



## ENGAGING A LEGALLY QUALIFIED MEDICAL PRACTITIONER TO UNDERTAKE AN INDEPENDENT MEDICAL OR REHABILITATION EXAMINATION UNDER THE SRC ACT

### PURPOSE

To provide claims and rehabilitation delegates<sup>1</sup> with guidance in relation to the engagement and management of legally qualified medical practitioners (LQMPs)<sup>2</sup> to conduct rehabilitation or medical examinations (independent examinations) under sections 36 and 57 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).<sup>3</sup>

### BACKGROUND

Independent examinations can be used to assist in managing both an employee's workplace rehabilitation and their claim for workers' compensation, to facilitate a safe and effective return to health and work.

The SRC Act permits independent examinations to be initiated by either a rehabilitation delegate under section 36 in relation to an employee's capability to undertake a rehabilitation program, or a claims delegate under section 57 if a medical examination is required. To proceed to an independent examination, the requirements in the section 57A Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024 (the Guide) must be met.<sup>4</sup>

This guidance is specific to the independent examination process and the use of LQMPs for that purpose. It sets out:

- > when to consider requesting an independent examination
- > the requirement to seek further information from the employee's treating practitioner<sup>5</sup>
- > how to select an appropriate LQMP for an independent examination, including:
  - considering the qualifications of the LQMP
  - seeking the views of the employee on the selection of the LQMP
- > limitations on frequency and number of medical examinations
- > how to manage a LQMP's performance when conducting independent examinations.

Rehabilitation and claims delegates should consider the following guidance and apply it alongside policies, procedures and reporting requirements of their organisations relating to the engagement and management of LQMPs.

1 A claims delegate has been delegated powers under the SRC Act to undertake claims management activities. A rehabilitation delegate has been delegated powers under the SRC Act to undertake rehabilitation activities.

2 A LQMP is a general practitioner or specialist registered to practice under the Australian Health Practitioner Regulation Agency (AHPRA).

3 This scheme guidance relates to the engagement of LQMPs for the purposes of undertaking independent medical examinations under the SRC Act. It does not deal with any other assessment type which may be performed under other legislative or employer-based powers, such as Fitness For Duty assessments.

4 The Guide is a legislative instrument that applies to section 36 and section 57 determinations made on or 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.

5 The term 'treating practitioner' is defined in section 4 of the Guide and means a medical practitioner or other health professional who is primarily responsible for the clinical management of the employee's injury. For example, this could be the employee's treating general practitioner, treating specialist or treating psychologist.

# GUIDANCE

## When to consider requesting an independent examination

Delegates must comply with the requirements of the Guide when considering engaging a LQMP for an independent examination. This includes relying on the existing information available regarding the employee to make the determination or, if that information is insufficient or inconsistent, requesting more information from the employee's treating practitioner.

If the treating practitioner's response is still not sufficient to make a determination, or if it has failed to address the inconsistencies in the available information, the delegate can then proceed to organising an independent examination with a LQMP.

Note: Rehabilitation assessments are not limited to those conducted by LQMPs. They can also be undertaken by an 'other health professional',<sup>6</sup> or 'other qualified person'.<sup>7</sup> Further information on arranging a rehabilitation assessment can be found in Comcare's [Rehabilitation Case Manager Handbook](#).

### Sections 36 and 57 – requiring a rehabilitation or medical examination

Before requiring an employee to undergo an independent examination, the delegate must review whether there is already sufficient information to make a determination. This includes information about the employee's circumstances or any change in those circumstances. 'Employee's circumstances' is a defined term in section 4 of the Guide and includes a range of subjects that a claims delegate may need information on. 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.

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6 The term 'other health professional' is defined in section 4 of the Guide and means a person, other than a medical practitioner, who is qualified by their training or registration under the law of a State or Territory providing for the registration for a specific profession, and registered with the Australian Health Practitioner Regulation Agency or a member of the relevant professional association. This captures health professionals, such as psychologists and occupational therapists, who do not meet the definition of 'medical practitioner'.

7 The term 'other qualified person' is defined in section 4 of the Guide and means a person, other than a medical practitioner, and otherwise has the same meaning as 'suitably qualified person' in the SRC Act. The note to this definition provides that the term 'suitably qualified person', which is not defined in the SRC Act, appears in section 36 of the SRC Act.

