



SECTION 57 POWER TO REQUIRE A MEDICAL EXAMINATION UNDER THE *SAFETY, REHABILITATION AND COMPENSATION ACT 1988*

PURPOSE

To provide claims delegates¹ with scheme guidance on the section 57 power to require an independent medical examination (IME) under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

This scheme guidance should be read in conjunction with the Scheme Guidance [Engaging a Legally Qualified Medical Practitioner to Undertake an Independent Medical Examination Under the SRC Act](#).

BACKGROUND

The SRC Act allows a claims delegate to arrange an IME under section 57 if additional medical information or specialist opinion is required to support the decision making and management of the claim. Arranging an IME should only be considered when all other methods of obtaining the required medical information have been exhausted. A claims delegate should always in the first instance make every attempt to obtain medical information from the treating medical practitioner(s) before considering a section 57 medical examination and arranging an IME.

A claims delegate may need to arrange an IME as part of the initial determination process, appeals process or while managing an employee's accepted claim.

This guidance covers the legislative requirements and considerations for a claims delegate regarding a section 57 IME and addresses:

- > the purpose and reasons to arrange a section 57 IME
- > the legislative requirements of a section 57 IME
- > factors a claims delegate should consider when arranging a section 57 IME.

The purpose of a section 57 IME

A section 57 IME may be used to seek additional medical information in relation to an employee's medical condition(s) to assist the claims delegate to effectively manage an employee's claim and support timely decisions. As part of the section 57 IME, a medical report will be provided and will usually address:

- > the history of the condition
- > a medical opinion on the causation (and contributing factors) of the condition
- > current and future recommended treatment for the employee
- > progress to date and likely prognosis
- > specific answers to the questions posed by the claims delegate.

¹ A claims delegate is an employee of a relevant authority (as defined under section 4 of the SRC Act) with delegated powers to undertake claims management activities and make determinations on a claim they are managing under the SRC Act on behalf of the relevant authority.

Reasons for arranging a section 57 IME

Arranging a section 57 IME may be appropriate when information from an employee's treating medical practitioner(s) is insufficient, conflicting, unavailable or unable to be obtained in a timely manner. The claims delegate should review the information contained within the claim file and attempt to resolve any concerns directly with the employee and their treating medical practitioners before considering arranging a section 57 IME.

A section 57 IME may be appropriate where information is required to assist with:

- > clarifying the diagnosis of the claimed condition
- > establishing a link between employment and the claimed condition
- > when an employee has developed a new condition
- > when an employee has submitted a claim for a permanent impairment
- > clarifying medical treatment required as a result of the claimed condition
- > the condition seems to have stabilised, worsened, or recovery has stalled
- > clarifying an employee's capacity to engage in suitable employment.

Who can conduct a section 57 IME?

A section 57 IME can only be conducted by a Legally Qualified Medical Practitioner (LQMP)². An LQMP is a general practitioner or specialist registered to practice under the Australian Health Practitioner Regulation Agency (AHPRA). When arranging a section 57 IME under the SRC Act, a claims delegate should select an appropriate independent³ LQMP with qualifications relevant to the employee's claimed condition to undertake the examination. A claims delegate should have regard to an LQMP's expertise and experience in the field, their qualifications, and the quality of any previous reports provided.

For more information on LQMPs see Comcare's scheme guidance titled *Engaging a Legally Qualified Medical Practitioner to Undertake an Independent Medical Examination Under the SRC Act*.

Frequency and type of examinations

Section 57(6) of the SRC Act states that an employee is not required to undergo an IME at more frequent intervals than are specified by the Minister by legislative instrument. The *Safety, Rehabilitation and Compensation (Specification of Medical Examination Interval) Instrument* limits the frequency of IMEs to one per month with the same type of LQMP. The specified interval only applies if the employee undergoes the IME, it is not applicable if the employee cancels and the IME needs to be rescheduled.

In practice, claims delegates should avoid arranging IMEs with the same type of LQMP too frequently or requesting an employee attend multiple IMEs with different LQMPs for the same condition as this could be perceived as seeking a preferred medical opinion.

