

Independent medical examinations of employees

Policy Number: E11 (QH-POL-170)

Publication date: June 2021

Purpose: To outline the requirements under the *Public Service Act 2008* in relation to independent medical examinations of employees when there is a reasonable suspicion that an employee's absence or unsatisfactory performance is caused by mental or physical illness or disability.

Application: This policy applies to all Queensland Health employees.

This policy does not apply to employees of Queensland Ambulance Service. Instead, Queensland Ambulance Service employees are to refer to their local policy/procedure.

Delegation: The 'delegate' is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Hospital and Health Services Human Resource (HR) Delegations Manual, as amended from time to time.

Legislative or other authority:

- *Anti-Discrimination Act 1991*
- *Human Rights Act 2019*
- *Hospital and Health Boards Act 2011*
- *Industrial Relations Act 2016*
- *Public Service Act 2008*
- Public Service Regulation 2018
- *Workers' Compensation and Rehabilitation Act 2003*
- PSC Directive No. 10/20: Independent medical examinations

Related policy or documents:

- [PSC Commission Chief Executive Guideline: Managing employee health, safety and wellbeing – independent medical examinations](#)
- [Public service appeal guide \(Queensland Industrial Relations Commission\)](#)
- Reasonable adjustment HR Policy G3 (QH-POL-210)
- Workplace rehabilitation Standard (QH-IMP-401-5:2020)

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1 Key principles

Queensland Health affirms the government's commitment to workplace health, safety and wellbeing for all employees.

Queensland Health is committed to supporting employees who experience illness or injury to maintain their employment, including, where appropriate, through the application of reasonable adjustment.

The following key principles apply in all independent medical examination processes:

- Comply with relevant legislation, Public Service Commission (PSC) directives and/or applicable policy and guidelines.
- Reasonable adjustment/s must be considered.
- Processes are fair and without bias, provide for impartiality and inform and involve the employee.
- Decisions must be supported by evidence which has taken into account all relevant material.
- Decisions are to be made in a timely manner.
- Processes will be implemented with appropriate support, sensitivity and respect, and managed in a way that is mindful of the potential adverse impact they may have on an employee's health and well-being. The process in Attachment One is managed in a way that is mindful of the potential adverse impact it may have on an employee's health and well-being.
- Processes comply with privacy obligations. Information in relation to this process is to be kept confidential, except to the extent that disclosure is required or permitted by law.
- Procedural fairness is to be provided.
- Decision makers have an obligation under the *Human Rights Act 2019* to make decisions in a way that is compatible with human rights. When making a decision under this policy, the delegate is to give proper consideration to human rights.

It is expected that managers/delegates and employees will work together to:

- manage work performance and absence in an appropriately supportive manner, including where a medical condition may be a contributing factor
- explore opportunities for continuing employment in line with an Independent Medical Examination report, where it has been obtained, before considering ill health retirement of an employee under the *Public Service Act 2008*
- communicate regularly, openly and constructively, including while the employee is absent, or during performance management processes. Mutual information sharing is expected to occur and is likely to improve outcomes for employees' health, safety, wellbeing and performance.

2 Independent medical examinations

Early and open communication between a manager/delegate, an employee and the employee's doctor (only with the employee's consent) may resolve performance or current absence concerns that are reasonably suspected to be caused by a mental or physical illness or disability. However, in some cases, management efforts may not be successful in addressing these issues/concerns and the delegate may need to consider directing the employee to submit to an independent medical examination.

Chapter 5, Part 7 of the Public Service Act provides for a process to assess and manage an employee where there is a reasonable suspicion an employee's absence or unsatisfactory performance is caused by a mental or physical illness or disability. The Public Service Regulation 2018 extends the mental or physical incapacity provisions of the Public Service Act to health service employees.

Public Service Commission (PSC) Directive No. 10/20: Independent medical examinations clarifies the practical application of sections 174 and 175 of the Public Service Act. The Public Service Regulation 2018 extends the directive relating to medical examinations to health service employees. Any replacement directive issued dealing with substantially the same subject matter is to be applied.

PSC Directive No. 10/20: Independent medical examinations clarifies the practical application of sections 174 and 175 of the Public Service Act. The following conditions must **both** be met before a delegate may require the employee to submit to a medical examination:

- Firstly, section 174(a) of the Public Service Act requires that an employee is either absent from duty (which is a question of fact) **OR** the delegate must have sufficient grounds, supported by evidence, to be reasonably satisfied the employee is not performing their duties satisfactorily; **and**
- Secondly, in section 174(b) of the Public Service Act, the delegate must have sufficient grounds, which have been documented, to support their reasonable suspicion that the employee's current absence or unsatisfactory performance is caused by a mental or physical illness or disability.

