasonable costs of the employee attending the appointment
b. any information they need to take with them to the appointment (e.g. x-rays)
c. that if the employee fails to submit to the medical examination, they may be subject to discipline action in accordance with the Commissioner directive about discipline.

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.

Submitting to a medical examination requires more than mere attendance at the appointment. It requires the employee to actively participate in the medical examination, co-operate with the examining doctor and provide honest responses to questions about their relevant medical history. However, it does not require the employee to hand over all their past medical records.

If the employee requests that a support person accompany them to the medical examination, the request may be passed onto the examining doctor for their consideration. A support person must not talk for the employee during the medical examination or create a conflict of interest (for example, a witness relied upon as evidence to changes in the employee's performance).

Before the employee attends the medical examination, the entity must advise the employee of the process to be undertaken after the chief executive receives the medical report, the steps the chief executive will take to ensure confidentiality of the report information, and the steps that will be taken if the examining 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 (Template letter – to an employee required to submit to a medical examination (docx, 58 KB)).

Providing a copy of the report to the employee

The chief executive is required to provide the employee with the medical examination report as soon as practicable after receiving the medical report.

If the examining 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.

In this case, the chief executive must:

a. advise the employee in writing that the examining 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 (in practice this is usually the employee's treating doctor).

If the employee nominates a doctor for the medical report to be sent to, the chief executive must:

a. write to the nominated doctor, provide the report and outline the examining doctor's decision that release of the report directly to the employee might be prejudicial to their mental or physical health or wellbeing
b. send the employee a copy of the correspondence sent to the nominated doctor (without the report)
c. pay the reasonable costs of the employee's visit to their nominated doctor to discuss the contents of the report.

Where the examining 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 chief executive will need to consider appropriate actions based on the report, for example encourage and support the employee to locate a suitable treating doctor. The chief executive should engage with the employee to enable them to participate meaningfully in the process. How that is done, can vary depending on the circumstances of the case.

5.4. Considering the report from the examining doctor

The chief executive must consider the medical examination report to determine whether they are reasonably satisfied that the employee's absence or unsatisfactory performance is caused by a mental or physical illness or disability.

The chief executive must ensure the privacy of information contained in the medical examination report and related documents, refer to clause 15.1 of the directive for further information. Only employees with a legitimate reason to consider the report should access it (for example, employees who are or will be involved in or advising on the decision-making process).

Where there is no medical reason for the unsatisfactory performance or absence

Where the examining 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 the absence, any performance issues or continuing absences should be addressed through the appropriate framework under the Act and associated Commissioner directives (for example, the Commissioner directive relating to positive performance management). Further medical opinions should not be sought using the same direction.

Determining the proposed action

The chief executive must consider the medical examination report and any other relevant material (excluding workers' compensation documentation) to determine how best to support the employee and propose what action, if any, is to be taken with a focus on continuing their employment. The chief executive may propose an appropriate course of action in accordance with section 107 of the Act. All reasonably practicable options for continuing employment must be considered, consistent with the medical examination report, and medical retirement of the employee should be considered as a last resort.

Where the medical examination report suggests adjustments to enable the employee to continue in their substantive position (for example, specialised equipment, modification of work tasks or the workplace, changes to the hours of work or number of hours worked, incorporating breaks or consideration of other action), the chief executive must consider their legislative obligation to implement reasonable adjustments in consultation with the employee. 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 entity.