The instrument does not preclude a claims delegate from organising more than one section 57 IME in a month in the limited circumstances where an employee has multiple injuries that cannot be assessed by one LQMP. Every attempt should however be made to minimise the need for frequent medical examinations. Each case needs to be assessed on their own facts.

Section 57(1) of the SRC Act provides that a claims delegate may require an employee to undergo an IME by 'one legally qualified medical practitioner.' A claims delegate cannot therefore arrange for an employee to be examined by a medical panel for the purposes of a section 57 IME⁴. In circumstances where an employee has multiple claimed conditions, all necessary steps should be taken to arrange an IME with an appropriate LQMP with the qualifications to assess all claimed conditions. A claims delegate should avoid arranging more than one assessment, however, there may be circumstances where there is a need for a different specialist to assess the claimed conditions. In such cases, a separate appointment can be made with another LQMP with a different speciality to enable a complete examination. These separate IMEs can be held on the same day if reasonable and appropriate.

² Section 57(1) of the SRC Act

³ The term 'independent' is not used or defined in the SRC Act but is taken from Macquarie Dictionary to mean 'not influenced by others in matters of opinion, conduct, etc.'

⁴ Re Bessell and Telstra [1994] AATA 317

If a re-assessment of the employee who has attended a prior assessment is required, every attempt should be made to arrange all future assessments with the same LQMP unless:

- > the LQMP is not available within a suitable timeframe or has ceased to practice
- > the speciality required to assess the condition has changed or is different, e.g. a newly claimed injury requiring a different speciality
- > the employee has raised concerns with attending a re-assessment with the same LQMP.

It is recommended a re-assessment is arranged with the same LQMP so that the employee does not need to repeat their history multiple times. An employee may also find it is less stressful to be re-assessed by the same LQMP and the LQMP may be in a better position to assess the employee's health if they have seen them over time.

Example – frequency of section 57 medical examinations

An employee falls down a flight of stairs and suffers multiple injuries to their back, leg, and arm. They later develop a psychological condition that is secondary to their physical injuries. With limited medical evidence available from the employee's treating health practitioner, despite attempts to obtain that information, the claims delegate decides to organise two separate section 57 IMEs on the same day to assess both aspects of the claim. While the claims delegate is aware of the section 57(6) legislative instrument requirement limiting the frequency of IMEs to one per month, they also understand that given that there are multiple injuries requiring different specialists, the bookings can proceed.

When can a section 57 IME be arranged?

Section 57(1) of the SRC Act allows a claims delegate to require an employee to undergo an IME at any time throughout the workers' compensation process, as long as there has been a notice of injury provided under section 53 of the SRC Act or a claim has been made under section 54.

A section 57 IME can also be arranged during appeal proceedings should further medical information be required.

Issuing a section 57 medical examination notice

As part of the IME process, an employee must be fully informed of and provided with sufficient and specific details of the IME to enable them to adequately comply with the request⁵. This is done through the section 57 IME notice.

A section 57 notice must be provided to an employee by a claims delegate for it to be considered valid⁶. The notice should include the following to ensure the employee is fully informed about the appointment:

- > the date, time, and location of the appointment
- > the name, speciality, qualifications and reason for selecting the LQMP
- > the reason for requiring the employee to attend an IME and the purpose of the assessment
- > a support person or escort may accompany them to the IME
- > that the relevant authority will meet the cost of the IME and will reimburse them for the costs reasonably incurred in travelling to and from the appointment, including the cost of accommodation where they are required to travel interstate or for a long distance
- > the employee's obligations in relation to the assessment, including the requirement to attend the appointment under section 57 of the SRC Act
- > the implications of refusing or failing, without a reasonable excuse, to undergo the medical examination, or in any way obstructing the medical examination.

5 Re WCNC and Comcare [2019] AATA 2777

6 Re Bruce and Comcare [2000] AATA 1007

Employees should also be informed of any specific requirements or expectations the LQMP may have in relation to the IME appointment such as the requirement to present proof of identity upon arrival at the examination, for example. Where the employee has advised they are unable to meet the requirements or expectations set by the LQMP, the claims delegate should consider the employee's reasons and decide whether or not to modify those arrangements in order to assist the employee in attending the IME, where possible.

