



# Independent medical examinations procedure

**Version:** 4.1 | **Version effective:** 07/09/2021

## Audience

This procedure applies to all employees of the Department of Education (the department).

## Purpose

This procedure outlines the process for directing an employee to an independent medical examination (IME) where it is reasonably suspected that mental or physical illness or disability is causing absence from duty or unsatisfactory performance.

## Overview

The Department of Education (the department) is committed to appropriately supporting and managing employees whose absence or unsatisfactory performance may be caused by mental or physical illness or disability in accordance with the requirements of the [Public Service Act 2008 \(Qld\)](#) (PS Act), [Directive 10/20 Independent Medical Examinations](#) and [Guideline - Managing employee health, safety and wellbeing- independent medical examinations](#) (PSC Guideline).

Managers and employees are expected to work together early to:

- manage work performance and absence in an appropriately supportive manner, including where mental or physical illness or disability may be a contributing factor
- communicate regularly, openly and constructively, including while the employee is absent, or during performance management processes
- mutually share information, as it is likely to improve outcomes for employees' health, safety, wellbeing and performance.

Chapter 5, Part 7 of the PS Act provides the department the ability to direct an employee to submit to a medical examination if:

- the employee is absent from duty or the employee's chief executive (or delegate) is reasonably satisfied the employee is not performing his or her duties satisfactorily; and
- the chief executive (or delegate) reasonably suspects that the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability.

The purpose of an IME is to obtain a written report of 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, and if so:

- the likely direct or indirect effect of the illness or disability on the employee's performance; and
- an estimate of how long the illness or disability or its effects are likely to last.

This will assist the department to:

- understand whether an employee has a mental or physical illness or disability that is causing the employee's documented unsatisfactory performance or absence; and if so
- explore opportunities for continuing employment in line with the report (including, where appropriate, through the application of reasonable adjustment) before considering ill health retirement of an employee under the PS Act; or if not
- deal with the unsatisfactory performance or absence issues in a performance management context as appropriate.

## Responsibilities

### Employees

- provide relevant and updated medical information and documents and participate in open and constructive discussions regarding the potential impact of any mental or physical illness or disability on work performance or absence. This includes:
  - confirming attendance at an IME as requested
  - attending and participating in an IME (when directed under the PS Act).

### Principals, managers and supervisors

- engage early with employees about performance or absence concerns to explore what factors may be impacting on the employee's ability to carry out the duties of their role
- appropriately manage and document engagement with an employee demonstrating unsatisfactory work performance or absence in accordance with the department's policies and procedures, ensuring appropriate supports are in place
- where an employee discloses that a mental or physical illness or disability is affecting their performance or their current absence, the discussion may include:
  - exploring options for workplace rehabilitation arrangements or reasonable workplace adjustment
  - asking for existing medical information from the employee, or for consent to contact their treating doctor.
- inform human resources staff of any employee reasonably believed to have a mental or physical illness or disability causing unsatisfactory performance or absence and continue to manage the employee.

### Rehabilitation & return to work coordinators (RRTWCs)

- support and inform a principal/manager/supervisor of any employees who may directed to an IME as required

- collate school or work unit based information required to support an IME process, including any involvement in processes relating to the provision of rehabilitation support to an employee (excluding workers' compensation documents).

### Regional human resources staff

- guide and inform employees, RRTWCs and principals/managers/supervisors through the IME process
- prepare appropriate documentation for the Regional Director Human Resources Business Partner (HRBP) to consider for direction of an employee to attend an IME and any resulting proposed course of action.

### Directors HR Business Partnering (HRBP)

- direct employees to attend an IME in accordance with Chapter 5, Part 7 of the PS Act, including approval of funding the appointment and costs incurred by the employee to attend the IME
- provide the employee with a copy of the report in accordance with the recommendations of the independent medical examiner
- advise the employee in writing of the proposed course of action following receipt of an IME report
- ensure all documentation is appropriately secured and the privacy of the IME report once obtained.