Where an employee's absence is relied upon, the delegate must reasonably suspect it is caused by mental or physical illness or disability and not another reason, for example, a suspension unrelated to mental or physical illness or disability.

Where the conditions in section 174 of the Public Service Act are satisfied, the delegate may appoint a doctor to examine the employee and give the delegate a written report on the examination. Section 174 of the Public Service Act also provides that a delegate may require the employee to submit to the medical examination. This is a lawful direction that does not require the employee's consent. Failure to comply may be grounds for disciplinary action.

The delegate is to provide the employee with at least 28 days' notice of a medical examination appointment unless the employee agrees to a shorter notice period. The direction to require an employee to submit to a medical examination must set out the basis and reasons for the direction under section 174, including the information provided to the medical examination doctor. The direction must also explain the employee's right to seek an internal review or appeal the decision and the timeframes. The internal review process is outlined in Attachment One.

3 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 delegate 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. This may include (but is not limited to):

- determining strategies to support the effective management of the employee's attendance or performance, **excluding** ill health retirement and transfer or redeployment under section 178 of the Public Service Act (noting that an independent medical examination must be performed prior to considering these actions).
- supporting a delegate's reasonable suspicion that the employee's current absence or unsatisfactory performance is caused by an illness or disability as part of the evidence required to direct an employee to attend an independent medical examination.

Clear written consent for the use of the report should be obtained from the employee.

Section 572A of the *Workers' Compensation and Rehabilitation Act 2003* states a person must not, for a purpose relating to an employee's employment:

- obtain or attempt to obtain a workers' compensation document about the employee
- use or attempt to use a workers' compensation document about the employee.

Therefore, a document (including paraphrasing of a document) obtained for the purpose of a workers' compensation claim cannot be provided to an examining doctor or be relied upon to make decisions about an employee's employment (including a decision to retire, transfer or redeploy an employee), regardless of whether the employee consents to the use of the report.

4 Requirement for documentation

Section 179 of the Public Service Act requires that a record must be kept of:

- the requirement to submit to an independent medical examination; and
- the report on the medical examination.

Throughout the process, the delegate is required to ensure there is sufficient documentation to demonstrate that appropriate consideration has been given to the decisions made, including but not limited to, decisions about:

- the requirement to submit to an independent medical examination
- reasonable adjustment
- transfer or redeployment
- ill health retirement.

If a delegate considers transfer or redeployment is not reasonably practicable, there must be sufficient documentation to support why this was not reasonably practicable.

These documents are to be kept in a separate confidential file, and not on the employee's personnel file.

5 Right to appeal

Section 194(1)(a) of the Public Service Act allows for an appeal of a decision made under a directive. An employee may seek either an internal review or an appeal of a decision requiring them to submit to a medical examination, on the basis the decision does not satisfy the conditions of section 174 of the Public Service Act. Where the employee does not seek an internal review, an appeal must be made within 21 days of the decision, or within the time determined by the Queensland Industrial Relations Commission (QIRC).

Where an employee has sought an internal review, and the internal review decision requires them to submit to a medical examination, the employee may appeal the internal review decision on the basis that it does not satisfy the conditions of section 174 of the Public Service Act. The appeal must be made within 21 days of the internal review decision or within the time required by the QIRC.

The internal review and appeal rights may not be exercised concurrently.

Definitions:

Procedural fairness	For the purposes of this policy means 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:
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	<ul style="list-style-type: none"> • 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 • 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 • 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 • the opportunity to respond to the action proposed by the agency based on the outcome of the medical examination. <p>Refer PSC Commission Chief Executive Guideline: Managing employee health, safety and wellbeing – independent medical examinations.</p>
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History:

June 2021	<ul style="list-style-type: none"> • Policy: <ul style="list-style-type: none"> – changed title from 'Mental or Physical Incapacity of Employees' to 'Independent medical examinations of employees' for consistency with PSC Directive No. 10/20: Independent medical examinations – amended to incorporate provisions of PSC Directive No. 10/20, including: <ul style="list-style-type: none"> ○ right to request an internal review of an independent medical examination direction ○ extension to the required notice period for an employee to attend an independent medical examination from 14 to 28 days – amended to update references and naming conventions.
June 2020	<ul style="list-style-type: none"> • Policy: <ul style="list-style-type: none"> – formatted as part of the HR Policy review – amended to update references – amended to include compliance with Human Rights Act as a key principle (section 7) – application amended as a result of changes outlined in the Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019.
October 2018	<ul style="list-style-type: none"> • Policy amended to: <ul style="list-style-type: none"> – reflect provisions of the PSC Directive 01/18 Managing Employee Health, Safety and Wellbeing – Independent Medical Examinations (IME) under the <i>Public Service Act 2008</i> – clarify appeal provisions – include requirements to keep records.

