

EXPLANATORY STATEMENT

Issued by authority of the Minister for Employment and Workplace Relations
under section 57A of the *Safety, Rehabilitation and Compensation Act 1988*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**) establishes the workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations. The SRC Act authorises:

- a rehabilitation authority in relation to an employee to arrange for the assessment of the employee's capability of undertaking a rehabilitation program (subsection 36(1)) and to require the employee to undergo an examination by the person or panel of persons making the assessment (subsection 36(3)) subject to the requirements in section 36; and
- a relevant authority in relation to an employee to require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority (subsection 57(1)) subject to the requirements in section 57.

Part 2 of Schedule 3 to the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (the **Closing Loopholes Act**), which commenced on 14 June 2024, amended the SRC Act by:

- inserting new section 57A to provide that Comcare must, in consultation with the Safety, Rehabilitation and Compensation Commission (the **Commission**), prepare a written document to be called the 'Guide for Arranging Rehabilitation Assessments and Requiring Examinations' (the **Guide**);
- inserting a new definition in subsection 4(1) of 'approved Rehabilitation Assessments and Examinations Guide' to relevantly mean the document prepared by Comcare in accordance with section 57A that has been approved by the Minister and is for the time being in force;
- inserting new subsection 36(3A) to provide that, in deciding whether to arrange for an assessment under subsection 36(1) or to require an examination under subsection 36(3), the rehabilitation authority must comply with the approved Rehabilitation Assessments and Examinations Guide; and
- inserting new subsection 57(1A) to provide that, in deciding whether to require an examination under subsection 57(1), the relevant authority must comply with the approved Rehabilitation Assessments and Examinations Guide.

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 (SRC Act, subsection 57A(2)).

Subsections 57A(3) and (4) of the SRC Act provide that the Guide:

- must provide that, for the purposes of a rehabilitation assessment or examination of an employee: (i) information in relation to the employee should be sought from the employee's treating practitioner; and (ii) the employee's treating practitioner and the information (if any) provided by the treating practitioner should be relied on as much as possible before a referral is made to an independent medical practitioner, or other qualified person, in relation to the employee (subsection 57A(3)(a));
- must specify the circumstances in which it is appropriate to require an employee to undergo a rehabilitation assessment or examination (subsection 57A(3)(b));
- must specify limitations on the frequency and number of rehabilitation assessments or examinations that an employee may be required to undergo (subsection 57A(3)(c));

- must specify the qualifications of the person or, if required under section 36, the panel of persons who may conduct a rehabilitation assessment or an examination of an employee (subsection 57A(3)(d));
- must require the rehabilitation authority or the relevant authority (as the case requires) to seek, and take into account, the views of an employee, who is required to undergo a rehabilitation assessment or examination, about the selection of the person or, if required under section 36, the panel of persons who are to conduct the rehabilitation assessment or examination (subsection 57A(3)(e));
- must require that an employee who is required to undergo a rehabilitation assessment or examination be given a notice of the employee’s rights relating to the rehabilitation assessment or examination (subsection 57A(3)(f)); and
- may provide for any other relevant matter (subsection 57A(4)).

The Guide is a legislative instrument made by the Minister on the day on which it is approved by the Minister (SRC Act, subsection 57A(6) and (7)).

The purpose of the *Safety, Rehabilitation and Compensation Act 1988 – Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024* (the **Instrument**) is to bring into existence the first edition of the Guide as required by section 57A of the SRC Act. The Guide appears at Schedule 1 to the Instrument. An explanation of each section of the Instrument including Schedule 1 is included in Attachment A.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, which appears at Attachment B.

CONSULTATION

Consultation in accordance with statutory precondition

Subsection 57A(1) of the SRC Act provides that Comcare must, in consultation with the Commission, prepare the Guide.

The Commission is a part-time body, which meets at least 4 times per year, and Comcare is legislatively required to provide support and guidance to the Commission in carrying out its functions. Comcare consulted with the Commission on the development of the Guide through providing members of the Commission with specific information such as the discussion paper and draft Guide (outlined below) and regular email updates were provided to the Commission via Comcare’s weekly update. A final update was provided at the Commission’s in-person meeting on 19 April 2024. At that meeting, the members confirmed they considered the Commission was sufficiently consulted on the Guide and no further consultation was required prior to seeking the Minister’s approval.