### Internal Review Decision Maker

- where a request for an internal review is made, determine whether the decision to direct the employee to submit to the IME was made in compliance with the conditions in Section 174 of the PS Act and the procedural requirements of [Directive 10/20 Independent Medical Examinations](#)
- advise the employee in writing within 20 working days' notice of the review decision.

## Process

Prior to commencing the formal IME process, supervisors and managers are to make every effort to identify the causes of unsatisfactory performance and absence and to resolve issues through appraisal, guidance, counselling, coaching, training and development, and where practicable, temporary variations to working arrangements and workloads. The department has a number of procedures for managing unsatisfactory performance and these are listed in the 'Related procedures' section. These procedures aim to improve unsatisfactory performance where possible. Should you require assistance with one of these processes, contact your relevant Human Resources Branch.

### 1. Referral

#### Start of formal process

A direction to an IME may be considered when:

- reasonable efforts to manage the apparent impact of reasonably suspected mental or physical illness or disability on an employee's unsatisfactory performance or current absence are unsuccessful; or
- an employee declines to provide medical information to enable appropriate management strategies or reasonable adjustments to be put in place but there is documented information to provide sufficient grounds

for the suspicion that current absence or unsatisfactory performance is caused by illness or disability.

### Determine referral reason

The regional human resources team reviews the circumstances and the regional HRBP must be reasonably satisfied that the referral meets the criteria for either:

**Absence:** the employee is currently absent from duty and available evidence supports a reasonable suspicion that the employee's absence is caused by mental or physical illness or disability

Or

**Performance:** the employee is not performing their duties satisfactorily and the available evidence supports a reasonable suspicion that the employee's unsatisfactory performance is caused by mental or physical illness or disability.

If the issue is performance, there must be:

- records to show that there have been appropriate discussions with the employee; and
- documentation to verify that the employee has been provided with a copy of these records before referral to the HRBP.

If the issue is absence then:

- this must be for a current absence from work
- it does not refer to frequent, intermittent absences whether due to illness or other reasons. (although these may also be reflected in the leave history of an employee with a current absence)
- A pattern of absences that affects work performance is a performance issue rather than a current absence. The HRBP must be reasonably satisfied that the performance impact of these absences has been identified and discussed with the employee.

If one of the above reasons apply (supported by documented evidence), the HRBP can consider appointing a doctor to examine the employee in order to obtain a written medical report.

Note: This procedure does not apply for illness or injury for which there is an accepted WorkCover claim.

For further detail regarding complying with the 'absence' or 'performance' reasons above, refer to section 9.3 in the [PSC Guideline](#).

## 2. Prepare briefing note with background information

Regional human resources staff prepare the briefing note with background information recommending direction for the employee to an IME, the draft letter to the employee and the draft letter to the examining doctor.

The background information must:

- be specific to either absence OR performance (not both)
- not include documents relating to an employee's application for compensation or common law claim for damages by the worker under the *Workers' Compensation and Rehabilitation Act 2003* (Qld) ('workers' compensation document')

**Uncontrolled copy.** Refer to the Department of Education Policy and Procedure Register at <https://ppr.qed.qld.gov.au/pp/independent-medical-examinations-procedure> to ensure you have the most current version of this document.

- not include content from QSuper reports, unless the employee has specifically provided a written consent for QSuper reports to be used in the IME process
- be relevant only to the current mental or physical illness or disability and current circumstances contributing to their unsatisfactory performance or absence
- include details of the employee's role, duties and responsibilities, an outline of the work environment (if relevant), a chronology of the impact that the employee's mental or physical illness or disability has had on their performance and the supports and actions that the department has implemented to date.

The background information 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 mental or physical illness or disability on their work performance or current absence.

If satisfied the requirements of the PS Act are met, the HRBP signs the briefing note approving the direction of the employee to an IME which includes funding approval.

### **Additional funding**

The region is to organise reasonable travel and accommodation if required. Any costs associated with travel or accommodation require prior approval from the HRBP.

### **3. Arrange appointment and advise employee**

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Once the brief, including funding, has been approved an appointment is made with the examining doctor by the regional human resources team.