When proposing action under section 107 of the Act, options that may be considered, depending on the circumstances, include, but are not limited to:

a. **temporary workplace rehabilitation arrangements** such as a graduated return to work to support a transition back to the workplace while the employee recovers. This may include temporary restrictions or modifications to their substantive role
b. **secondment or temporary opportunity in a different role**. This may be reasonable where the medical report indicates there are reasonable prospects for the employee to return to their substantive role
c. **search for a suitable role to transfer or redeploy the employee** within the work group, entity or the Queensland public sector, on the basis that the employee is medically incapable of performing the genuine occupational requirements of their role for the foreseeable future, but they could perform required duties elsewhere. When searching for a suitable role, the chief executive may consider whether there are any vacant roles within the entity or another public sector entity, which the employee could perform. The employee and the entity should work together to understand the types

of roles that may be suitable for the employee, whether the employee has any preferred alternative employment locations (towns/cities) and their ability to relocate. It is at the discretion of chief executive of a receiving entity whether to approve a proposed transfer or redeployment

d. **consider retiring the employee** where it is not reasonably practicable to transfer or redeploy, and where reasonable adjustment has also not been possible.

In deciding the action to be taken, the chief executive should also consider statutory protections for ill or 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 a medical examination where this protection applies but the entity cannot consider retirement of the employee, if that is the recommendation of the examining 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.

Procedural fairness

Procedural fairness requires that a fair and unbiased process be applied when making a decision that may adversely affect an employee and their employment.

Any action proposed by the chief executive based on the medical examination report, under section 107 of the Act, is subject to procedural fairness. The employee must be given any relevant information to enable them to challenge the proposed action/s and to provide their own further relevant information if they wish.

The chief executive must provide the employee with:

a. written details of any action proposed in response to the medical examination report and an explanation of why that action is proposed
b. any alternative actions that were considered when determining the action to be proposed and why the alternative actions were not considered appropriate
c. a copy of the medical examination report (except where the examining doctor has advised this would be detrimental) and any other material relied upon by the doctor or the agency in proposing a course of action
d. the opportunity to respond to any proposed action, with a minimum period of 14 calendar days to respond (a longer period to respond may be appropriate particularly where the employee is seeking additional advice)
e. written advice that as part of their response, the employee may submit any additional material they consider relevant excluding workers' compensation documentation (for example, 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 the associated costs.

5.5. Engaging with the employee

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 absence and the options available to them, they must not be asked to

resign or retire as this could constitute constructive dismissal, discrimination or adverse action. This is different to ill health retirement under section 107 of the Act, which is a decision made about the employee's employment, not a request made to the employee.

An employee who advises they are considering resigning or retiring because of a mental or physical illness or disability should be provided with information about their entitlements and encouraged to seek professional advice (for example, superannuation or taxation advice) prior to making any decisions.

Where a public sector entity is a participant in the Commissioner directive relating to the Voluntary medical retirement (VMR) scheme, the employee cannot apply for a voluntary retirement package after the employee has been required to submit to a medical examination, unless invited to do so by the chief executive. If the chief executive has decided under section 107 of the Act to continue an employee's employment with or without reasonable adjustment, the employee may then make an application for a voluntary retirement package.

5.6. 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 chief executive must consider all relevant material (excluding workers' compensation documents), including the medical examination report and any information submitted by the employee as soon as possible.

The chief executive must then make a decision on the action to be taken in accordance with section 107 of the Act. The decision and reasons for the decision must be communicated in writing to the employee, and the employee advised of their rights of review and support available, for example the entity's EAS.

Chief executives must give proper consideration of human rights under the *Human Rights Act 2019,* when making decisions under section 107 of the Act.

Where a mental or physical illness or disability is ongoing, and the employee remains within the entity after consideration of the medical examination report, the action taken should be monitored and reviewed if there are any changes in the employee's circumstances.

Where the action to be taken is ill-health retirement, the chief executive must encourage the employee to seek advice from relevant organisations, including, but not limited to:

a. their superannuation fund
b. the Australian Tax Office
c. the Department of Social Services
d. Services Australia (e.g. Centrelink and/or Medicare)
e. the National Disability Insurance Agency.

The chief executive will also need to identify any obligations 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.

6. Complaints, appeals and rights of review

6.1. Complaints and rights of review

Under clause 11 of the Directive, an employee may request an internal review of the decision to require them to submit to a medical examination. The employee must notify the chief executive in writing within 14 days,

that they are seeking an internal review of the decision and why they believe the decision does not meet the conditions in section 103 of the Act or the procedural elements of the directive.