Bodies/groups/individuals consulted

Comcare also consulted with employee representatives (including the Australian Council of Trade Unions, the Community and Public Sector Union, and United Firefighters Union of Australia), employer representatives (including Commonwealth agencies, licensees, and the Safety, Rehabilitation and Compensation Licensee Association), and various bodies with expertise (including the Australian Rehabilitation Providers Association, Australian Medical Association, the Royal Australian College of General Practitioners, the Royal Australasian College of Physicians, the Australian Lawyers Alliance, and the Law Council of Australia). In addition, Comcare consulted with the Department of Employment and Workplace Relations.

Method and purpose of consultation

Stakeholder feedback informed the development of the Guide. Prior to preparation of a draft of the Guide, Comcare sought views from stakeholders, including those listed above, as to content of the Guide through a discussion paper. The discussion paper included an Appendix A entitled ‘*Response Form: Discussion questions for stakeholder consultation*’, which sought direct comment from stakeholders with reference to the matters set out at subsection 57A(3) of the SRC Act. The discussion paper was distributed via targeted direct electronic communication (email) to Comcare stakeholders. Consultation on the discussion paper occurred from 29 January to 29 February 2024. Comcare received 46 written responses to the discussion paper.

Comcare again consulted with stakeholders following completion of an initial draft of the Guide. The Comcare website provided news banners, a draft of the Guide and a document entitled ‘*Overview of Consultation Draft*’, which provided an outline of the provisions contained within the proposed Guide. A feedback form was also made available which allowed stakeholders to provide feedback on the draft Guide. Targeted direct electronic communication (email) was also sent to Comcare stakeholders seeking comment on the draft Guide. Consultation on the draft Guide was open from 28 March to 18 April 2024. Comcare received 30 written responses to the draft Guide.

Issues raised in consultation and outcomes

Feedback received through consultation generally sought for the Guide to be:

- written in plain English;
- supportive of improved decision-making and claims management processes; and
- easily interpreted and applied by decision-makers and claims managers.

A significant concern identified by stakeholders was that the Guide should not operate to cause delay in rehabilitation and claims processes. In particular, stakeholders were concerned to ensure that the Guide did not prevent decision-makers from complying with amendments made to the *Safety, Rehabilitation and Compensation Regulations 2019* by the *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023*, which prescribes the periods for determining claims for compensation under section 14 of the SRC Act and deciding requests for reconsideration of determinations under section 62 of the SRC Act.

While acknowledging the statutory purpose of the Guide, stakeholders requested that the Guide be drafted so it may be capable of operating in dispute resolution environments, such as where an application for merits review by the Administrative Appeals Tribunal (soon to be the Administrative Review Tribunal) is made in accordance with section 64 of the SRC Act.

In preparing the Guide, Comcare had regard to the views of practitioners in the medical and rehabilitation fields concerning timeframes for the preparation and provision of information sought by decision-makers.

Where appropriate, Comcare has incorporated feedback received during the consultation processes into the Instrument.

COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION (PRIVACY)

As required by subsection 57A(2) of the SRC Act, the Guide requires appropriate consideration of the employee’s personal circumstances as part of decision-making in relation to arranging a rehabilitation assessment or requiring an employee to undergo an examination.

As required by paragraph 57A(3)(a) of the SRC Act, the Guide provides that a rehabilitation authority or relevant authority should request information from an employee’s treating practitioner in particular circumstances. Any information provided in accordance with the request should be relied on as much as possible in making certain decisions.

As required by paragraph 57A(3)(c) of the SRC Act, the Guide provides for limitations on the frequency and number of rehabilitation and medical examinations. The Guide provides that the 6-month interval does not apply in specific circumstances, which include a recommendation by the employee's treating practitioner for an examination or a change in the employee's circumstances (see subsections 6(3) and 12(3) of Schedule 1 to the Instrument for the full list).