A decision to send an employee for a section 57 IME is not considered a determination as it is not listed under section 60(1) of the SRC Act⁷. It is therefore not subject to a reconsideration under section 62 of the SRC Act or appeal at the Administrative Appeals Tribunal (AAT). If an employee disagrees with the requirement to attend a section 57 IME and wishes to have the decision reviewed, they will need to make an application to the Federal Court of Australia (FCA)⁸. Claims delegates should therefore always carefully consider an employee's reasons why they should not attend an IME before proceeding to make the arrangements.

Arranging a section 57 IME

Considerations when organising the appointment

When arranging an IME under section 57 of the SRC Act, there are a number of considerations that the claims delegate should have regard to, to ensure that the employee is appropriately supported throughout the process. These include, but are not limited to:

- > ensuring that the examination rooms accommodate specific physical needs, including access for employees with ambulatory difficulties
- > scheduling the appointment at a time and date suitable for the employee, including ensuring the employee is provided with reasonable notice
- > whether an employee has special requirements relating to gender, culture, or language
- > whether an IME via video may be appropriate, for example if an employee lives remotely or there are restrictions imposed by a pandemic
- > whether the distance the employee is required to travel is reasonable and within their medical capacity or if they will require transport to be arranged
- > consideration of any support the employee may require before, during or after the IME.

Escorts/support person for medical examinations

An employee may be accompanied by a support person⁹ or escort¹⁰ when attending an IME. Where an escort is required, the claims delegate should obtain medical opinion to show it is medically necessary that the employee has someone attend with them. This medical opinion supports the payment of reasonable travel costs for the escort. The accompanying person must not interfere with or participate in the assessment¹¹. Should this occur, the IME may be terminated by the LQMP.

If the employee wishes to have a support person or escort attend the IME, the claims delegate should inform the LQMP prior to the examination. If the LQMP does not agree to any support person or escort attending the IME, then the claims delegate should make every attempt to arrange the IME with an alternate LQMP that will accommodate this. In limited circumstances, rescheduling may not be possible due to the availability of an alternative LQMP. If this occurs, a discussion with the employee is required.

⁷ Re Australian Postal Corporation v Forgie [2003] FCAFC223

⁸ A request to review a decision under a non-reviewable section of the SRC Act can be made to the Federal Court of Australia under the Administrative Decisions (Judicial Review) Act 1977 or the Judiciary Act 1903 (Judiciary Act).

⁹ A support person may attend the medical examination to provide emotional support to the employee, but is not medically required

¹⁰ An escort is a person that is medically required to assist the employee in attending the medical examination

¹¹ Re Twaddell and Comcare [2001] AATA 759

Travel

Where an employee is requested to undergo an IME under section 57 of the SRC Act, the employee can request reimbursement of reasonably incurred costs associated with making the necessary journey¹². There is no minimum distance requirement if an employee is claiming reimbursement for travel to and from an IME arranged under section 57 of the SRC Act. However, a claims delegate should have regard to:

- > the means of transport available to the employee for the journey
- > the route and routes by which the employee could have travelled; and
- > the accommodation available to the employee.

A claims delegate may reimburse air travel, meals and accommodation costs where it was necessary for the employee to travel a long distance to attend the IME. The legislation does not refer to set rates for meals and accommodation; however, a claims delegate may consider referring to the travel policies and procedures of their organisation to understand what are considered reasonably incurred costs.

Example – section 57 travel costs

A claims delegate arranged a section 57 IME in Sydney for an employee who lives in Bowral (1.5-hour one way trip by vehicle). The IME is scheduled for 12.00 pm and will go for approximately one hour. The employee leaves at 10.30 am in order to make it to the appointment on time and returns home at approximately 3.30 pm.

In this circumstance, it would be appropriate for the claims delegate to reimburse reasonable costs for lunch on the day of the IME. It would unlikely be reasonable for the claims delegate to pay for overnight accommodation in Sydney, as there is sufficient time for the employee to complete their travel in daylight hours. However, if the employee has medical restrictions that prevents them from completing the travel within the same day, it may be reasonable for the claims delegate to reimburse reasonable costs for one night of accommodation.

Other considerations

In some instances, circumstances may change after a claims delegate has arranged a section 57 IME. Should the employee's circumstances deem an IME unreasonable at the time, a claims delegate should consider postponing the IME until it is more appropriate for them to attend.

