



ENGAGING A LEGALLY QUALIFIED MEDICAL PRACTITIONER TO UNDERTAKE AN INDEPENDENT MEDICAL EXAMINATION UNDER THE SRC ACT.

PURPOSE

To provide claims and rehabilitation delegates¹ with guidance regarding the provisions of sections 36 and 57 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) in relation to the use of independent medical examinations (IMEs), focusing on the engagement and management of legally qualified medical practitioners (LQMP)² providing these services.³

BACKGROUND

IMEs can be used to assist in managing both the employee's workplace rehabilitation and their claim for workers' compensation to facilitate a safe and effective return to health and work.

The SRC Act permits IMEs to be initiated by either a rehabilitation delegate under section 36 in relation to an employee's capability to undertake a rehabilitation program, or under section 57 by a claims delegate if additional medical evidence is required in relation to an employee's claimed condition.

This guidance is specific to the IME process and the use of LQMPs for that purpose and sets out:

- > when to consider requesting an IME
- > how to select an appropriate LQMP for an IME
- > how to manage a LQMP's performance when conducting IMEs.

Claims managers should consider the following guidance and apply it alongside policies, procedures and reporting requirements of their organisations relating to the engagement and management of LQMPs.

GUIDANCE

When to consider requesting an IME

Section 36 – assessing an employee's capability to undertake a rehabilitation program

Rehabilitation delegates may consider utilising the services of a LQMP to assist in further understanding an employee's capability to engage in a rehabilitation program.

1 A claims delegate has been delegated powers under the SRC Act to undertake claims management activities. A rehabilitation delegate has been delegated powers under the SRC Act to undertake rehabilitation activities, in this instance under section 36 of the SRC Act.

2 An LQMP is a general practitioner or specialist registered to practice under the Australian Health Practitioner Regulation Agency (AHPRA).

3 This scheme guidance relates to the engagement of LQMPs for the purposes of undertaking independent medical examinations under the SRC Act. It does not deal with any other assessment type which may be performed under other legislative or employer-based powers, such as Fitness For Duty assessments.

There are many possible reasons for arranging an IME under section 36 of the SRC Act, they include but are not limited to:

- > if the injury is severe and/or the employee has limitations for work capacity
- > if clarification is required about the employee's physical/mental capabilities and any activities that must be avoided
- > if there is medical evidence suggesting a possibility of re-injury at work
- > where there is conflicting medical information particularly in relation to an employee's work capacity and treatment
- > factors in the work environment, including any perceived or actual adverse relationships with supervisors or co-workers
- > if the injury is slow onset and the symptoms have developed over a period of time
- > if there is a significant change in the employee's certified capacity for work or participation in rehabilitation
- > the opinion of the liable employer, if the employee is now employed by another entity covered by the SRC Act (for example, where liability sits with a different employer and they have questions regarding an employee's capacity for work).

Note: Rehabilitation assessments are not limited to those conducted by LQMPs, they can also be undertaken by a suitably qualified person. Further information on arranging a rehabilitation assessment can be found in Comcare's [Rehabilitation Case Manager Handbook](#).

Section 57 – power to require a medical examination

If a claims delegate has made every attempt to obtain current medical evidence from the employee's treating practitioners but requires further information to effectively manage the claim, they can utilise the services of a LQMP to conduct an IME. This may assist the claims delegate to gain a greater understanding of an employee's condition, including a diagnosis, prognosis, any likely contributing factors, cause of injury and suitability of treatment. Arranging an examination can be prompted by, but not limited to, the following triggers:

- > uncertainty on diagnosis of the claimed condition
- > there is difficulty establishing a link between employment and the claimed condition
- > there is insufficient or conflicting medical evidence on the employee's claim file
- > the treatment being received does not appear to be clinically justified⁴ and/or an opinion on treatment needs is required
- > a claim is complex⁵
- > an employee has developed a new or secondary condition
- > an employee has submitted a claim for permanent impairment
- > concerns about the current medical evidence or circumstances of the claim
- > the condition seems to have stabilised
- > recovery has stalled.

How to select an appropriate LQMP for an IME

To ensure that the best possible information is obtained from these examinations, it is important that the most suitable LQMP is selected to perform the examination. Where possible, it is recommended that the same LQMP is used for re-assessment if their qualifications remain appropriate.

Neither section 36 nor section 57 of the SRC Act stipulate how an LQMP should be sourced. This provides delegates with the freedom to utilise either medicolegal service providers or suitable LQMPs directly through their practices. The delegate can select a LQMP whose speciality is appropriate for the employee's compensable condition and who can provide the service in a timely manner.

⁴ See Scheme guidance *Applying the Clinical Framework to assess the reasonableness of medical treatment*.

⁵ The complexity of a claim will be established on a case by case basis and will take into account a range of considerations such as biopsychosocial factors and any individual determining authorities' policies.

What information you are seeking

If a delegate is unsure as to what information they are seeking, they may select an unsuitable LQMP and pay for an examination which was not necessary or helpful. Delegates are encouraged to clarify their line of questioning before considering which LQMP speciality might be most suitable.

Where delegates are managing a claim with multiple different medical conditions and there are questions regarding all of them, they may need to consider engaging multiple LQMPs to aid them in obtaining the information sought. Section 36 allows for panel assessments where different specialists can be engaged to provide one consolidated report. However, section 57 does not provide for the same arrangements, so all examinations must be booked separately.