As required by paragraph 57A(3)(e) of the SRC Act, the Guide provides that a rehabilitation authority or relevant authority is to seek, and take into account, the views of an employee about the selection of the person(s) who are to conduct a rehabilitation assessment or examination.

Where reasonable and practicable, Comcare collects information about an employee directly from the employee. However, Comcare may also collect personal information from someone other than the employee with the employee's express consent, or if it is required or authorised to do so by or under an Australian law. Comcare holds all its records in accordance with the provisions of the *Archives Act 1983* and relevant records authorities. Comcare is required to comply with the *Privacy Act 1988* (including the Australian Privacy Principles), *Privacy Amendment (Notifiable Data Breaches) Act 2017* and the Australian Government Agencies Privacy Code. Comcare also has a Privacy Policy, available on Comcare's website.

COMMENCEMENT

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument, including the Guide appearing at Schedule 1 to this Instrument, is to commence on the day after the Instrument is registered.

Authority: section 57A of the
Safety, Rehabilitation and Compensation Act 1988

NOTES ON SECTIONS

In these notes on sections, the following abbreviations are used:

Abbreviation	Definition
Acts Interpretation Act	<i>Acts Interpretation Act 1901</i>
Closing Loopholes Act	<i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i>
Guide	<i>Guide for Arranging Rehabilitation Assessments and Requiring Examinations set out in Schedule 1 to the Instrument</i>
Instrument	<i>Safety, Rehabilitation and Compensation Act 1988 – Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024</i>
Legislation Act	<i>Legislation Act 2003</i>
SRC Act	<i>Safety, Rehabilitation and Compensation Act 1988</i>

Section 1 – Name

- Section 1 provides that the title of the instrument is the *Safety, Rehabilitation and Compensation Act 1988 – Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024*.

Section 2 – Commencement

- Section 2 provides that the Instrument commences on the day after the Instrument is registered on the Federal Register of Legislation. For example, if the Instrument is registered on 2 September 2024, the Instrument would commence on 3 September 2024.

Section 3 – Authority

- Section 3 provides that the Instrument is made under section 57A of the SRC Act. Section 57A is inserted into the SRC Act by Part 2 of Schedule 3 to the Closing Loopholes Act.

Section 4 – Definitions

- The introductory note to section 4 lists several expressions used in the Instrument that are defined in the SRC Act. Subsection 13(1)(b) of the Legislation Act relevantly provides that, if enabling legislation confers on a person the power to make a legislative instrument, then, unless the contrary intention appears, expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time.
- Section 4 defines the following additional terms used in the Instrument.

‘Application date’

- The term ***application date*** means the date that is 6 weeks after the date on which the Instrument commenced in accordance with section 2. For example, if the Instrument commenced on 3 September 2024, the application date would be 15 October 2024.

'Approved Rehabilitation Assessments and Examinations Guide'

7. The term **approved Rehabilitation Assessments and Examinations Guide** and **this Guide** means the Guide for Arranging Rehabilitation Assessments and Requiring Examinations set out in Schedule 1 to the Instrument.

'Assessor', 'medical practitioner', 'other health professional', 'other qualified person', 'panel'

8. The term **assessor** means a **medical practitioner** or **other qualified person**.
9. The term **medical practitioner** means a person who is registered with the Australian Health Practitioner Regulation Agency as a medical practitioner and is to be interpreted consistently with the term 'legally qualified medical practitioner' in the SRC Act. The note to this definition provides that the term 'legally qualified medical practitioner', which is not defined in the SRC Act, appears in subsection 4(1) in the definition of 'medical treatment', subsection 4(13) and sections 7, 15, 16, 36, 54, 57 and 126 of the SRC Act. The note further provides that the term 'legally qualified medical practitioner' does not include a psychologist, which is covered by the term **other health professional**.
10. The term **other health professional** 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**.
11. The term **other qualified person** 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.
12. The term **panel** means a panel comprising two or more **assessors**.

