



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 or Rehabilitation Examination Under the SRC Act and the Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 (the Guide).²

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. However, a claims delegate can only arrange a section 57 IME if they have first complied with the provisions within the Guide.³

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 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:

- > when to consider requesting a section 57 IME
- > the requirement to seek further information from the employee's treating practitioner
- > how to select an appropriate Legally Qualified Medical Practitioner (LQMP)⁴ for an independent examination, including:
 - considering the qualifications of the LQMP
 - seeking the views of the employee on the selection of the LQMP

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.

2 The Guide is a legislative instrument that applies to section 36 and section 57 determinations made on and after 30 October 2024. Compliance with the Guide is mandatory. The object of the Guide is to support ethical, transparent and accountable decision-making in relation to arranging a rehabilitation assessment of an employee under subsection 36(1), or requiring an employee to undergo an examination under subsection 36(3) or 57(1), including appropriate consideration of the employee's personal circumstances.

3 Section 57(1A) of the SRC Act.

4 An LQMP is registered as a 'medical practitioner' with the Australian Health Practitioner Agency (AHPRA) (e.g. a GP or specialist doctor).

- > limitations on frequency and number of medical examinations
- > factors a claims delegate should consider when arranging a section 57 IME
- > developing a case summary and questions for a section 57 medical examination
- > issuing a section 57 determination, including notice of rights and obligations relating to the examination
- > employee non-compliance
- > receipt of the section 57 report.

GUIDANCE

When to consider requesting a section 57 IME

Section 57(1) of the SRC Act allows a claims delegate to require an employee to undergo an IME throughout the workers' compensation process. However, this power can only be used when the claims delegate has complied with all of the requirements in Part 2 of the Guide.

For a section 57 IME to be required, there must have been a notice of injury provided under section 53 of the SRC Act, or a claim made under section 54. A section 57 IME can also be arranged during appeal proceedings should further medical information be required.

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.

Before requiring an employee to undergo a section 57 IME, section 9(1) of the Guide requires the claims delegate to review whether there is already sufficient information available to determine the claim. This includes information about the 'employee's circumstances', any change in those circumstances or the employee's capability of undertaking a rehabilitation program.⁵ 'Employee's circumstances' is a defined term in the Guide and includes a range of subjects that a claims delegate may need information on to make a determination for compensation. These include:

- > the injury
- > other medical conditions that may be relevant to the claim, for example pre-existing or secondary injuries
- > the requirement for medical treatment
- > the employee's capacity for work
- > the employee's claim for permanent impairment and non-economic loss
- > the employee's need for alterations, modifications or aids or appliances
- > the employee's need for household services or attendant care service
- > understanding suitable employment requirements
- > personal circumstances – such as any biopsychosocial factors that may be impacting their return to work
- > any other relevant matter.

⁵ This may be relevant where, for example, a relevant authority has an obligation or function in relation to a matter concerning a claim for compensation under Division 3 of Part II (concerning injuries resulting in incapacity for work) or section 39 (concerning alterations, modifications or aids or appliances) of the SRC Act.

Seeking further information from the employee's treating practitioner

The Guide requires claims delegates to rely on the existing information available regarding the employee to make the determination. If that information is insufficient or inconsistent, section 9(2) of the Guide states that the claims delegate should seek the required information from the treating practitioner.

In most cases, where the claims delegate is satisfied there is insufficient or inconsistent information regarding the 'employee's circumstances', it is expected that the claims delegate will seek information from the employee's treating practitioner. However, it may be appropriate in exceptional circumstances, (for example, emergencies, the treating practitioner is no longer practicing, genuinely time-limited medical treatment opportunities, or to comply with work health and safety duties), for the claims delegate to not seek information from the employee's treating practitioner.

Section 9(2) of the Guide sets out the requirements a claims delegate must comply with when requesting information from the employee's treating practitioner, including:

- > requesting the information in writing
- > requiring the treating practitioner's response in writing⁶
- > specifying a time period of at least 14 calendar days in which the treating practitioner must respond (the claims delegate does not have to wait for the specified period to expire if the treating practitioner provides the requested information within that timeframe).

