

DIRECTIVE 1/18

Managing Employee Health, Safety and Wellbeing – Independent Medical Examinations (IME) under the *Public Service Act 2008*

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) and by providing an appeal right where the PS Act conditions for a requirement to submit to an IME have not been met.

2. Effective date: 16 February 2018

3. Legislative provisions: sections 53, 174, 175 and 179AA of the PS Act.

4. Application:

This directive applies to public service employees, including public service officers, general employees, and employees engaged on a temporary or casual basis.

5. Previous references: Nil.

6. Related information:

Commission Chief Executive Guideline: Mental or physical incapacity.

Public Service Commission resources available at <https://www.forgov.qld.gov.au/cape-resources>

7. Definitions

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

8. Statement of intent and expectation

- 8.1 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.
- 8.2 It is expected that managers 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;
 - 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;
 - 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.
- 8.3 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.
- 8.4 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.



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

- 9.1 In some cases, early communication and management efforts may not be successful in addressing performance issues or current absences.
- 9.2 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. Failure to comply may be grounds for discipline action.
- 9.3 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 his or her duties satisfactorily. For the second part, 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.
- 9.4 The chief executive is to provide the employee with at least two weeks' 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.

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

- 10.1 Section 194(1)(a) of the PS Act allows for an appeal of a decision made under a directive. An employee may, under this directive, appeal a decision of their chief executive to require them to submit to a medical examination, where the decision does not satisfy the conditions of section 174 of the PS Act.
- 10.2 An [Appeals Guide](#) has been designed to help explain the Appeal process and can be found on the Queensland Industrial Relations Commission website. The PS Act provides 21 days to appeal.

11. The independent medical examination report

- 11.1 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.
- 11.2 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 behavior. This type of information should only be included after careful consideration of its relevance by the independent medical examiner.
- 11.3 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.

12. Transition provision

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 directive does not apply where notice to attend an IME has been signed before the directive takes effect.