

# Rehabilitation Case Manager Information session



## ***The Guide for Arranging Rehabilitation Assessments and Requiring Examination***

The following is Comcare's response to a collation of the questions asked in the Rehabilitation Case Manager Information sessions 2024 on the [Guide for Arranging Rehabilitation Assessments and Requiring Examinations](#) held on 24 September and 3 October 2024.

Comcare can only provide general information about the application of the legislation. Each case must be assessed on its own merits.

### ***Questions relating to seeking information from the treating practitioner***

***1. Is the 14-day timeframe for information requested from treatment providers measured in business days or calendar days?***

The time frame for the request for information from the treating practitioner is 14 calendar days ('days' are defined in s4 of the Guide).

***2. If an employee is receptive to a section 36(3) with a WRP, is it necessary to wait 14 days for the treating GP to respond?***

Yes, it is a requirement to wait for the treating practitioner to respond unless the response is received later than the specified 14 days. The delegate can proceed earlier than the 14 calendar days if the treater responds within that time frame or proceed if they don't respond after 14 calendar days.

***3. If an employee is happy to proceed with an assessment, and their treater is not forthcoming in advising of their opinion, what strategies does Comcare recommend?***

If the treating practitioner advises they will not be providing the requested information, the rehabilitation delegate should confirm this in writing back to the practitioner and discuss the next step with the employee. A rehabilitation assessment may be arranged at this point.

***4. When requesting information from a treating practitioner, is the request issued under s36 or to align with s36?***

The request to the treating practitioner is requested as a requirement of the Guide. It is not issued under s36 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

**5. *Given this is a legislative requirement and obtaining information for a treating practitioner is a mandatory step prior to arranging a section 36 assessment, will Comcare fund information provided by the treating practitioner?***

No. Comcare cannot pay for the cost of obtaining information from a treating practitioner prior to a s36 assessment. Under the SRC Act, Comcare can only pay for treating practitioner costs associated with delivering a s36(3) examination. Section 36 allows assessments but distinguishes between an assessment under ss36(1), and an assessment with an examination under ss36(3), the latter involving a face-to-face evaluation of the employee by an assessor.

**Questions relating to seeking and taking into account employee's views**

**6. *Are there two stages to seeking the views from employees for assessment by a panel: 1) asking for general feedback about the panel, and 2) asking for specific feedback about each assessor?***

No. There is only one stage to seeking the employee's views about an assessor or a panel of assessors. The Guide does not prescribe how you operationalise this step. For example, you may ask the employee if they have any views in general about a panel of assessors or provide them with the detail of each panel member you are considering. The [explanatory statement](#) provides examples of how you might seek the employee's views.

**7. *Does the employee response need to be in writing or is verbal OK?***

The employee may respond verbally or in writing. If provided verbally, you should document the employee's views in writing. The Guide specifies that the rehabilitation authority must keep a record of the views of the employee (if any) provided by the employee in accordance with s3(2) for the period required by any law that applies to the record or records of that kind.

**8. *I know there is a 3-day period for seeking employee views, but how much time prior to the assessment can the employee raise objections?***

An employee can raise an objection about the assessment including the nominated assessor at any time. If the employee provides their views by the specified date, the rehabilitation delegate must take the employee's views into account.

If the employee provides their views after the 3-day period and the rehabilitation delegate has selected the assessor or panel, the rehabilitation authority may take that information into account but is not required to take the employee's views into account. However, if the views expressed by the employee at any time would support a reasonable excuse for the employee not attending or undergoing the examination, the rehabilitation authority should take those views into account for the purposes of s36(4).

If the delegate decides to issue a s36(3) determination and arranges the assessment with the assessor that the employee has concerns about, the employee can seek a review of that determination. The employee must then attend the examination or have a reasonable excuse not to.

**9. *If an employee is examined and the LQMP recommends reassessment within six months, can the employee refuse to be reassessed by the same LQMP?***

When considering the reassessment of an employee based on the recommendation of the legally qualified medical practitioner (regardless of the time period) the rehabilitation delegate must meet the requirements of the Guide including seeking and taking into account the views of the employee about the assessor. If after considering the views of the employee, the delegate determines the assessment will be carried out by the previous assessor the employee has the right to seek a review/reconsideration of the determination that they undertake the rehabilitation examination.

**10. *Does the minimum timeframe when requesting the employee views include the date where the rehabilitation authority requests the employee's views?***

No. The minimum three business day timeframe starts the next business day after the request is made to the injured employee.

*Questions relating to support person*

**11. *What if the employee requests a support person but the LQMP does not allow one? Even if we approve a support person, won't the final say be up to the LQMP?***

There are some legally qualified medical practitioners that will not allow a support person to attend some or all of the examination. Therefore, when seeking the employee's views about whether they require a support person, you must take into account the employee's views about the support person and attempt to find an assessor who will accommodate the employee's request for the support person if possible. If that is not possible, the rehabilitation authority should ensure the employee is aware of any potential limitations when advising the employee in accordance with subsection 3(5). The [explanatory statement](#) (74(a)) provides examples of where it is not possible to have a support person present<sup>1</sup>.