The information provided by the employee's treating practitioner must be relied on as much as possible by the claims delegate in their decision-making process. The claims delegate can only proceed to organising an IME if the treating practitioner's response is still not sufficient to make a determination or has failed to address the inconsistencies present across any available information in relation to:

- > the employee's circumstances
- > any change in the employee's circumstances
- > the employee's capability of undertaking a rehabilitation program.⁷

The claims delegate must consider whether the requested additional information provided by the employee's treating practitioner is still insufficient or inconsistent with the available evidence before arranging an IME. The provided information should only be considered insufficient or inconsistent if it prevents a claims delegate from making a fully informed determination on the claim before them. If the information provided by the treating practitioner does not answer all the claims delegate's questions, but still provides enough information to assess and determine the claim, the claims delegate should not proceed to arranging an IME. It is important the claims delegate thoroughly documents the insufficiency and/or inconsistency of the available information in the section 57 determination and why an IME is required to manage the employee's claim.

Example 1 – insufficient information

An employee submits a claim for workers' compensation accompanied by a medical certificate from the employee's treating practitioner with a diagnosis of a sprained right ankle. The medical certificate does not contain sufficient details the claims delegate requires, such as the date and cause of injury, so the claims delegate requests this information from the employee's treating practitioner in writing. The claims delegate provides a period of 14 calendar days for the treating practitioner to provide their response.

No response is provided by the employee's treating practitioner within the time provided. The claims delegate calls the treating practitioner's practice and is informed that the treating practitioner will not be providing a further response. As the information remains insufficient to make a fully informed determination, the claims delegate can proceed with arranging an IME to obtain the information required to make an accurate determination on liability for the claimed sprained right ankle.

⁶ If the employee's treating practitioner is a LQMP and the claim is a claim for compensation under section 14 of the SRC Act, the request for further information in writing enlivens section 11A(3) of the *Safety, Rehabilitation and Compensation Regulations 2019*. This will have the effect that the timeframe to make the s 14 determination will not include the time between day the claims delegate requires further evidence until the day they receive the written report. See [Scheme guidance: Statutory timeframes for decision-making under the SRC Act](#).

⁷ Paragraph (1)(c) may be relevant where, for example, a relevant authority has an obligation or function in relation to a matter concerning a claim for compensation under Division 3 of Part II (concerning injuries resulting in incapacity for work) or section 39 (concerning alterations, modifications or aids or appliances) of the SRC Act.

Example 2 – inconsistent information

An employee submits a claim for workers' compensation accompanied by a medical certificate from the employee's treating practitioner with a diagnosis of carpal tunnel syndrome. The medical certificate states the carpal tunnel syndrome was due to mouse and keyboard overuse in their employment.

Also accompanying the employee's claim is a report from an orthopaedic surgeon who confirms the diagnosis of carpal tunnel syndrome, but states that it is unlikely to have been caused by work-related mouse and keyboard use and cites scientific research to support their views.

As the views of the employee's treating practitioner and orthopaedic surgeon are inconsistent, the claims delegate seeks clarification from the employee's treating practitioner about their reasons for diagnosis, including whether there is any scientific research to support their views. The claims delegate provides a period of 14 calendar days for the treating practitioner to provide their response.

The claims delegate receives a written response from the employee's treating practitioner 10 calendar days after the request. The treating practitioner states that their view on diagnosis and causation remains unchanged and is based on their 15 years of experience as a general practitioner, without citing any scientific research to support their opinion.

The medical evidence remains inconsistent, so the claims delegate can proceed with arranging an IME to obtain the information required to make an accurate determination on liability for the claimed carpal tunnel syndrome.

Selecting an appropriate LQMP for an IME

Qualifications of the LQMP

A section 57 IME can only be conducted by a LQMP.⁸ A LQMP selected to undertake an IME must be registered with the Australian Health Practitioner Regulation Agency (AHPRA) as a medical practitioner and be qualified, by their training or registration, to assess the employee's injury.⁹ Where a LQMP does not hold qualifications which clearly relate to the employee's condition, they may be unable to provide the claims delegate with the information they are seeking, or any information provided by them may not stand up to scrutiny in a merits review process. When selecting a LQMP, a claims delegate should have regard to their expertise and experience in the field, their qualifications, and the quality of any previous reports provided.

