



Safety, Rehabilitation and Compensation (Guidelines for Rehabilitation Authorities) Instrument 2019

I, Susan Weston, Chief Executive Officer of Comcare, make the following instrument.

Dated 9 July 2019

Susan Weston
Chief Executive Officer of Comcare

Contents

1	Name	1
2	Commencement.....	1
3	Authority	1
4	Purpose.....	1
5	Definitions.....	1
6	Schedules.....	2
7	Delegation by rehabilitation authority	2
8	Rehabilitation assessment.....	2
9	Rehabilitation program.....	3
10	Use of workplace rehabilitation providers.....	4
11	Employee non-compliance	4
12	Transitional—rehabilitation assessments	5
13	Transitional – rehabilitation programs.....	6
Schedule 1—Repeals		7
<i>Guidelines for Rehabilitation Authorities 2012</i>		<i>7</i>

1 Name

This Instrument may be cited as the *Guidelines for Rehabilitation Authorities 2019*.

2 Commencement

This instrument commences on 15 August 2019.

3 Authority

This instrument is made under section 41 of the Act.

4 Purpose

These guidelines have been prepared and issued by Comcare in relation to the performance or exercise by rehabilitation authorities of their functions or powers under Part III of the Act. A rehabilitation authority must comply with the guidelines.

5 Definitions

Note: Some expressions used in this instrument are defined in the Act, including the following:

- (a) approved program provider;
- (b) rehabilitation authority;
- (c) rehabilitation program;
- (d) relevant authority;
- (e) relevant employer; and
- (f) suitable employment.

In this instrument:

Act means the *Safety, Rehabilitation and Compensation Act 1988*.

consultation is the process of sharing relevant information with a person in a timely manner, providing that person with an opportunity to express their views and considering those views when making decisions.

medical practitioner is a person registered with the Australian Health Practitioner Regulation Agency (AHPRA) and is to be interpreted consistently with the term ‘legally qualified medical practitioner’ in the Act.

other health professional is 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 is registered with the Australian Health Practitioner Regulation Agency (AHPRA) or a member of the relevant professional association.

rehabilitation assessment is an assessment of the employee’s capability of undertaking a rehabilitation program.

workplace rehabilitation provider has the same meaning as ‘approved program provider’ in the Act.

6 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned.

7 Delegation by rehabilitation authority

- (1) If the rehabilitation authority delegates all or any of its powers and functions under Part III of the Act to an officer or a person, it must ensure that officer or person:
 - (a) has the appropriate skills and capabilities to exercise those powers or perform those functions; and
 - (b) is supported with appropriate resources and training for the exercise or performance of those powers and functions.
- (2) The rehabilitation authority must monitor the exercise or performance of the powers and functions which it has delegated.

8 Rehabilitation assessment

- (1) If the employee has made a written request under subsection 36(1) of the Act, the rehabilitation authority must arrange a rehabilitation assessment and subsections 8(2) and 8(3) of this section will not apply.
- (2) A rehabilitation authority may issue a determination under subsection 37(1) of the Act without undertaking an assessment of an employee's capability to undertake a rehabilitation program under section 36 of the Act.
- (3) Without limiting the generality of subsection 8(2), an assessment under section 36 of the Act may not be necessary if the rehabilitation authority has advice, information or recommendations on the employee's capability to undertake a rehabilitation program from:
 - (a) the employee's medical practitioner or other health professional;
 - (b) a workplace rehabilitation provider or a person (not including a partnership or company) with the equivalent qualifications, knowledge and experience of a workplace rehabilitation provider;
 - (c) the relevant employer; or
 - (d) the employee.
- (4) If the rehabilitation authority receives a written rehabilitation assessment under section 36 of the Act, it must provide a copy of that written rehabilitation assessment to:
 - (a) the employee; or
 - (b) the employee's medical practitioner and/or other health professional, where the employee's medical condition necessitates the rehabilitation assessment first being released to that person; and

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- (c) the relevant authority.
 - (5) The rehabilitation authority must advise the employee of the findings and the anticipated next steps following the rehabilitation assessment, including if a rehabilitation program will be provided under section 37 of the Act.
 - (6) In undertaking the actions required by subsections 8(4) and (5), the rehabilitation authority must consider:
 - (a) the employee's injury and circumstances; and
 - (b) the employee's communication needs.

Note: Nothing in this section limits the requirements of subsections 38(1) and 61(1) of the Act.

9 Rehabilitation program

- (1) If making a determination under subsection 37(1) of the Act, the rehabilitation authority must have regard to all matters in subsection 37(3) of the Act.
- (2) The rehabilitation authority must refer to the relevant matters to which it had regard in the determination.
- (3) The rehabilitation authority must consult the employee regarding the proposed rehabilitation program.
- (4) In undertaking the consultation required by subsection 9(3), the rehabilitation authority must consider:
 - (a) the employee's injury and circumstances; and
 - (b) the employee's communication needs.