January 2018	<ul style="list-style-type: none"> • Policy: <ul style="list-style-type: none"> – formatted as part of the HR Policy review – amended to update references and naming conventions – application excludes employees of Queensland Ambulance Service.
January 2014	<ul style="list-style-type: none"> • Policy redrafted and formatted as part of the HR Policy Simplification project. • Policy amended to: <ul style="list-style-type: none"> – change title from 'Medical Examination of Employees' to 'Mental or Physical Incapacity of Employees' to better reflect the scope of the policy – provide more comprehensive information outlining the process to address mental or physical incapacity of employees.
April 2009	<ul style="list-style-type: none"> • Amended to include section 7.2 to include referral by an occupational health and safety practitioner in accordance with OHSMS 3-3#21 Managing Ill Health Work Practice Directive.
August 2008	<ul style="list-style-type: none"> • Amended section 8.1 to reflect all Queensland Health employees may be retired, not only those employees from the public service.
August 2008	<ul style="list-style-type: none"> • Extracted from the Separation of Employment HR Policy as the outcome of a medical examination may or may not be separation of employment.
Previous	<ul style="list-style-type: none"> • Separation of Employment HR Policy H1 Part C (April 2008)

Attachment One – Process

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Queensland Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy, the directive relating to independent medical examinations and standard practice and ensure employee entitlements continue to be met.

1 Independent medical examination process

Where an employee discloses a medical condition or there is a reasonable suspicion the employee has a mental or physical illness or disability that may be affecting their attendance or ability to perform their duties satisfactorily, the following actions should occur:

- Informal and timely discussions between the employer and employee which may resolve concerns about the employee's attendance or performance and/or
- Consultation with the employee's treating doctor (with the employee's signed authorisation) who may provide information to enable the effective management of the employee's attendance or performance.

In these situations, formal intervention under Part 7 of the *Public Service Act 2008* may not be required.

Where consideration is being given to a medical examination under the Public Service Act, the local human resources unit must be consulted prior to taking any action.

Throughout the process, open and regular communication should be maintained with the employee and information should be shared in a respectful, timely and appropriate manner. Employee Assistance should be offered.

1.1 Determine grounds for direction exist

When a delegate has considered all available information, and is reasonably satisfied the employee is absent or is not performing their duties satisfactorily, and reasonably suspects this is caused by mental or physical illness or disability, the delegate may commence a process under Part 7 of the Public Service Act.

1.2 Appoint a doctor to examine the employee

A specialist in the area relevant to the employee's suspected mental or physical illness or disability should be appointed to conduct the medical examination.

In situations where it is unclear the type of doctor to whom an employee should be referred, consideration should be given to sending the employee to a general physician or occupational physician.

A letter must be provided to the examining doctor:

- appointing them under the Public Service Act and identifying the provisions of the Public Service Act under which the appointment is being made
- with sufficient background information about:
 - the employee's absence or how the employee is not performing their duties satisfactorily (which may include a role description and/or detailed statement of duties)
 - their illness or injury (which may include medical information obtained from the employee's treating doctor)

- advising them to exclude from the report any medical or other information which is not directly or indirectly related to the effect and management of the employee's medical condition on their workplace performance or current absence. Information that may be irrelevant, depending on the medical condition, may include, for example, family or personal history, gender preferences for intimate relationships, gynaecological history, libido or past sexual behaviour. This type of information should only be included after careful consideration of its relevance by the independent medical examiner.
- advising them that the information they provide could be used to determine whether the employee should be:
 - transferred or redeployed; or
 - retired
- requesting them to respond to the questions in section 177 of the Public Service Act.

A copy of the letter to the examining doctor should also be provided to the employee.

1.3 Issue a 'direction to attend' letter

If a delegate requires an employee to submit to a medical examination under the Public Service Act, the employee is to be provided with a letter:

- directing them to attend and participate in an appointment under section 175 of the Public Service Act
- advising the details of the appointment
- advising the grounds on which the direction is made under the Public Service Act (Section 174 of the Public Service Act outlines that this part of the Act applies if the delegate is reasonably satisfied the employee is absent or is not performing their duties satisfactorily, and reasonably suspects the absence or unsatisfactory performance is caused by a mental or physical illness or disability)
- outlining the type of information sought from the specialist
- outlining the employee's right to request an internal review (refer section 2 below) and appeal the decision to direct the employee to a medical examination (refer section 6 of this policy)
- outlining the action that may be taken on receipt of the medical report.

The employee is to be given at least 28 days' notice of the appointment, unless the employee agrees to a shorter notice period.

The employee may seek an internal review or appeal of the decision requiring them to submit to a medical examination, on the basis the decision does not satisfy the conditions of section 174 of the Public Service Act (refer to sections 6 and 7 of this policy for timeframes).