## How to select an appropriate LQMP for an independent examination

To ensure that the best possible information is obtained from these examinations, it is important that the LQMP selected is suitable to perform the examination. Where possible, it is recommended that the same LQMP is used for re-assessment if their qualifications remain appropriate.

Neither section 36 nor section 57 of the SRC Act stipulate how a LQMP should be sourced. This provides delegates with the freedom to use either medicolegal service providers or suitable LQMPs directly through their practices. The delegate can select a LQMP whose speciality is appropriate for the employee's compensable condition and who can provide the service in a timely manner.

If a delegate is unsure about what information they are seeking, they might select a LQMP that is unsuitable to perform the examination and pay for an examination which was not necessary or helpful. Delegates are encouraged to clarify their line of questioning before considering which LQMP speciality might be most suitable.

Where a delegate has questions about multiple medical conditions that are part of a claim, they may need to consider engaging multiple LQMPs to help get the information they need, if it is not reasonably practicable for a single medical practitioner to provide an assessment. Section 36 allows for panel assessments where different specialists can be engaged to provide one consolidated report. However, section 57 does not provide for panel assessments, so all examinations must be booked separately.

When considering an independent examination for a claim with multiple medical conditions and there are questions regarding only one of the conditions, the delegate can target their LQMP selection to the most appropriate specialist type for that condition. It is not necessary to have all the employee's medical conditions reviewed at the same time.

If a delegate is reviewing a claim with additional non-compensable factors which they want to know more about for the purposes of managing the claim or rehabilitation, they should take care to ensure that they are seeking that information in relation to the claimed condition and utilising the right legislative powers to obtain it. Ensuring the LQMP is provided with proper instructions, including the appropriate scope of the medical examination, can minimise the risk of the LQMP inquiring into areas that are irrelevant to the workers' compensation claim.

### **The LQMP's qualifications, expertise and experience align with the employee's condition**

A LQMP selected to undertake an independent examination 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.<sup>8</sup> Where a LQMP does not hold qualifications which clearly relate to the employee's condition, they may be unable to provide the delegate with the information they are seeking.

There are several options which may help identify what speciality is most appropriate to choose for an independent examination, 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 employer's clinical panel or injury management specialists (if available).

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<sup>8</sup> The Guide sets out the qualifications of LQMPs at section 4, Part 1 section 4 and Part 2 section 10.

### **Whether the LQMP is registered to practise and any conditions they may have on that registration**

Before the delegate arranges an independent examination, the Guide requires them to be reasonably satisfied that the medical practitioner is a LQMP registered with AHPRA and qualified, by their training or registration, to assess the employee's injury.

AHPRA maintains a [searchable database](#) of all Australian registered medical practitioners. It provides information on a LQMP's registration, any conditions placed upon their registration and any undertakings or reprimands.

Before a delegate schedules an independent examination, they should first check whether the LQMP has any conditions or restrictions placed upon their registration by AHPRA that would make them inappropriate to conduct the examination.

### **Whether there is any known conflict of interest in engaging the LQMP**

There may be times when a LQMP could be viewed as having a conflict of interest in undertaking an independent examination of an employee. A conflict of interest may include:

- > having a personal relationship with the employee (family or friendship)
- > having a personal relationship with someone connected to the employee (family or friends)
- > where the LQMP has a personal relationship with the delegate.

In most instances the LQMP or employee will advise of the conflict of interest before the assessment occurs. If a conflict of interest arises, it is recommended that where possible the delegate engage an alternative LQMP to avoid any risks that information provided by the LQMP has a real or perceived bias.

### **If the LQMP is known to hold any specific opinions which could be viewed as biased in some way**

Where a LQMP is known to hold a specific potentially biased opinion, the examination and their reports may result in the delegate not making the correct decision. To avoid perceived bias or biased information, it is recommended that an alternative LQMP is considered.

### **Seeking the employee's views on the person conducting the independent examination**

The Guide requires delegates to:

- > seek the employee's views about the selection of the medical practitioner to conduct the independent examination, and
- > take those views into account.

The employee may express a variety of views about the medical practitioner, including:

- > views about the medical practitioner's gender
- > views about the location of the medical practitioner's practice
- > a preference for the same or a different medical practitioner who conducted a prior examination
- > a preference for a telehealth consultation
- > if the employee requires a support person to accompany them during all or part of the examination
- > any other views that may be relevant to the employee's attendance or participation in the examination.

