

GUIDE FOR ARRANGING ASSESSMENTS AND REQUIRING EXAMINATIONS

The following is Comcare's response to frequently asked questions relating to Part 1 of the [Guide for Arranging Rehabilitation Assessments and Requiring Examinations \(the Guide\)](#).

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

If an employee is happy to proceed with a s36 assessment, and their treater is not forthcoming in providing the requested information, 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, discuss the next step with the employee and seek their views about the matters outlined in the Guide if arranging a rehabilitation assessment examination.

Additionally, if the treating practitioner doesn't respond within 14 days (or a greater length of time, if that is what has been agreed to) then the rehabilitation delegate is not required to take the information into consideration.

Under what circumstances must a rehabilitation delegate issue a s36(1) determination?

The only circumstance where the rehabilitation delegate must issue a s36(1) determination is when an employee requests a rehabilitation assessment in writing. This is a requirement under section 36(1) of the *Safety, Rehabilitation and Compensation Act 1988*. The Guide does not oblige rehabilitation delegates to require the employee to undergo a rehabilitation assessment.

If an employee requests a s36 assessment in writing, does the rehabilitation delegate still need to seek information from their treating practitioner?

Yes. When an employee requests a rehabilitation assessment, the rehabilitation delegate must still comply with the Guide.

Does the rehabilitation delegate need to seek information from the treating practitioner prior to arranging an assessment under s36 with a Workplace Rehabilitation Provider (WRP) when conducting a transferable skills analysis, vocational assessment, or ergonomic assessment?

Yes. It is a requirement to seek information from the treating practitioner before completing any section s36 determinations regardless of what specific assessments may be included within the overall rehabilitation assessment.

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.

Can rehabilitation delegates proceed to a s37 program without a s36(1) assessment or s36(3) assessment with examination?

Yes. The Guide does not require a rehabilitation authority to arrange a rehabilitation assessment prior to making an s37(1) determination.

Will Comcare fund information provided by the treating practitioner? (for Commonwealth premium paying agencies).

Comcare cannot cover the cost of obtaining information from a treating practitioner prior to a s36 assessment. Under the SRC Act, Comcare can only pay for costs related to a treating practitioner's services when conducting a s36(3) examination. Section 36 permits assessments but differentiates between an assessment under s36(1) and an assessment with an examination under s36(3), with the latter involving an in-person evaluation of the employee by an assessor.

When seeking the employee's views, does the 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 delegate must keep a record of the views of the employee (if any) provided by the employee.

Does the minimum timeframe when requesting the employee views include the date where the rehabilitation delegate requests the employee's views?

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

What if the employee requests a support person but the legally qualified medical practitioner (LQMP) does not allow one?¹

Some LQMPs (or panels) may be unable to accommodate a support person during part or all of the examination. Therefore, when seeking the employee's views about whether they require a support person, the rehabilitation delegate must take into account their views and find an assessor who will accommodate the employee's request for the support person. If that is not possible, the delegate should ensure the employee is aware of any potential limitations around the support person's attendance when advising the employee that they may have a support person accompany them during the examination.

Given that information should be obtained from the treating practitioner before a rehabilitation assessment or examination, how does this apply to s36 Initial Needs Assessments (INAs) with WRPs?

INAs are comprehensive rehabilitation assessments that require the employee's participation, and therefore, they are considered rehabilitation assessments with an examination under s36(3).

¹ "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)". *Guide Explanatory Statement*

Does the rehabilitation delegate 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, but this approach should be taken with caution.

Pre-booking the assessment must be well documented, be for administrative convenience only, and must not result in a 'set and forget' approach or to proceeding to s36 assessment because the appointment is already booked in. It should not presume that the employee will be required to attend an IME appointment, with the IME that's been booked.

Do we need to wait 14 days from the determination for a s36(3) examination for booking an appointment with a WRP?

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). The 14-day requirement relates to rehabilitation assessment examinations with a LQMP.

More information

For more information or to ask a question, please contact Comcare: Provider Frameworks and Return to Work providerframeworksandRTW.

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](#)