There are several options which may help identify an appropriate specialty (or specialties) 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
- > the relevant authority's clinical panel or injury management specialists (if available).

For more information on LQMPs see Comcare's scheme guidance titled [Engaging a Legally Qualified Medical Practitioner to Undertake an Independent Medical or Rehabilitation Examination Under the SRC Act](#).

Views to be sought from the employee

Sections 9(5), 9(6) and 9(7) of the Guide require claims delegates to seek and take into account the employee's views about:

- > the selection of the LQMP to conduct the IME; and
- > whether the employee requires a support person; and
- > any other relevant matter.

⁸ Section 57(1) of the SRC Act.

⁹ The Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 sets out the qualifications of LQMPs conducting a section 57 IME at section 4 and Part 2 section 10.

The employee may express a variety of views about the LQMP, such as:

- > the LQMP's gender
- > the location of the LQMP's practice
- > a preference for the same or a different LQMP as a prior examination
- > a preference (or otherwise) for a telehealth consultation
- > any other views that may be relevant to the employee's attendance or participation in the examination.

Where possible, the claims delegate should organise a LQMP that takes into consideration the employee's views.

The claims delegate must give the employee a period in which to respond with their views on the person conducting the IME. This period must be at least 3 business days.¹⁰ If the employee responds within the specified period, the claims delegate can issue the determination without waiting for the period to end.

If accommodating some or all of the employee's requests in relation to the medical practitioner are not practicable in the circumstances, the claims delegate should discuss the reasons why the employee's concerns cannot be accommodated with the employee.

The claims delegate will need to clearly document all considerations relating to the selection of the LQMP, including the employee's views, in the section 57 medical examination determination.

The Guide does not specify how a relevant authority operationalises the requirement to seek and take into account the views of an employee on the selection of the person conducting the medical examination. This will be up to each relevant authority to determine. The following scenarios provide 2 different examples of how a relevant authority can comply with this requirement.

Example 3 – seeking the views of the employee on the selection of LQMP

The claims delegate identifies a LQMP who has qualifications relevant to the employee's injury and is available to provide their services at a reasonable cost. The claims delegate calls the employee explaining the reasons for the medical examination and why the particular LQMP has been proposed to conduct the medical examination. The claims delegate asks the employee for their views on the selection of the LQMP and informs them that they do not need to make a decision on the spot, they have 3 business days to consider the LQMP selected. The claims delegate immediately follows up this call with an email to ensure the employee has all the relevant information before them to make an informed decision.

The employee provides their views via email one business day after the request. They have stated that while the LQMP selected by the claims delegate appears to be satisfactory, they would prefer to see a LQMP that assessed their injury previously. This LQMP is also located closer to the employee's home, requiring less travel, has the same qualifications as the LQMP proposed by the claims delegate and conducts medical examinations for a similar cost.

The claims delegate considers the views put forward by the employee and makes a determination that the employee is to undergo a s 57 IME with the LQMP proposed by the employee.

Example 4 – seeking the views of the employee on a range of proposed LQMPs

The claims delegate provides the employee with a choice of 3 available LQMPs who have qualifications relevant to the employee's injury. The claims delegate explains the reasons for the proposed selection and asks for the employee's views on their preferred LQMP. The employee requests 5 business days to provide their views to allow them to consult with their treating practitioner, which the delegate agrees to.

The employee provides their views during a subsequent telephone call with the claims delegate 6 business days after the request. As the employee's response is late, the claims delegate may (but does not have to) consider their views when deciding which LQMP to nominate. Given the employee's response is only one day later than agreed, and the claims delegate is yet to book a s 57 IME appointment, the claims delegate takes into account the employee's views on the selection of the person who will conduct the section 57 IME.

¹⁰ Business days are based on the employee's location, not the location of the claims delegate.

Limitations on frequency and number of IMEs

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 IME.¹¹

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 specialty to enable a complete examination. These separate IMEs can be held on the same day if reasonable and appropriate.

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 practise
- > the specialty required to assess the condition has changed or is different, e.g. a newly claimed injury requiring a different specialty
- > 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.