The frequency of section 57 examinations is limited to one per month with the same type of LQMP by the *Safety, Rehabilitation and Compensation (Specification of Medical Examination Interval) Instrument 2019*, issued under section 57(6) of the SRC Act. The instrument protects employees from the requirement to attend medical examinations more frequently than is necessary for the delegate to determine their entitlements under the SRC Act.

When considering an IME for a claim with multiple medical conditions and there are questions regarding only one of them, the delegate can target their LQMP selection to the most appropriate specialist type for that condition. It is not necessary to have all the employee's conditions reviewed at the same time.

If a delegate is reviewing a claim with additional non-compensable factors which they want to know more about, they should take care to ensure that they are seeking that information in relation to the claimed condition and utilising the right legislative powers to obtain it. Ensuring the LQMP is provided with proper instructions, including the appropriate scope of the medical examination, can minimise the risk of the LQMP inquiring into areas that are irrelevant to the workers' compensation claim.

The LQMPs qualifications, expertise and experience align with the employee's condition

It is vital that a LQMP selected to undertake an IME holds qualifications in a speciality which clearly correlates to the employee's condition. Where an LQMP does not hold suitable qualifications, they may be unable to provide the delegate with the information they are seeking, or any information provided by them may not stand up to scrutiny in a merits review process.

There are several options which may help identify what speciality is most appropriate to choose for an IME, including seeking advice and guidance from:

- > the LQMP or the medicolegal provider
- > online clinical decision support resources
- > the employee's treating practitioner
- > a Workplace Rehabilitation Provider (WRP)
- > the employer's clinical panel or injury management specialists (if available).

Whether the LQMP is registered to practice and any conditions they may have on that registration

The Australian Health Practitioner Registration Agency (AHPRA) maintains a searchable database of all Australian registered medical practitioners. The information available provides information on the LQMP's registration, any conditions placed upon that registration and any undertakings or reprimands.

Before a delegate schedules an IME, they should first check whether the LQMP has any conditions or restrictions placed upon their registration by [AHPRA](#) that would make them inappropriate to conduct the examination.

Whether there is any known conflict of interest in engaging the LQMP

There may be times when a LQMP could be viewed as having a conflict of interest in undertaking an IME of an employee. A conflict of interest may include:

- > having provided treatment to the employee in the past, where an independent or second opinion is being sought
- > having a personal relationship with the employee (family or friendship)
- > having a personal relationship with someone connected to the employee (family or friends)
- > where the LQMP has a personal relationship with the delegate.

In most instances the LQMP or employee will advise of the conflict of interest before the assessment occurs. If a conflict of interest arises, it is recommended that where possible, the delegate engage an alternative LQMP to avoid any risks that information provided by the LQMP can be misconstrued as biased.

If the LQMP is known to hold any specific opinions which could be viewed as biased in some way

Where a LQMP is known to hold a specific potentially biased opinion, the examination and their reports may be viewed poorly through the merits review process. To avoid perceived bias or biased information, it is recommended that an alternative LQMP is considered.

How quickly an examination and report can be obtained with as little disruption as possible

As examinations are usually required to provide important information regarding a claim or rehabilitation of an employee it is always best to try to obtain the earliest possible appointment time.

This can be challenging in regional areas where there are reduced numbers of LQMPs offering these services. In these instances, the delegate who is arranging the examination may wish to consider either; contacting medicolegal providers to see if they have pre-arranged travel plans in the area in the near future, making an appointment for the employee in another location where the number of LQMPs is higher or booking a virtual/telehealth assessment, where suitable.

If employees are required to travel to attend an assessment, the cost related to travel and accommodation will be payable under the SRC Act.

How to monitor and manage an LQMP's performance when conducting IMEs

The SRC Act does not provide any guidance regarding performance standards of LQMPs, nor managing the performance of an LQMPs. When a delegate engages a LQMP to undertake an IME, a contract with that provider for the provision of a service is being entered into. The delegate, as their employer's representative, should actively manage any agreements they make with that service provider in relation to the IME. This includes monitoring the provider's performance and managing any issues they may have with provision and cost of service, quality and timeliness of reports and complaints raised by an employee.

Monitoring provider performance

As there are no specific standards set by the SRC Act, it is the responsibility of the delegate engaging the LQMP to monitor their performance. Some common measures that may be used include:

- > quality of the report
- > complaints against the LQMP
- > employee experiences
- > timeliness of reports and responses to further questions
- > cost of the service and report.

Managing performance concerns

How a delegate manages LQMP performance concerns will depend on the method by which they have engaged them. If the LQMP was engaged via a medicolegal company the delegate may wish, in the first instance, to raise their concerns with the medicolegal company so they can manage the issues in line with their internal policies or contractual arrangements in place. Where the delegate has engaged the LQMP directly through their practice they will likely need to raise any concerns directly with the LQMP.

If the delegate or employee has concerns regarding a LQMP's behaviour, such as concerns that their behaviour is placing the public at risk, they are practicing in an unsafe manner or their health may be affecting their ability to make safe judgements about their patients, they may raise a concern through [AHPRA](#). A delegate can also choose to discontinue using this LQMP for IMEs.

FURTHER INFORMATION

For further information regarding this topic please refer to:

- > the [Rehabilitation Case Manager Handbook](#) which is located on the [Rehabilitation Case Manager](#) page of the Comcare Website
- > Scheme e-guidance available through [Comcare's Learning Management System \(LMS\)](#) on the Comcare website:
 - Rehabilitation case management – first steps
 - SRC Act and Comcare scheme overview.

Please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email: SchemePolicyandDesign@comcare.gov.au if you require any additional information.