

AN OVERVIEW FOR CLAIMS MANAGERS

About the Guide

Section 57A of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) requires Comcare to prepare a Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 (the Guide). The Guide's purpose is to support ethical, transparent and accountable decision-making in relation to arranging:

- > rehabilitation assessments and examinations under section 36 of the SRC Act
- > medical examinations under section 57 of the SRC Act.

As a claims manager, you will need to document your considerations against the requirements of the Guide when issuing section 57 medical examination determinations to employees.

The Guide applies to all section 57 medical examination determinations on and after **30 October 2024**.

Section 57 medical examination process



Figure 1 – Overview of the section 57A Guide process for section 57 medical examinations

Requiring medical examinations

Before you consider requiring an employee to undergo a medical examination, you must review whether you already have sufficient information to determine the claim. This includes information about the 'employee's circumstances' or any change in those circumstances. 'Employee's circumstances' is a defined term in the Guide and includes a range of subjects that you 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 services
- > understanding suitable employment requirements
- > personal circumstances – such as any biopsychosocial factors that may be impacting their return to work
- > any other relevant matter.

If the available information is insufficient or inconsistent, you should first request the information or clarification of the inconsistent information with the employee's treating practitioner. The request must be in writing and specify a period in which the information is to be provided. This period must be at least 14 calendar days. You do not have to wait for the specified period to expire if the treating practitioner provides the requested information within that timeframe.

After considering the existing information and the information from the employee's treating practitioner, you may require the employee to undergo a section 57 medical examination by a medical practitioner where there is still insufficient or inconsistent information about:

- > the employee's circumstances; or
- > any change to the employee's circumstances; or
- > the employee's capability to undertake a rehabilitation program.

Seeking the employee's views on the person conducting the medical examination

Before requiring an employee to attend an examination, you must:

- > seek their views about the selection of the medical practitioner to conduct the examination, and if they require a support person to accompany them during all or part of the examination; and
- > take those views into account.

This process can be verbal or in writing, however you must keep a record of the views of the employee (if any).

You must give the employee a period in which to respond. This period must be at least 3 business days. You can make a decision earlier than 3 business days if the employee responds earlier – you do not have to wait for the period to end.

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

Qualifications of medical practitioners

Before you arrange a medical examination, the Guide requires you to be reasonably satisfied that the medical practitioner is a legally qualified medical practitioner registered with the Australian Health Practitioner Regulation Agency. They must be qualified, by their training or registration, to assess the employee's injury.

Notice requirements

A decision to require an employee to 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:

- > give the terms and reasons for the decision, including demonstrating that you have had regard to the requirements in the Guide and your reasons for relying on, or not relying on, the opinion of the treating practitioner and/or the views of the employee
- > be given to the employee at least 14 calendar days prior to the examination (unless you and the employee agree to an earlier examination)
- > be accompanied by a notice of the employee's rights and obligations relating to 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 Administrative Appeals Tribunal (AAT) (soon to be the Administrative Review Tribunal).

Limitations on frequency and number of medical examinations

Subject to some specific exceptions, you cannot require an employee to undergo more than one medical examination in respect of the injury more frequently than at 6-month intervals. The exceptions are where:

- > the employee does not undergo the examination or obstructs the examination
- > an examination is requested by the employee or their treating practitioner
- > an earlier medical examination recommended a further examination or re-examination
- > there has been a change in the 'employee's circumstances' as defined in section 4 of the Guide
- > the injury requires multidisciplinary medical treatment (i.e., a complex case) and it is not reasonably practicable for a single medical practitioner to conduct the examination, so it may be appropriate for you to require the employee to undergo more than one examination, with a different medical practitioner
- > the medical practitioner who conducted the examination 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 AAT 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 manager could organise a section 57 medical examination in the same 6-month period as a section 36 rehabilitation examination organised by a rehabilitation authority.

Further information

For more information about the operation of the Guide please contact Comcare's Scheme Policy and Design team at scheme.policy_helpdesk@comcare.gov.au.

You can also [review the explanatory statement that accompanied the Guide](#).

Other relevant scheme guidance:

- > [Section 57 power to require a medical examination under the SRC Act](#)
- > [Engaging a legally qualified medical practitioner to undertake an independent medical or rehabilitation examination under the SRC Act](#).