A claims delegate should also ensure an IME arranged under section 57 remains necessary and should continuously monitor and review the available medical and other information received prior to the IME. If new information is received that supports a timely determination or the ongoing management of the employee's claim, a claims delegate should consider whether the scheduled IME is still required or should be cancelled.

Developing a case summary and questions for a section 57 medical examination

It is important to ensure the LQMP is comprehensively briefed on the employee's workers' compensation claim. This can be done through a case summary, which provides relevant background information on an employee's claimed condition and is provided to the LQMP by the claims delegate as part of the section 57 IME request. Providing the LQMP with proper instructions, including the appropriate scope of the medical examination, should minimise the possibility of the LQMP seeking information from the employee that is irrelevant to their workers' compensation claim.

¹² Section 57(3) of the SRC Act

A case summary should contain facts relevant to the employee's claimed condition, including but not limited to:

- > date of injury
- > diagnoses provided by treating medical providers
- > what the accepted condition is (if the condition has been found to be compensable)
- > details of the claimed circumstances
- > details of new conditions or other claims if relevant and applicable
- > details of the treatment the employee has undertaken in relation to their claimed condition
- > details of rehabilitation the employee has/is participating in
- > details of the employee's capacity for work.

In addition to the case summary, the claims delegate also needs to prepare questions for the LQMP. It is important that a question is asked in a way that allows the LQMP to elaborate and provide context for their answer rather than asking closed questions. The claims delegate should ensure they tailor the questions to fit the individual circumstances of the claim and avoid presenting leading questions.

Examples of questions that may be leading include:

- > Has the employee's divorce impacted on their recovery and return to work?
- > Is the employee's non-compensable injury causing an incapacity for work?

A claims delegate may consider reframing the questions to ask:

- > In your opinion, what are the specific factors that have impacted on the employee's recovery and return to work? Please provide reasons for your response.
- > Are there any other factors causing the employee's inability to work or work restrictions? If so, please provide details.

There is no legislative requirement to provide an employee with the list of questions developed for the section 57 IME or to agree on the questions to be asked¹³. Similarly, there is no legislative requirement that briefing materials provided to the LQMP must be made available to the employee prior to the section 57 IME¹⁴.

A claims delegate must ensure they are only sending information relevant to the employee's specific claim and in line with the *Privacy Act 1988*. Examples of relevant documents to be provided to the LQMP include, but are not limited to:

- > Workers' compensation form
- > Employee/employer statements
- > Rehabilitation reports
- > Medical certificates
- > Medical reports
- > Service provider reports such as initial and ongoing assessments by an allied health service provider
- > Reports on the outcomes of diagnostic tests and investigations.

Ensuring the LQMP receives the relevant background and medical information relating to the employee's workers' compensation claim should assist the LQMP to make a comprehensive assessment.

¹³ Re Leonard v Comcare [2000] AATA 94

¹⁴ Re Noronha v Comcare [2021] AATA 2456

Employee non-compliance

Section 57(2) of the SRC Act states that if an employee refuses or fails, without a reasonable excuse, to undergo an IME, or in any way obstructs an IME required under section 57, their claim for compensation, and to institute or continue any proceedings under the SRC Act, is suspended until the IME takes place. This means that, unlike suspensions issued under the rehabilitation provisions of the SRC Act where medical expenses continue to be payable during a suspension, a suspension applies to all types of compensation related to the specific claim the IME request was made on. It also prohibits the employee from instituting or continuing with a review of the claim in question by the AAT in respect of the SRC Act. If an employee has more than one claim, a suspension in relation to one of those claims does not impact the remaining injury claims¹⁵.

A decision to suspend an employee's compensation should not be taken lightly. Before proceeding with a suspension, a claims delegate must ensure the employee has been fully informed of and provided with sufficient details of the IME via the section 57 notice¹⁶.

The claims delegate should make every reasonable attempt to assist the employee to comply with the IME, taking into consideration the specific needs of their case. If the employee remains non-compliant, the claims delegate must allow natural justice¹⁷ and provide the employee with an opportunity to give their reasons for refusing or failing to attend the IME before deciding whether the employee's excuse is reasonable.