A claims delegate cannot require an employee to undergo more than one IME in respect of the injury more frequently than at 6-month intervals.¹² The exceptions are where:

- > the employee does not undergo the examination or obstructs the examination
- > the employee's support person obstructs the examination
- > an examination is requested by the employee or their treating practitioner
- > a medical practitioner, following an earlier medical examination, has recommended a further examination or re-examination
- > there has been a change in the 'employee's circumstances' as defined in the Guide
- > the injury requires multidisciplinary medical treatment (i.e., a complex case) and it is not reasonably practicable for a single medical practitioner provide an assessment, so it may be appropriate for the claims delegate to require the employee to undergo more than one independent examination, with a different medical practitioner
- > the LQMP fails, for any reason, to provide a written report within a specified timeframe
- > a request for reconsideration of a determination is made but a reviewable decision in response to that request has not yet been made
- > an application for review of a reviewable decision is made to the Administrative Review Tribunal (ART) but a final decision has not yet been made.

The limitations placed on the frequency of arranging section 57 medical examinations are not impacted by the arrangement of a section 36 rehabilitation examination. That is, a claims delegate could organise a section 57 medical examination in the same 6-month period as a section 36 rehabilitation examination organised by a rehabilitation authority.

¹¹ Re Bessell and Telstra [1994] AATA 317

¹² The Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 sets out the limitations on frequency and number of rehabilitation examinations at Part 1, section 12

Example 5 – frequency of section 57 medical examinations

An employee falls down a flight of stairs and suffers a fractured right leg. They are subsequently diagnosed with associated neuralgia.

The claims delegate follows all of the requirements set out in the Guide but has been unable to obtain sufficient information to determine the claim. With limited medical evidence available on file, the claims delegate decides to organise 2 separate section 57 IMEs on the same day to assess both the fractured leg with an orthopaedic surgeon and the neuralgia with a neurologist. As there are multiple conditions requiring different specialists, section 12(3)(e) of the Guide permits the 2 section 57 IME bookings to occur on the same day, as the injury requires multidisciplinary medical treatment.

Factors that a claims delegate should consider when 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, or other psychological requirements of the employee
- > scheduling the appointment at a time and date suitable for the employee, including ensuring the employee is provided with at least 14 calendar days notice from the date of the section 57 determination¹³
- > 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 on travel in place
- > 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.

Escort/support person for medical examinations

An employee may be accompanied by a support person¹⁴ or escort¹⁵ when attending an IME. Claims delegates must advise an employee that they may have a support person accompany them during part or all of the examination.¹⁶ 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 employee's support person must not interfere with or in any way obstruct the examination.¹⁷ They should not attempt to answer questions put to the employee by the examiner.

The selected examiner may be unable to continue with the examination due to the behaviour of the support person. In this case, the examiner may choose to terminate the examination and will advise Comcare of their reasons for doing this in writing.

Please note: It is not appropriate for the employee to take their children to the medical examination. Employees should make alternative arrangements for their children while they attend the medical examination.

If an employee would like a support person to attend the independent medical examination, the examiner must be informed before the appointment.

¹³ Part 2, Section 11(3) of the Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024.

¹⁴ A support person may attend the medical examination to provide emotional support to the employee, but is not medically required. This term is defined in section 4 of the Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024.

¹⁵ An escort is a person that is medically required to assist the employee in attending the medical examination

¹⁶ Part 2, Section 9(8) of the Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024

¹⁷ Re Twaddell and Comcare [2001] AATA 759

The examiner may not agree to any support person attending the medical examination. In such a case, the employee should be informed and a different examiner should be sought who will allow the support person to attend.

If a suitable examiner is unable to be found, the employee will need to attend the examination. The support person will be required to wait in the waiting room during the appointment.

Travel

Claims delegates should engage LQMPs that are located within a reasonable distance of the employee's location wherever practicable. This can be challenging in regional areas where there are reduced numbers of LQMPs. In these instances, the delegate who is arranging the examination may wish to consider: 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.

Where an employee is required 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 journey.¹⁸ A claims delegate will reimburse air travel, meals and accommodation costs where it was necessary for the employee to travel a long distance to attend the IME. 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
- > the accommodation available to the employee.

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 as a possible indication of what costs may be reasonable. The claims delegate will also take into consideration the medical needs of the employee.

Example 6 – 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 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. A claims delegate will need to issue a section 62 reconsideration of own motion decision of the section 57 determination if the IME is cancelled.