Choose an examining doctor – under section 175(a) of the PS Act, the department may appoint a doctor to examine the employee and provide a written report on the results of the examination. The department should choose a doctor who:

- is independent; and
- has expertise in the relevant area of the suspected mental or physical illness or disability; and
- is not currently treating or has previously treated the employee – this is to eliminate a real or perceived conflict of interest.

Once an appointment is secured, the employee is contacted by the regional human resources team to advise them of the decision to move to direction and provide them with the details of the date and time of the appointment. This is to ensure that the employee is prepared for the final documentation once it is prepared.

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

## 4. Correspondence

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### Letter for employee

Regional human resources staff prepare the direction letter to the employee and should provide 28 days' notice of the examination (unless the employee agrees in writing to a shorter notice period) and advise the employee of the following:

- the reason for the examination
- the process to be undertaken following the receipt of the medical report by the department
- the steps the department will take to ensure confidentiality/privacy of the information contained in the medical report
- 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
- that the department will meet the cost of the medical examination and reasonable associated expenses
- a copy of the correspondence and information provided to the appointed examining doctor
- a copy of Chapter 5, Part 7 and Section 187 of the PS Act
- the employee's internal review rights; (refer to [fact sheet IME – Information for employees](#)) and
- the employee's appeal rights (refer to [fact sheet IME – Information for employees](#)).

### Letter for examining doctor

Regional human resources staff prepare the referral letter for the examining doctor which must meet the requirements of the directive and guideline and include the following attachments:

- details of the employee's roles and responsibilities and a chronology of the impact that the employee's mental or physical illness or disability has had on the inherent nature of the role
- the supports and actions that the department has implemented to date
- specific questions for the examining doctor relevant to the impact of the mental or physical illness or disability, including in relation to the employee's ability to perform the inherent requirements of their role
- relevant medical reports and information (in accordance with briefing note guidelines)
- a copy of Chapter 5, Part 7 of the PS Act.

### Employee confirms the appointment

The employee is responsible for contacting the person nominated in the letter within three days of receipt of the direction letter to confirm that they will be attending the appointment or will request an internal review or appeal. If the employee is unable to attend for legitimate reasons which have been provided in writing and approved by the delegate, the delegate should reschedule the medical examination appointment.



## 5. If the employee requests an internal review or lodges an appeal

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### Internal review

When an employee believes the decision to require them to submit to a medical examination does not satisfy the conditions of section 174 of the PS Act, they may seek an internal review of the decision.

This written internal review request must be clear as to why they believe the direction does not meet the conditions of the PS Act and be submitted within 14 days of receiving the notice. This should be emailed to the nominated contact on the direction letter and [MECInternalReview@qed.qld.gov.au](mailto:MECInternalReview@qed.qld.gov.au).

The internal reviewer will have access to all information considered for the original decision. Information about this review right is available under the [Directive 10/20 Independent Medical Examinations](#). If an internal review is requested the department must not proceed with the direction to IME until the interview review is finalised.

### Appeal

When an employee believes the decision to require them to submit to a medical examination does not satisfy the conditions of section 174 of the PS Act, they may appeal the decision under section 194(1)(a) of the PS Act. The appeal must be lodged with the Queensland Industrial Relations Commission within 21 days after the date the employee received the direction letter.

An [Appeals Guide](#) to the process is available on the Queensland Industrial Relations Commission website.

If an appeal is lodged the department should not proceed with the direction to IME until the appeal is finalised.

## 6. IME attendance

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### Employee attends the medical examination

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

### Employee does not attend the medical examination

If the employee does not attend the scheduled examination, the employee must not have any paid or unpaid sick leave approved for any period that they do not submit to the medical examination (as specified in section 176 of the PS Act).

Additionally, if the employee does not attend the examination or if they cancel the examination without providing a minimum of five working days' notice, they may be subject to disciplinary action under section 187(1) (d) of the PS Act, on the grounds of contravening a direction given as a public service employee without reasonable excuse.