'Employee's circumstances'

13. The term **employee's circumstances** is defined broadly to encompass various matters relevant to the employee's rights, entitlements and obligations under the SRC Act. The definition is not intended to be exhaustive. Paragraph (k) of the definition confirms that the circumstances of an employee include any other relevant matter.
- (a) Before the rehabilitation authority arranges a **rehabilitation assessment**, the rehabilitation authority must consider whether it has sufficient information regarding the following matters to the extent the matters may be relevant to the employee's rehabilitation: the **employee's circumstances**; or any change in the **employee's circumstances**; or any relevant matter specified in the **Guidelines for Rehabilitation Authorities** (Schedule 1, subsection 2(1)).
- (b) Similarly, before the employee is required to undergo a **rehabilitation examination** or a **medical examination**, the rehabilitation authority or the relevant authority, as the case may be, must consider whether it has information regarding the following matters: the **employee's circumstances**; or any change in the **employee's circumstances**; or the employee's capability of undertaking a rehabilitation program (Schedule 1, subsections 3(1) and 9(1)).
- (c) An employee shall not be required to undergo more than one **rehabilitation examination** or **medical examination** in respect of the **injury** more frequently than at 6-month

intervals, where each interval commences the day after the last day on which the last examination took place (Schedule 1, subsections 6(1) and 12(1)). That minimum interval does not apply in relation to a **rehabilitation examination** or **medical examination** if, among other things, there has been a change in the **employee's circumstances** (Schedule 1, paragraphs 6(3)(d) and 12(3)(d)).

14. The term **employee's circumstances**, in relation to an employee who suffers an **injury**, includes:
- (a) the **injury**;
 - (b) any other medical condition, however described, suffered by the employee before, during or after the **injury**;
 - (c) the employee's need or claimed need for medical treatment;
 - (d) the employee's capacity for work or claimed incapacity for work;
 - (e) the employee's impairment or claimed impairment; the employee's non-economic loss or claimed non-economic loss;
 - (f) the employee's need or claimed need for any alterations, modifications or aids or appliances;
 - (g) the employee's need or claimed need for household services or attendant care services; any suitable employment for the employee including the availability of such employment;
 - (h) the employee's personal circumstances; and
 - (i) any other relevant matter.
15. See the next paragraph for the meaning of the term **injury**.

'Injury'

16. The term **injury**, in relation to an employee, is defined to mean an 'injury' (within the meaning of the SRC Act: see subsection 4(3), and sections 5A and 123A) suffered by the employee in respect of which compensation is payable under the SRC Act. It is also defined to mean a medical condition, however described, that is the subject of a claim made by or on behalf of the employee, or a notice under section 53 of the SRC Act but is not yet the subject of a claim. The appropriate meaning of the term **injury** is to be determined by reference to the context in which the term appears in the Instrument.
17. In Part 2 of Schedule 1 to the Instrument, the term **injury** has an extended meaning and includes a reference to the effects of the injury. The effects of the injury include, for example: the need for medical treatment in relation to the injury; the incapacity for work or impairment resulting from the injury; the need for household services or attendant care services as a result of the injury; the non-economic loss resulting from the injury or impairment; and the need for any alterations, modifications or aids or appliances as a result of the impairment.

'Guidelines for Rehabilitation Authorities'

18. The term **Guidelines for Rehabilitation Authorities** means the guidelines, if any, issued by Comcare in accordance with section 41 of the SRC Act to rehabilitation authorities in relation to the performance or exercise by those authorities of their functions or powers under Part III of the SRC Act, and as in force from time to time.

‘Independent medical practitioner’, ‘treating practitioner’

19. The term ***independent medical practitioner***, in relation to an employee, means a ***medical practitioner*** other than a ***treating practitioner***.
20. The term ***treating practitioner***, in relation to an employee, 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.
21. See above for the meaning of the terms ***injury***, ***medical practitioner*** and ***other health professional***.