Providing a rehabilitation program

- (5) The rehabilitation program must include:
 - (a) details of the rehabilitation case manager, and where applicable, the details of the supervisor and the workplace rehabilitation provider;
 - (b) the review dates; and
 - (c) if applicable, the reasonable steps being undertaken by the relevant employer to provide to the employee, or to assist the employee to find, suitable employment under section 40 of the Act.
- (6) The rehabilitation authority must provide a copy of the written rehabilitation program and determination under subsection 37(1) of the Act to the:
 - (a) employee; or
 - (b) employee's medical practitioner and/or health professional, where the employee's medical condition necessitates the rehabilitation program first being released to that person; and
 - (c) the relevant authority.

Monitoring progress

- (7) The rehabilitation authority must monitor the employee's:
- (a) rehabilitation program where a rehabilitation program has been provided; or
 - (b) the employee's capability to undertake a rehabilitation program where a rehabilitation program has not been provided.
- (8) Monitoring for the purposes of subsection 9(8) includes seeking information on the employee's work capacity, injury and the availability of suitable employment.
- (9) Without limiting the circumstances, the rehabilitation authority may consider providing or altering a rehabilitation program if there are changes in:
- (a) the employee's work capacity, injury or circumstances; or
 - (b) the availability of suitable employment.
- (10) The rehabilitation authority must notify the relevant authority of the outcome at the end of the rehabilitation program.

Note: Nothing in this section limits the requirements of subsections 38(1) and 61(1) of the Act.

10 Use of workplace rehabilitation providers

- (1) If using a workplace rehabilitation provider, the rehabilitation authority must:
- (a) effectively monitor the performance of the workplace rehabilitation provider; and
 - (b) inform Comcare of any concerns regarding the service delivery of the workplace rehabilitation provider.

11 Employee non-compliance

- (1) If the rehabilitation authority requires an employee to undergo an examination under subsection 36(3) of the Act or undertake a rehabilitation program under subsection 37(1) of the Act, the rehabilitation authority must notify the employee in writing that the employee's right to compensation under the Act (other than compensation for the cost of medical treatment payable under section 16 of the Act), and to institute or continue any proceedings under the Act in relation to compensation, may be suspended if the employee:
- (a) refuses or fails without reasonable excuse to undergo, or in any way obstructs, an examination under subsection 36(3) of the Act; or
 - (b) refuses or fails, without reasonable excuse to undertake a rehabilitation program under section 37 of the Act.
- (2) If the employee refuses or fails to undergo an examination or undertake a rehabilitation program, the rehabilitation authority must:

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- (a) request reasons from the employee for the refusal or failure; and
 - (b) consider whether the reasons constitute a reasonable excuse.
- (3) If the rehabilitation authority is satisfied that the employee does not have a reasonable excuse for the refusal or failure, or the employee in any way obstructs an examination, and the refusal, failure or obstruction is such that it prevents or interrupts the provision of effective rehabilitation, the rehabilitation authority must:
- (a) notify the employee in writing that the employee's rights to compensation, and to institute or continue proceedings under the Act, are suspended until;
 - (i) if it relates to an examination – the employee attends the next available appointment and cooperates with all requirements of the examination; or
 - (ii) if it relates to a rehabilitation program – the employee commences the specified activity or next steps in the program; and
 - (b) request that the relevant authority take steps to implement any decision to suspend the employee's compensation or proceedings under the Act.
- (4) If the employee complies with the requirement provided under subparagraphs 11(3)(a)(i) and (ii), the rehabilitation authority must immediately:
- (a) notify the employee in writing that the suspension has been lifted; and
 - (b) request that the relevant authority take steps to recommence the employee's compensation and reinstate any proceedings under the Act.

Note: Nothing in this section limits the requirements of subsections 38(1) and 61(1) of the Act, or the right of review available under subsection 38(2) or 62(2) of the Act.

12 Transitional - rehabilitation assessments

- (1) This section applies if before the commencement of this instrument:
- (a) a rehabilitation authority made a determination under subsection 36(1) of the Act to arrange a rehabilitation assessment; and
 - (b) a rehabilitation assessment (including an examination) had commenced or concluded immediately before the commencement of this instrument.
- (2) The rehabilitation assessment does not lapse because of the repeal of the *Guidelines for Rehabilitation Authorities 2012* by Schedule 1 of this instrument, but continues in force after the commencement of this instrument:
- (a) as if the requirements of subsections 8(4) to (6) of this instrument had been met in relation to a concluded rehabilitation assessment; and
 - (b) any commenced rehabilitation assessment must comply with the requirements of this instrument.

13 Transitional – rehabilitation programs

- (1) This section applies if before the commencement of this instrument:
 - (a) a rehabilitation authority made a determination under subsection 37(1) of the Act that the employee undertake a rehabilitation program; and
 - (b) a rehabilitation program for the employee had commenced.
- (2) The rehabilitation program does not lapse because of the repeal of the *Guidelines for Rehabilitation Authorities 2012* by Schedule 1 of this instrument, but continues in force after the commencement of this instrument as if the requirements of subsections 9(1) to (7) of this instrument had been met in relation to that rehabilitation program.
- (3) Any monitoring, alteration or suspension of that rehabilitation program must comply with the requirements of this instrument.

Schedule 1—Repeals

Guidelines for Rehabilitation Authorities 2012

1 The whole of the instrument

Repeal the instrument