Where an employee has been ill health retired under section 107 of the Act, they may be able to lodge an application for re-instatement (unfair dismissal claim) with the Queensland Industrial Relations Commission (QIRC). Further information relating to unfair dismissal claims can be found on the QIRC website[4].

In addition, employees may be able to pursue other review avenues including, but not limited to, a claim of adverse action to the QIRC or a human rights complaint or discrimination claim to the Queensland Human Rights Commission of Queensland, in relation to proposed action under chapter 3, part 8, division 5 (mental or physical incapacity) of the 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.

Employees who are members of a union may seek advice from their union on rights of review.

6.2. Appeals

Appeal provisions are provided for under chapter 3, part 10 (appeals) of the Act. Further information can be found in the Commissioner directive relating to appeals, on the QIRC website[5] and in the QIRC Public sector appeals guide.

An employee may appeal a decision that requires the employee to submit to a medical examination (a directive decision), on the basis that the decision does not meet the requirements of section 103 of the Act.

An employee may appeal an internal review decision under clause 11 of the Directive that requires the employee to submit to a medical examination (a directive decision), on the basis that the decision does not meet the requirements of section 103 of the Act.

The internal review under clause 11 of the Directive and appeal rights provided for in chapter 3, part 10 (appeals) of the Act may not be exercised concurrently.

Appeals by public sector employees are heard and decided by the QIRC under chapter 11 of the *Industrial Relations Act 2016* (IR Act).

[4] https://www.qirc.qld.gov.au/unfair-dismissal
[5] https://www.qirc.qld.gov.au/public-sector-appeals

7. Glossary

Doctor	'Medical practitioner' registered under the Health Practitioner Regulation National Law to practice in the medical profession (other than a student). The Medical Board of Australia defines the scope of specialist medical practitioners. Only people who practise as one of these types of specialist medical practitioners may be appointed to examine an employee. Examples may include, but are not limited to: • **Psychiatrist** – diagnoses and treats mental, emotional and behavioural disorders and prescribes medications and treatment to promote or restore mental health. • **Occupational Physician** – assess, treat and prevent musculoskeletal disorders and determine whether the condition is related to work. Trained to assess a person's capacity for work. • **Orthopaedic Surgeon** – specialist surgeon who diagnoses and provides surgical treatment of conditions of the musculoskeletal system including conditions of bones, joints, ligaments, tendons, muscles and nerves. • **Rheumatologist** – specialises in the diagnosis and management of inflammatory conditions of joints, muscles and soft tissues. • **Neurologist** – diagnoses and provides non-surgical management of conditions of the brain, spine and peripheral nerves. Neurologists can assess all neurological conditions and cognitive deficits. • **Neurosurgeon** – specialist surgeon who specialises in conditions and surgery of the brain and spine. When selecting a provider to undertake a medical examination, entities may consider engaging a medical practitioner on the WorkCover Queensland Independent medical examinations panel available at: WorkSafe – Current panels.
Entity	Means a public sector entity provided for under section 8 of the Act.
Genuine occupational requirement	The genuine occupational requirements (also referred to as inherent requirements) of the role are aspects that are essential to the role and may include: • 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. 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. 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. (Queensland Human Rights Commission)

	(Australian Human Rights Commission)
Allied health professional	An individual accredited by a professional body upon completing a course of study, and usually licensed by a government entity to practice a health-related profession, such as physiotherapy, occupational therapy or radiology.
Medical condition	A generic term for *mental or physical illness or disability* in chapter 3, part 8, division 5 (mental or physical incapacity) of the Act.
Unjustifiable hardship	Determined by reference to all the relevant circumstances, including: • the nature of the special services or facilities required • the cost and number of people who would benefit or be disadvantaged • the financial circumstances of the employer • the disruption that making the adjustment might cause • 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 entity. (Queensland Human Rights Commission)

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