The regional human resource staff engage with the employee as to the reason that they may not have attended the appointment. If the employee supplies a reasonable excuse in writing and approved by the delegate, the medical examination appointment will be rescheduled.

If the employee does not provide a reasonable excuse, engage with the Intake and Assessment Team in regard to relevant disciplinary processes for an alleged contravention, without reasonable excuse, of a direction given by a responsible person (section 187(1) (d) of the PS Act).

## 7. Provide a copy of the examining doctor's report to the employee

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The HRBP must provide the employee with a copy of the examining doctor's report as soon as practicable after receiving it, unless the examining doctor advises that disclosure of information in the report to the employee may be prejudicial to the employee's mental or physical health or wellbeing. If this occurs, the HRBP must make the disclosure to a doctor nominated in writing by the employee. When providing the report to the nominated doctor, the department must cover reasonable cost of the employee's visit to their nominated practitioner.

## 8. Review the report and provide a proposed course of action letter to employee

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The HRBP reviews the report in conjunction with all other relevant information and proposes a course of action in writing to the employee in line with the principles of natural justice and procedural fairness.

The following are examples of actions that may be taken upon receipt of the examining doctor's report:

- take **no action** (e.g. in the event the report indicates that a mental or physical illness or disability is temporary and the employee can safely return to full duties in the foreseeable future)
- **continue or initiate action** to manage unsatisfactory work performance or return to work from a current absence, if there is no medical reason for the unsatisfactory performance or current absence
- **continue or commence action** to manage the employee and their mental or physical illness or disability (e.g. provide ongoing rehabilitation support)
- **provide reasonable adjustment**, to enable the employee to continue in their substantive position (e.g. modify work tasks, implement graduated return to work arrangements or a change to working hours, or consider other actions, if practicable) in accordance with the [Reasonable adjustments](#) procedure
- **explore opportunities for a suitable vacant role(s) and** if/when possible **transfer** or **redeploy** the employee to a suitable position within the work group or the department or Queensland public service 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 medical advice states they can undertake the inherent requirement of the suitable vacancy
- **ill health retire** the employee as a last resort in accordance with the [Ill health retirement](#) procedure. Retirement may be considered for an employee who is unable to return to their substantive position, either permanently or for the foreseeable future, and it is not reasonably practicable to transfer or redeploy the employee. The decision whether or not it is reasonably practicable to transfer or redeploy the employee depends on the circumstances of each case. (note the Regional HRBP is not the delegate for this action).

In proposing the course of action particular consideration must be given to:

- whether the provision of reasonable adjustment to accommodate the employee's mental or physical illness or disability would genuinely impose unjustifiable hardship on the department;
- whether the employee can perform the genuine occupational or inherent requirements of their substantive position; and



- whether there are any statutory protections applying to the employee, for example, section 297 of the [Industrial Relations Act 2016 \(Qld\)](#) or section 232B of the [Workers' Compensation and Rehabilitation Act 2003 \(Qld\)](#).

The HRBP writes to the employee, advising the employee of the proposed course of action following the IME and must provide the employee with any other material relied upon by the doctor or the department in proposing a course of action to be taken, except where ill health retirement is the proposed course of action. Please refer to the Ill Health Retirement procedure for details.

Note: The employee must be provided with a reasonable opportunity to respond to the proposed course of action, with a minimum period of 14 days.

## Definitions

Term	Definition
<b>Employee</b>	References to employees in this procedure include permanent employees, temporary employees (through direct engagement) and casual employees
<b>Independent Medical Examination</b>	Chapter 5, Part 7 of the PS Act provides the chief executive (or delegate) of the department the ability to direct an employee to submit to a medical examination if: <ul style="list-style-type: none"> <li>• 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</li> <li>• the chief executive reasonably suspects that the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability.</li> </ul>
<b>Ill health retirement</b>	The retirement of an employee as a result of a mental or physical illness or disability that prevents them from safely performing the inherent requirements of their substantive position, either permanently or for the foreseeable future, despite the consideration or provision of reasonable workplace rehabilitation or reasonable adjustment and options to transfer or deploy the employee. All decisions to ill health retire an employee are made under the PS Act.
<b>Inherent requirements</b>	Inherent requirements are those genuine occupational requirements, activities, conditions and practices that are essential. The inherent requirements of a role may include: <ul style="list-style-type: none"> <li>• The ability to perform tasks which are essential to perform a job productively and to the required quality</li> <li>• The ability to work effectively in a team or other organisation</li> <li>• The ability to work safely.</li> </ul>
<b>Internal Review</b>	A process by which an employee may request a review of the decision to direct them to an IME. The written review request is to be clear why the requirement to