**12. *If there is travel involved in getting to an assessment, do we also need to pay travel costs for the support person?***

No. The cost for a support person's travel (if any) must be met by the employee.

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<sup>1</sup> Some assessors or panels may be unable to accommodate a support person during part of the examination (for example, if certain tests require the employee to be in isolation) or all of the examination (for example, if public health directions or other applicable laws apply to limit the number of people in a room). If that is the case, the rehabilitation authority should ensure the employee is aware of any potential limitations when advising the employee in accordance with subsection 3(5) of the Guide.

### Questions relating to rehabilitation assessments with examination

**13. If we determine a section 36(3) assessment is needed and already have information from a treater, do we still need to request further information, such as a medical certificate recommending a rehab program, if we believe a section 36 assessment would better assist in developing that program?**

Yes. If you cannot proceed with a rehabilitation program based on the information you have, you should seek and rely on information from the treating practitioner as much as possible *before* arranging a rehabilitation examination.

**14. Does the Rehabilitation Case Manager (RCM) need to seek information from the treating practitioner prior to arranging an assessment under s36 with a Workplace Rehabilitation Provider (WRP) when undertaking the following assessment activities: transferable skills analysis, vocational assessment, ergonomic assessments?**

Yes. It is a requirement for the rehabilitation authority to seek information from the treating practitioner before completing any section s36 determinations and referrals regardless of what specific assessments may be included within the overall rehabilitation assessment. The purpose of the s36 assessment is to determine the employee's capability to undertake a rehabilitation program. As such, the treating practitioner must be requested to provide information relevant to determining the employee's overall rehabilitation needs and potential for returning to work.

Specific assessments may be included as an activity on a s37(1) rehabilitation program if one is in place and if these services are not required to determine the employee's capability to undertake a rehabilitation program. In this case information from the treating practitioner would not be required to complete these discrete assessments under the rehabilitation program.

**15. If an employee agrees to participate in a referral to a WRP for an initial assessment/examination, and the WRP recommends another examination (e.g., a functional or vocational assessment), can these additional assessments proceed on the examiner's recommendation? Are they subject to a determination?**

The additional assessments can proceed if the rehabilitation delegate agrees and undertakes the requirements of the Guide prior to arranging the additional assessments.

They are subject to a determination under s36 if they are required to determine the employee's capability to undertake a rehabilitation program (refer to response at question 4). If these assessments also have an examination (under s36(3)) there are additional notice requirements in the Guide - the determination must include the delegates reason(s) for accepting or not accepting the views of the employee, and for relying on or not relying on the employee's treating practitioner and the information (if any) provided by the treating practitioner.

If the additional assessments are not required to determine the employee's capability of undertaking a rehabilitation program, and a program is already in place, the assessments may be included as a rehabilitation activity under the program.

**16. Noting that information should be sought from the treating practitioner before arranging a rehabilitation assessment or examination, where does this leave s36 initial needs assessments (INAs) with WRPs? Would waiting for the treatment practitioner information unnecessarily delay the employee's return to work or rehabilitation activities?**

Initial needs assessments (INA) are comprehensive rehabilitation assessments that require the employee's participation. Therefore, they are considered rehabilitation assessments with an examination undertaken under s36(3). The steps outlined in the Guide relating to reviewing existing rehabilitation information and seeking information from the treating practitioner may mean that a rehabilitation examination (such as an INA conducted by a WRP) may not be necessary to determine the employee's capability of undertaking a rehabilitation program.

When seeking information from the treating practitioner, the rehabilitation delegate may expedite this step through verbal consultation with the treator, capturing the information provided in writing from the consultation, and asking the practitioner to respond back in writing confirming the information is correctly captured.

Questions relating to frequency of rehabilitation assessments

**17. Could you confirm if the rehabilitation assessment is separate from the rehabilitation examination when considering the 6-month interval rule outlined in section 6.3 of the Guide?**

The limitations on frequency of assessments only apply to assessments when the employee participates in or undergoes an assessment. Therefore, the six-month interval only applies to rehabilitation assessments with an examination (under s36(3)). The Guide does not pose a limitation on the frequency of rehabilitation assessments that do not include an examination; that is, assessments under s36(1) of the SRC Act.

**18. If the WRP conducting an INA recommends other assessments (e.g. functional capacity, vocational, ergonomic etc) - does the 6-month interval apply?**

Yes. If these additional assessments are conducted under s36(3) the 6-month interval applies unless there is an exception that is outlined in the Guide (part 1 s6(3)). For example, there has been a change in the employee's circumstances or if the WRP who conducted the first assessment recommended these assessments by a specific date or after a specific period of time<sup>2</sup>.