‘Medical examination’

22. The term ***medical examination*** means an examination arranged by a relevant authority that an employee is required to undergo in accordance with subsection 57(1) of the SRC Act.
 - (a) Subsection 57(1) provides that, where a notice has been given to a relevant authority under section 53 in relation to an employee, or an employee has made a claim for compensation under section 54, the relevant authority may require the employee to undergo an examination by one legally qualified medical practitioner nominated by the relevant authority.
 - (b) Subsection 57(1A) provides that, in deciding whether to require an examination under subsection 57(1), the relevant authority must comply with the ***approved Rehabilitation Assessments and Examinations Guide***.

‘Day’, ‘month’

23. The term ***day*** means calendar day, unless otherwise specified in the Instrument.
24. The term ***month*** has the meaning given in section 2G of the Acts Interpretation Act.
 - (a) Subsection 2G(2) of the Acts Interpretation Act and subsection 13(1) of the Legislation Act relevantly provide that, in any Act (which includes a legislative instrument), subject to a contrary intention, a reference to a period of 2 or more months is a reference to a period: starting at the start of a day of one of the calendar months (the ***starting month***); and ending: (i) immediately before the start of the corresponding day of the calendar month that is that number of calendar months after the starting month; or (ii) if there is no such day—at the end of the calendar month that is that number of calendar months after the starting month.
 - (b) Example 1: A reference to 6 months starting on 15 December in a year is a reference to a period starting on that day and ending immediately before 15 June in the next year.
 - (c) Example 2: A reference to 6 months starting on 31 October in a year is a reference to a period starting on that day and ending at the end of April in the next year (because April is the calendar month coming sixth after October and does not have 31 days).

‘Rehabilitation assessment’

25. The term ***rehabilitation assessment*** means an assessment of an employee’s capability of undertaking a rehabilitation program arranged by a rehabilitation authority in accordance with subsection 36(1) of the SRC Act.

- (a) Subsection 36(1) provides that, where an employee suffers an ‘injury’ (within the meaning of the SRC Act: see subsection 4(3), and sections 5A and 123A) resulting in an incapacity for work or an impairment, the rehabilitation authority may at any time, and shall on the written request of the employee, arrange for the assessment of the employee’s capability of undertaking a rehabilitation program.
- (b) Subsection 36(3A) relevantly provides that, in deciding whether to arrange for an assessment under subsection 36(1), the rehabilitation authority must comply with the ***approved Rehabilitation Assessments and Examinations Guide***.

‘*Rehabilitation examination*’

26. The term ***rehabilitation examination*** means a ***rehabilitation assessment*** and examination arranged by a rehabilitation authority that an employee is required to undergo in accordance with subsection 36(3) of the SRC Act.
- (a) Subsection 36(3) provides that the rehabilitation authority may require the employee to undergo an examination by the person or panel of persons making the assessment.
 - (b) Subsection 36(3A) relevantly provides that, in deciding whether to require an examination under subsection 36(3), the rehabilitation authority must comply with the ***approved Rehabilitation Assessments and Examinations Guide***.
 - (c) Subsection 36(8) provides that, where an examination is carried out, the person or persons who carried out the examination shall give to the rehabilitation authority a written assessment of the employee’s capability of undertaking a rehabilitation program, specifying, where appropriate, the kind of program which he or she is capable of undertaking and containing any other information relating to the provision of a rehabilitation program for the employee that the rehabilitation authority may require.

‘*SRC Act*’, ‘*SRC Regulations*’

27. The term ***SRC Act*** means the *Safety, Rehabilitation and Compensation Act 1988*.
28. The term ***SRC Regulations*** means the *Safety, Rehabilitation and Compensation Regulations 2019*. Section 10 of the Acts Interpretation Act and subsection 13(1) of the Legislation Act relevantly provide, in effect, that where an Act (which includes a legislative instrument) contains a reference to a short title of another Act (such as the *Safety, Rehabilitation and Compensation Regulations 2019*), then:
- (a) the reference shall be construed as a reference to that other Act as originally enacted and as amended from time to time; and
 - (b) where that other Act has been repealed and re-enacted, with or without modifications, the reference shall be construed as including a reference to the re-enacted Act as originally enacted and as amended from time to time.