Term	Definition
	submit to IME does not meet the conditions of the PS Act, and/or the procedural requirements of <a href="#">Directive 10/20 Independent Medical Examinations</a> .
<b>Mental or physical illness or disability</b>	A generic term for mental or physical illness or disability as outlined in section 174 of the PS Act. This includes medical conditions which is any injury, illness or disability which has been diagnosed or treated by a medical doctor. This includes but is not limited to: permanent disability, temporary disability or injury, long term or short term illness, pregnancy.
<b>Reasonable adjustment</b>	Where adjustments are made to a position, an employment practice, the workplace or work-related environment to ensure equal opportunity for people with a medical condition or disability to perform the inherent requirements of the position without imposing unjustifiable hardship on the organisation.
<b>Workers' compensation documents</b>	Any document relating to the <a href="#">worker's</a> application for <a href="#">compensation</a> or claim for <a href="#">damages</a> under the <a href="#">Workers' Compensation and Rehabilitation Act 2003 (Qld)</a> or a former Act.

## Legislation

- [Public Service Act 2008 \(Qld\)](#) section 9 and /chapter 5, part 7
- [Public Service Regulation 2018 \(Qld\)](#) part 3 division 1
- [Anti-Discrimination Act 1991 \(Qld\)](#) sections 5, 25(1),106,108
- [Disability Services Act 2006 \(Qld\)](#) section 11
- [Disability Discrimination Act 1992 \(Cth\)](#) s 21A
- [Right to Information Act 2009 \(Qld\)](#)
- [Information Privacy Act 2009 \(Qld\)](#) chapter 2 and schedule 3
- [Work Health and Safety Act 2011 \(Qld\)](#) section 19
- [Industrial Relations Act 2016 \(Qld\)](#) section 297
- [Industrial Relations Regulation 2018 \(Qld\)](#) section 8
- [Workers' Compensation and Rehabilitation Act 2003 \(Qld\)](#) section 572A and 232B
- [Directive 10/20 Independent Medical Examinations](#)
- [Human Rights Act 2019 \(Qld\)](#)

## Delegations/Authorisations

- [Human Resource Delegations Manual](#) (DoE employees only)

## Policies and procedures in this group

- Nil

## Supporting information for this procedure

- [Fact sheet – Independent medical examinations - Information for employees](#)

## Other resources

- [Managing employee health, safety and wellbeing - independent medical examinations guideline](#)
- [Employee performance, professional development and recognition policy](#)
- [Managing unsatisfactory performance \(excluding school based teachers and principals\) procedure](#)
- [Managing unsatisfactory performance - Principals procedure](#)
- [Managing unsatisfactory performance - Heads of program, heads of school, assistant principals and deputy principals procedure](#)
- [Managing unsatisfactory performance - State school teachers procedure](#)
- [QIRC Appeals Guide](#)
- [Public Service Commission Discipline Guideline](#)
- [Workplace rehabilitation procedure](#)
- [Reasonable adjustment procedure](#)
- [Ill health retirement procedure](#)

## Contact

For further information, please contact:

Organisational Safety and Wellbeing Unit

Email: [InjuryManagement@qed.qld.gov.au](mailto:InjuryManagement@qed.qld.gov.au)

## Review date

28/08/2023

## Superseded versions

*Previous seven years shown. Minor version updates not included.*

3.0 Independent medical examinations procedure

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