Where possible, the delegate should organise a LQMP that accommodates the employee's views. If this is not practicable, the delegate should discuss the reasons why with the employee.

The delegate must give the employee a period in which to respond, which must be at least 3 business days. If the employee responds within the specified period, the delegate can issue the determination without waiting for the period to end.

The delegate will need to clearly document all considerations relating to the selection of the LQMP, including the employee's views, in the determination. The determination must also demonstrate the delegate has had regard to the requirements of the Guide. The examination appointment must be at least 14 calendar days after the determination (unless the delegate and employee agree to an earlier examination).

## Travel

Delegates should engage LQMPs that are within a reasonable distance of the employee's location. This can be challenging in areas (such as regional areas) where there are fewer LQMPs offering these services. In these instances, the delegate who is arranging the examination may wish to consider one of the following:

- > 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 there are more LQMPs
- > booking a virtual/telehealth assessment where suitable.

If an employee is required to travel to attend an independent examination, reasonable costs related to travel and accommodation will be payable under the SRC Act.

## Limitations on frequency and number of independent examinations

Subject to some specific exceptions, the delegate cannot require an employee to undergo more than one independent examination in respect of the injury more frequently than at 6-month intervals.<sup>9</sup> The exceptions are where:

- > the employee does not undergo the examination or the employee or their support person in any way obstructs the examination
- > an examination is requested by the employee or their treating practitioner
- > another medical practitioner has 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 – in this case it may be appropriate for the 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
- > a request for reconsideration of any determination is made but a reviewable decision in response to that request has not yet been made
- > an application for review of any reviewable decision is made to the Administrative Appeals Tribunal 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 is organised by a rehabilitation authority.

## How to monitor and manage a LQMP's performance when conducting independent examinations

The SRC Act does not provide any guidance regarding performance standards of LQMPs or how to manage the performance of a LQMP. When a delegate engages a LQMP to undertake an independent examination, a contract with that provider for the provision of a service is being entered into. The delegate, as their employer's representative, should actively manage any agreements they make with that service provider in relation to the independent examination. This includes monitoring the provider's performance and managing any issues that may arise.

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<sup>9</sup> The Guide sets out the limitations on frequency and number of rehabilitation examinations at Part 1, section 6 and Part 2, section 12.

## Monitoring provider performance

As there are no specific standards set by the SRC Act, it is the responsibility of the delegate engaging the LQMP to monitor their performance. Some common measures that may be used include:

- > employee experiences
- > complaints against the LQMP
- > quality of the report
- > timeliness of reports and responses to further questions
- > cost of the service and report.

## Managing performance concerns

How a delegate manages LQMP performance concerns will depend on the method by which they have engaged them. If the LQMP was engaged via a medicolegal company the delegate may wish, in the first instance, to raise their concerns with the medicolegal company so they can manage the issues in line with their internal policies or contractual arrangements that are in place. Where the delegate has engaged the LQMP directly through their practice they will likely need to raise any concerns directly with the LQMP.

If the delegate or employee has concerns regarding a LQMP's behaviour, such as concerns that their actions are placing the public at risk, they are exhibiting unprofessional behaviour, they are practising in an unsafe manner or their health may be affecting their ability to make safe judgements about their patients, they may lodge a complaint through AHPRA. If a delegate considers that lodging an [AHPRA](#) complaint is appropriate, they should discontinue using that LQMP for independent examinations.

## FURTHER INFORMATION

For further information regarding this topic please refer to:

- > [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 rehabilitation case managers](#)
- > the [Rehabilitation Case Manager Handbook](#) which is located on the [Rehabilitation Case Manager](#) page of the Comcare Website
- > Scheme Guidance – [Section 57 power to require a medical examination under the SRC Act](#)
- > Scheme e-guidance available through [Comcare's Learning Management System \(LMS\)](#) on the Comcare website:
  - Rehabilitation case management – first steps
  - SRC Act and Comcare scheme overview.

Please contact Comcare's Scheme Policy and Design team on 1300 366 979 or email [SchemePolicyandDesign@comcare.gov.au](mailto:SchemePolicyandDesign@comcare.gov.au) if you require any additional information.