Questions relating to Rehabilitation Programs

**19. If the RCM determines a rehabilitation assessment is not required and there is sufficient information to provide a rehabilitation program, can the program include assessment activities, such as a workplace assessment or case conferencing, that require the employee's participation?**

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<sup>2</sup> S 6(3)(c) The minimum interval specified in subsection (1) does not apply in relation to a rehabilitation examination if: (c) where an earlier rehabilitation assessment recommended a further examination or re-examination by a specific date or after a specific period—the date is, or the period ends, during the minimum interval specified in subsection (1)

Yes. These activities can be provided under a s37 rehabilitation program provided they are not being completed to determine the employee's capacity to undertake a rehabilitation program and are instead rehabilitation program activities. If these activities are required to determine the employee's capacity to undertake a rehabilitation program, then they would be conducted under s36(3), and the requirements of the Guide will apply.

***20. Can we proceed to a section 37 program without a 36(1) or 36(3) assessment as per the rehabilitation guidelines?***

Yes. There is no requirement that a s36 assessment be arranged before a s37 determination is made. This is also spelled out in s8(2) of the Guidelines for Rehabilitation Authorities 2019 (Guidelines), which specifies "A rehabilitation authority may issue a determination under s37(1) of the Act without undertaking an assessment of an employee's capability to undertake a rehabilitation program under section 36 of the Act".

The Guidelines also outline that an assessment under s36 may not be necessary if the rehabilitation authority has advice, information or recommendations on the employee's capability to undertake a rehabilitation program from the employee's medical practitioner or other health professional; a workplace rehabilitation provider or a person with the equivalent qualifications, knowledge and experience of a workplace rehabilitation provider; the employer; or the employee.

*Other Questions*

***21. Do we have to wait for feedback from the treating practitioner before booking an assessment with an independent medical examiner?***

The rehabilitation delegate may decide to book a rehabilitation examination with an LQMP or a suitable qualified person (or panel) to reduce the wait time if they proceed with the examination, but they should approach this with some caution.

Pre-booking the assessment:

- must be for administrative convenience only
- cannot presume an outcome of the s36 process
- must be well documented
- must not result in rehabilitation delegates having a 'set and forget' approach, or proceeding to s 36 because the assessment is already booked in.

Note: The delegate cannot issue the s36 determination until they receive the information from the treating practitioner and relied on the information provided as much as possible before proceeding with the examination. To avoid unnecessary fees, it is recommended the delegate ascertains if a fee will be charged for a cancellation.

***22. Do we need to wait 14 days from the determination for a s36(3) examination for booking an appt with a WRP or just an LQMP? If not, what is the timeframe for making this appointment?***

The Guide does not prescribe a time frame from the determination to a rehabilitation assessment with examination conducted by a suitably qualified person (such as a WRP).



**23. Do you have any recommendations on how we document that we have taken into account the information we have on file already when considering making a determination for a rehab examination under 36(3)**

This information can be captured in the s36 determination and notice that is provided to the employee. Comcare is updating the s36 rehabilitation assessment referral template to make it easier for rehabilitation authorities to capture this requirement in the Guide.

**24. Is the order of operations set in stone? I.e. should the RCM believe a s36 is going to be required, must you always seek further information from the treating practitioner prior to asking for the worker's feedback (even if they are happy to proceed regardless)?**

No. The Guide specifies in s7(1) that the rehabilitation delegate does not need to comply with Part 1 of the Guide separately or sequentially. There are steps that can be performed concurrently (e.g. the delegate may seek information from the employee's treating practitioner at the same time as, or before or after, seeking views from the employee).

**25. Under what circumstances would the responsible authority choose to proceed with the rehabilitation assessment, despite the employee objecting on any number of grounds? What constitutes a reasonable objection that would be upheld vs one that would not?**

Comcare can only provide general information about the application of the legislation. Each case must be assessed on its own merits.

The employee may provide views in response to a proposed s36(3) assessment with examination. After considering those views, the rehabilitation authority may still proceed to issue a s36(3) determination in a form that is not entirely reflective of the employee's views, if the rehabilitation authority has reasons for that decision. At that point, the employee is required to attend. If the employee does not attend, their rights under the SRC Act (other than with respect to medical treatment) would be suspended if they do not have a reasonable excuse. It is at the s36(4) stage (i.e. the employee has not attended) that the reasonable excuse is relevant.

**26. Do we need to adhere to the Guide if we have arranged a combined fitness for duty assessment and section 36 rehabilitation examination?**

If a combined assessment is being arranged, all the requirements in the Guide relating to rehabilitation assessments will still need to be adhered to prior to arranging the s36 assessment and issuing the s36 determination.

**More information:**

For more information or to ask a question, please contact Comcare:  
[scheme.policy\\_helpdesk@comcare.gov.au](mailto:scheme.policy_helpdesk@comcare.gov.au).

Guidance to assist decision makers interpret and apply the SRC Act can be found on Comcare's website:  
[Guidance on applying the SRC Act | Comcare](#).