In line with section 176 of the Public Service Act, the employee must not be granted sick leave for any period during which the employee fails to comply with the requirement to attend the medical examination.

1.4 Assistance to attend appointment

The medical appointment will be paid for by the Hospital and Health Service/Department of Health Division/Agency and employees should be provided with reasonable travel assistance to attend the appointment. This may include taxi vouchers and/or airfares.

1.5 On receipt of the medical report

The independent medical examination report is an important piece of information for the delegate to consider when deciding how best to support an employee, with a focus on continuing employment. It must contain information that is required by section 177 of the Public Service Act. Any additional information that is included must be demonstrably related to workplace impacts of the employee's medical condition.

On receipt of the medical examination report, the delegate must provide a copy of the report to the employee, or to the employee's nominated treating doctor (depending on the advice of the examining doctor) in accordance with sections 177(3)–(5) of the Public Service Act as soon as reasonably practicable.

If the report is being provided to the employee's treating doctor, the employee must be advised that the report has been provided, and asked to make an appointment with their doctor to have the report explained to them.

No further action should be taken to progress a decision about the employee's ongoing employment until this has occurred, however an employee must not cause any unnecessary or unreasonable delay.

The delegate must consider the information contained in the report and either propose no further action or and determine the appropriate course of action to take under section 178 of the Public Service Act. This may include, but is not limited to:

- management of issues by way of normal performance management processes
- continued return to work attempts
- consideration of reasonable adjustment (refer to Reasonable adjustment HR Policy G3), including options in the employee's substantive position
- consideration of transfer or redeployment
- consideration of retirement.

In proposing a course of action, the chief executive must provide the employee with procedural fairness, consider any applicable statutory protections and consider all reasonably practicable options for continuing employment.

The employee must be advised of the delegate's decision, and the reasons for the decision, in writing.

2 Internal review

An employee may, within 14 calendar days of receiving the notice to attend a medical examination appointment, notify the delegate in writing that they are seeking an internal review of the decision requiring them to submit to a medical examination.

Upon the delegate receiving a notice of an internal review request, the independent medical examination appointment should be cancelled, and rescheduled subject to the outcome of the review decision.

The employee must provide reasons for requesting the review explaining why they believe the requirement to submit to an independent medical examination does not meet the conditions outlined in section 174 of the Public Service Act. The delegate may extend the time for the employee to provide reasons for requesting the review, taking into account the employee's individual circumstances.

The internal review should determine whether the decision was made in compliance with the conditions in section 174 of the Public Service Act and the procedural requirements and the Directive relating to independent medical examinations. The internal reviewer will have access to all information considered for the original decision.

The internal review is to be conducted within Queensland Health by a different decision maker. Where practicable, the review decision maker should be senior to the original decision maker and removed from the original decision-making process. An internal review should not be undertaken by a person who made or recommended the original decision.

The decision maker for the internal review must provide the employee with written notice of the review decision, including the basis and reasons for the decision within 20 working days of the employee providing their reasons for review, or a longer time with the employee's agreement.

An employee may appeal the review decision (refer to section 5 of this policy).

3 Consideration of transfer or redeployment

If the medical advice indicates the employee is unable to perform the duties of their substantive position, but could perform other work, consideration must be given to whether it is reasonably practicable to transfer or redeploy the employee.

Transfer or redeployment options should be based on:

- information provided by the specialist
- advice from the employee about alternative roles/locations/levels they would consider
- available vacancies.

Employees should be involved in this process and regularly informed of the options being considered.

If a delegate determines transfer or redeployment is not reasonably practicable, documentation must support any decision, including why those options are not suitable.

3 Consideration of retirement

Where a delegate determines it is not reasonably practicable to transfer or redeploy an employee, under section 178 of the PS Act, a delegate may consider retiring the employee. Retirement of the employee should only be considered as a last resort.

3.1 Letter to the employee

The principles of procedural fairness must be applied when determining whether an employee should be retired on the basis of physical or mental incapacity. Before a decision is made to retire an employee, the delegate is to write to the employee affording them an opportunity to show cause why they should not be retired pursuant to the Public Service Act. This includes an opportunity to provide medical advice or other information.

The employee should be provided with a reasonable period to provide their response, usually 14 days.

3.2 Decision on retirement

Upon reviewing all material, including any response to the proposed retirement, the delegate is required to make a decision about whether the employee should be retired.

The employee must be advised of the delegate's decision, and the reasons for the decision, in writing.

3.3 Notice of retirement to employee

If the employee is to be retired, the prescribed period of notice in the relevant industrial instrument is to be provided to the employee or payment in lieu of notice.

3.4 Notification to registration authorities

If a registered health professional is retired due to a mental or physical illness or disability, the appropriate registration authority is to be notified immediately.