

Independent medical examinations

Directive: 10/20

Effective date: 25/09/20

Supersedes: 01/18

1. Purpose

This directive affirms the government's commitment to workplace health, safety and wellbeing for all employees by clarifying the practical application of sections 174 and 175 of the *Public Service Act 2008* (PS Act), by providing that an employee may seek an internal review and may appeal a decision requiring them to submit to an independent medical examination (IME) where the PS Act conditions have not been met.

2. Authorising provisions

This directive is made pursuant to sections 53 and 179AA of the PS Act.

3. Application

- 3.1 This directive applies to public service employees as defined in the PS Act.
- 3.2 This directive applies to the following entities (each entity being an 'agency' for this directive) and their employees:
 - (a) departments
 - (b) public service offices listed in Schedule 1 of the PS Act
 - (c) an entity declared to be a public service office under a regulation and where the regulation applies this directive to the entity (sections 22-23 PS Act).
- 3.3 Section 52 of the PS Act outlines the relationship between a directive and industrial instrument including how to deal with inconsistencies.

Directive

4. Principles

- 4.1 The Queensland Government is committed to supporting public service employees who experience illness or injury to maintain their employment, including, where appropriate, through the application of reasonable adjustment.
- 4.2 It is expected that managers and employees will work together to:
 - (a) manage work performance and absence in an appropriately supportive manner, including where a medical condition may be a contributing factor
 - (b) where an IME report has been obtained, explore opportunities for continuing

employment in line with it before considering ill health retirement of an employee under the PS Act

- (c) 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.
- 4.3 The PS Act provides a mechanism for seeking independent medical advice. A PS Act IME under section 175 is to be used only where the conditions in section 174 have been met.
- 4.4 The chief executive is to ensure that processes are fair and without bias, provide for impartiality and inform and involve the employee. When making a decision about an IME for an employee, it is expected that the chief executive will also comply with the IME guideline, privacy obligations and any other relevant legislation.
- 4.5 The directive provides an employee with the right to seek an internal review of a decision requiring them to submit to a medical examination under sections 174 and 175 of the PS Act. This allows both the employee and the chief executive to ensure the conditions of the PS Act have been met.
- 4.6 The directive provides a mechanism for appealing a requirement to submit to an independent medical examination and confirms the expectation that processes under sections 174-179 of the PS Act will be implemented with appropriate support, sensitivity and respect in accordance with the management and employment principles of the PS Act.
- 4.7 The chief executive will make appropriate delegations of the decision making powers under sections 174-179 of the PS Act to support the internal review process in clause 6.
- 4.8 Under the *Human Rights Act 2019* decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this directive, to give proper consideration to human rights.

5. Decision to require an employee to submit to a medical examination

- 5.1 In some cases, early communication and management efforts may not be successful in addressing performance issues or a current absence.
- 5.2 Where the conditions in section 174 are satisfied, section 175 of the PS Act provides that a chief executive may appoint a doctor to examine the employee and give the chief executive a written report on the examination. It also provides that a chief executive 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 discipline action.
- 5.3 The conditions in sections 174(a) and (b) of the PS Act must both be met before a chief executive may require the employee to submit to a medical examination. Firstly, section 174(a) requires that an employee is either absent from duty (which is a question of fact) OR the chief executive must have sufficient grounds, supported by evidence, to be reasonably satisfied the employee is not performing their duties satisfactorily. Secondly, in section 174(b), the chief executive 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.

- 5.4 Where an employee's absence is relied upon, the chief executive 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.
- 5.5 The chief executive 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 IME doctor. The direction must also explain the employee's right to seek an internal review or appeal the decision and the timeframes.

6. Use of existing medical reports

- 6.1 Where an employee provides a medical report or consents to the agency being provided with a medical report from a third party (e.g. QSuper) the agency can consider the information provided in determining what actions if any are required to manage the impact of the employee's illness or disability in the workplace. Clear written consent for the use of the report should be obtained from the employee.
- 6.2 Workers' compensation documents including WorkCover medical reports cannot be used or paraphrased where action under s178 of the PS Act is or will be considered as it is contrary to s572A of the *Workers Compensation and Rehabilitation Act 2003*.

7. Internal review

- 7.1 An employee may, within 14 days of receiving the notice to attend a medical examination appointment, notify the chief executive in writing that they are seeking an internal review of the decision requiring them to submit to a medical examination.
- 7.2 Upon the chief executive receiving notice of an internal review request, the IME appointment should be cancelled, and rescheduled subject to the outcome of the review decision.
- 7.3 The employee must provide reasons for requesting the review explaining why they believe the requirement to submit to an IME does not meet the PS Act conditions. A chief executive may extend the time for the employee to provide reasons for requesting the review, taking into account the employee's individual circumstances.
- 7.4 The internal review should determine whether the decision was made in compliance with the conditions in section 174 of the PS Act and the procedural requirements of this directive. The internal reviewer will have access to all information considered for the original decision.
- 7.5 The internal review is to be conducted within the agency 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.
- 7.6 The review decision maker 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 under clause 7.3, or a longer time with the employee's agreement.

7.7 An employee may appeal the review decision made under clause 7 of this directive.

8. Right to appeal a requirement to submit to a medical examination

8.1 Section 194(1)(a) of the PS 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 PS Act. Where the employee does not seek an internal review under clause 7, an appeal must be made within 21 days of the decision, or within the time determined by the Queensland Industrial Relations Commission (QIRC).

8.2 Where the employee has sought an internal review under clause 7, and the internal review decision requires them to submit to a medical examination, the employee may, under this directive, appeal the internal review decision on the basis that it does not satisfy the conditions of section 174 of the PS Act. The appeal must be made within 21 days of the internal review decision or within the time required by the QIRC.

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

8.4 An [appeals guide](#) has been designed to help explain the appeal process and can be found on the QIRC website.

9. The independent medical examination report

9.1 The IME report is an important piece of information for the chief executive or 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 PS Act. Any additional information that is included must be demonstrably related to workplace impacts of the employee's medical condition.

9.2 The letter of referral to the IME doctor should identify for them that their report is not to contain any medical or other information that 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.

9.3 A copy of the report is to be provided to the employee or their nominated doctor in accordance with sections 177(3)–(5) of the PS Act.

9.4 The chief executive must consider the report and either propose no further action or propose an appropriate course of action under section 178 of the PS Act. 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. Retirement of the employee should be considered as a last resort.



10. Transitional arrangements

10.1 This directive applies where, on or after the effective date, a chief executive signs a requirement for an employee to submit to an IME. The superseded directive applies where notice to attend an IME has been signed before the directive takes effect.

11. Definitions

Agency—see application clause of this directive.

Chief executive in the context of exercising a decision making power, includes a person to whom the chief executive has delegated the decision making power.

Medical condition means a mental or physical illness or disability referred to in section 174 of the PS Act.

12. Related resources and reference materials

This material does not form part of the directive but may assist in the interpretation and application of the directive and should be considered by decision makers.

- Sections 52, 174 to 179 PS Act are provisions relevant to an IME.
- [Managing employee health, safety and wellbeing—-independent medical examinations guideline](#)
- [Template letters](#)
- [Decision making checklist](#)
- Superseded version of the directive: [01/18](#)
- [Find resources about managing employees](#) in the Queensland Government
- [Role of a support person](#) in the Queensland Government
- [Appeals directive](#) and QIRC information about [Public Service Appeals](#)