There is no legislative timeframe setting out how long a claims delegate must provide an employee for the right of reply. The timeframe provided is at the discretion of the claims delegate but should take into consideration an employee's circumstances and be reasonable. Claims delegates must follow procedural fairness and ensure appropriate time is provided to an employee to respond.

If the employee does not provide a reasonable excuse as to why they refused or failed to attend the IME, or in any way obstructs an IME required under section 57, the claims delegate can make a decision to suspend the claim. 'Reasonable excuse' is not defined in the legislation. To be considered reasonable, an excuse may show that an employee is physically, medically, or emotionally unable to participate or attend the IME. Judicial decisions found a reasonable excuse may relate to an employee being unable to attend an IME if there is a risk of injury,¹⁸ rather than them being simply unwilling to attend¹⁹. However, as circumstances of each claim will differ, reference to these decisions are guidance only and are non-binding. Whether an excuse is reasonable depends on the circumstances of the claim and is decided on a case-by-case basis.

If the employee does not provide a reasonable excuse as to why they failed to attend or obstructed the IME, the claims delegate can make a decision to suspend the claim. Like the notice requiring an employee to attend a section 57 IME, a decision to suspend compensation under section 57(2) is not a determination under section 60(1) of the SRC Act and is not subject to a reconsideration or review by the AAT²⁰. However, the decision should be communicated to the employee both verbally and in writing, with the letter setting out that their rights to compensation are suspended until they attend the IME and include the reasoning for the decision. If an employee disagrees with the decision to suspend their claims under the SRC Act and wishes for this to be reviewed, they must do so making an application to the FCA.

Once the employee has attended the IME, the claims delegate must lift the suspension and compensation is payable from that date forward. An employee cannot recover any monies for incapacity or medical treatment for the period of the suspension²¹.

15 Re Australian Postal Corporation v Sinnaiah [2013] FCAFC 98

16 Re WCNC v Comcare [2019] AAT 2777

17 [Australian Administrative Law Policy Guide - Attorney General's Department 2017](#)

18 Re McKinnon v Commonwealth [1998] FCA 1456

19 Re NRJT and Australian Offshore Solutions Pty Ltd [2015] AATA 588

20 Re Australian Postal Corporation v Fergie [2003] FCAFC 223

21 Section 57(5) of the SRC Act

Example – failure to provide a reasonable excuse

A claims delegate arranges for an employee to attend an IME arranged under section 57 of the SRC Act. The employee does not attend the scheduled appointment. When the claims delegate contacts the employee to allow them the opportunity to provide a reasonable excuse, the employee fails to provide reasons for their non-attendance at the IME.

After providing the employee with multiple opportunities to provide their reasons for failing to attend without a response being provided, the claims delegate makes the decision to suspend the employee's rights to compensation because they are unable to assess whether the employee has a reasonable excuse for failing to attend the scheduled IME.

Example – reasonable excuse

An employee does not attend the scheduled IME arranged under section 57 of the SRC Act. When the claims delegate contacts the employee to allow them the opportunity to provide a reasonable excuse, the employee advises that their daughter had been unexpectedly admitted to hospital the morning of the IME and provides evidence to support this.

The claims delegate considers the non-attendance was due to unforeseen circumstances and that the employee has provided a reasonable excuse. The claims delegate rearranges the appointment at a date that is appropriate for the employee to attend, and benefits continue.

Receipt of section 57 report

A copy of the section 57 report should be provided to the employee where appropriate and also their treating practitioner(s). Before releasing the report directly to the employee, the claims delegate should consider whether it is safe to do so. The person best placed to determine the risk involved in releasing the report is typically the employee's treating practitioner or specialist. It would, therefore, be appropriate to consult with the doctor/specialist before releasing the report directly to the employee. If there are concerns that the content of the report may negatively impact the employee, consideration should be given on releasing the report through alternate means, such as directly through the employee's treating practitioner.

MORE INFORMATION

For further information regarding this topic please refer to Comcare's scheme guidance:

- > [Engaging a Legally Qualified Medical Practitioner to Undertake an Independent Medical Examination Under the SRC Act](#)

Please email Comcare's [Scheme Policy and Design team](#) or call 1300 366 979 if you require any additional information.