¹⁸ Section 57(3) of the SRC Act

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.

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 asked.¹⁹ 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 IME.²⁰

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.

¹⁹ Leonard and Comcare [2000] AATA 94

²⁰ Noronha and Comcare [2021] AATA 2456

Issuing a section 57 determination, including notice of rights and obligations relating to the examination

A decision to require an employee attend a medical examination under section 57 of the SRC Act will be a determination for the purposes of section 60 of the SRC Act from 14 June 2024. This determination must include the terms and reasons for the decision and be accompanied by a notice of the employee's rights and obligations relating to the examination, including reconsideration and review rights. If the IME appointment will be on or after the application date of the Guide on 30 October 2024, it will also need to demonstrate that you have had regard to the requirements in the Guide. The determination must be given to the employee at least 14 calendar days prior to the examination (unless you and the employee agree to an earlier examination).

The determination should include the following:

- > the reasons for the examination, including:
 - documenting actions undertaken in respect of the assessment of incomplete or inconsistent information regarding the following matters:
 - the 'employee's circumstances'
 - any change in the 'employee's circumstances'
 - the employee's capability to undertake a rehabilitation program
 - documenting attempts to seek the required information from the treating practitioner and, if this is not possible, stating the reasons why this information could not be obtained
 - documenting reasons the available evidence is assessed as insufficient or inconsistent to enable the claims delegate to make a determination
 - documenting that the employee's views have been sought and taken into account regarding:
 - the person conducting the examination, including the qualifications of the examiner
 - whether they require a support person
 - any other relevant matter.
 - documenting reasons for requiring the employee to undergo an IME within 6 months of the most recent IME.
- > the date, time and location of the appointment
- > 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
- > the employee's reconsideration and review rights in relation to the decision.

The employee should also be advised:

- > 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 cost of accommodation where they are required to travel interstate or for a long distance
- > of any specific requirements or expectations the LQMP may have, such as the requirement to present proof of identify upon arrival at the examination.

If the employee is dissatisfied with your determination, they may request reconsideration of the determination. If they are still dissatisfied with the subsequent decision, they can apply for merits review at the ART.

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 ART in respect of the SRC Act, other than a review of the decisions made under section 57 in respect of that IME. If an employee has more than one injury, a suspension in relation to one of those injuries does not impact the remaining injury claims.²¹

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 determination.²²

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 justice²³ 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 obstructed an IME required under section 57, the claims delegate can issue a section 57 determination 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,²⁴ rather than them being simply unwilling to attend.²⁵ 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 issue a determination to suspend the claim under section 57(2) of the SRC Act.²⁶ The decision should be communicated to the employee both verbally and in writing, with the determination letter setting out that their rights to compensation are suspended until they attend the IME. The determination must also include the terms and reasons for the decision. If an employee disagrees with the decision to suspend their claim they may request reconsideration of the determination. If they are still dissatisfied with the subsequent decision, they can apply for a merits review at the ART.

Once the employee has attended the IME, the suspension is automatically lifted and compensation is payable from that date forward. This does not require a further determination. An employee cannot recover any monies for incapacity or medical treatment for the period of the suspension.²⁷

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

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

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

24 Re McKinnon v Commonwealth [1998] FCA 1456

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

26 Re Australian Postal Corporation v Forgie [2003] FCAFC 223

27 Section 57(5) of the SRC Act

Example 7 – failure to provide a reasonable excuse

A claims delegate arranges for an employee to attend an IME determined 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 issues a determination to suspend the employee's rights to compensation because they are unable to be satisfied the employee has a reasonable excuse for failing to attend the scheduled IME.

Example 8 – reasonable excuse

An employee does not attend the scheduled IME determined 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.

Receipt of section 57 report

A copy of the section 57 report must be provided to the employee or, where appropriate, to their treating practitioner(s) or nominated representative. 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:

- > [Engaging a Legally Qualified Medical Practitioner to Undertake an Independent Medical or Rehabilitation Examination Under the SRC Act](#)
- > [Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024](#)
- > [Fact sheet: Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 – an overview for claims managers](#)
- > [Fact sheet: Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 – an overview for employees about independent medical examinations](#)

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