‘*Support person*’

29. The term ***support person*** means, in relation to a rehabilitation examination or medical examination, any person who accompanies the employee during part or all of the examination for the sole purpose of providing emotional support to the employee during the examination. A person who is proposed to accompany the employee during an examination for any additional or other reason would not be covered by this definition.

‘Workplace rehabilitation provider’

30. The term **workplace rehabilitation provider** has the same meaning as ‘approved program provider’ in the SRC Act. The term ‘approved program provider’ is defined in subsection 4(1) of the SRC Act to mean a person or body approved under section 34F or 34H as a rehabilitation program provider and includes a person or body so approved whose approval is renewed under section 34L.

Section 5 – Approved Guide

31. Section 5 provides that the Guide prepared by Comcare in accordance with section 57A of the SRC Act, which is set out in Schedule 1 to the Instrument, is approved for the purposes of the SRC Act.
32. The first note to section 5 provides that, in deciding whether to arrange for an assessment under subsection 36(1) or to require an examination under subsection 36(3) of the SRC Act, the rehabilitation authority must comply with the Guide. The note refers the reader to subsection 36(3A) of the SRC Act.
33. The second note to section 5 provides that, in deciding whether to require an examination under subsection 57(1) of the SRC Act, the relevant authority must comply with the Guide. The note refers the reader to subsection 57(1A) of the SRC Act.

Section 6 – Application of the Approved Guide

34. Section 6 provides for the application of the Guide.
35. Paragraph 6(1)(a) provides that the Guide applies in relation to a rehabilitation assessment if the assessment is the subject of a determination made under subsection 36(1) of the SRC Act on or after the application date, regardless of when the employee sustained the injury.
36. Paragraph 6(1)(b) provides that the Guide applies in relation to a rehabilitation examination if the examination is the subject of a determination made under subsection 36(3) of the SRC Act on or after the application date, regardless of when the employee sustained the injury.
37. Paragraph 6(1)(c) provides that the Guide applies in relation to a medical examination if the examination is the subject of a determination made under subsection 57(1) of the SRC Act on or after the application date, regardless of when the employee sustained the injury.
38. **Application date** is defined in section 4 to mean the date that is 6 weeks after the date on which the Instrument commences. This is to allow decision makers to continue to make determinations under subsection 36(1), 36(6) or 57(1) of the SRC Act after the commencement of the Guide, but to provide a period of time to allow any necessary operational changes to implement the requirements in the Guide. It is intended to avoid a situation where it is said that a determination under subsection 36(1), 36(3) or 57(1) made the day after the commencement of the Instrument (for example) is improperly made due to failure to comply with the Guide.
39. Subsection 6(2) provides that, subject to subsection 6(3), both the Guide and the Guidelines for Rehabilitation Authorities apply in relation to rehabilitation assessments and rehabilitation examinations.
40. The note to subsection 6(2) provides that a rehabilitation authority shall comply with the Guidelines for Rehabilitation Authorities. The note refers the reader to subsection 41(2) of the SRC Act.

41. Subsection 6(3) provides an exception to subsection 6(2) and provides that, if there is an inconsistency between the Guide and the Guidelines for Rehabilitation Authorities, and the inconsistency is such that the Guide and the Guidelines for Rehabilitation Authorities cannot be applied at the same time, the Guide takes precedence over the Guidelines for Rehabilitation Authorities to the extent of the inconsistency.

Schedule 1 – Guide for Arranging Rehabilitation Assessments and Requiring Examinations

42. The following references to provisions are references to the provisions of Schedule 1 to the Instrument unless otherwise stated.

Part 1 – Rehabilitation assessments and rehabilitation examinations

Section 1 – Application of this Part

43. Section 1 provides that Part 1 is made for the purposes of section 57A of the SRC Act and applies in relation to rehabilitation assessments and rehabilitation examinations of an employee who suffers an injury resulting in an incapacity for work or an impairment.
44. If the rehabilitation authority *requires* the employee to undergo a rehabilitation assessment, the authority must comply with sections 2 to 7. Note that the rehabilitation authority only requires the employee to undergo a rehabilitation assessment if the authority requires the employee to undergo an examination as part of the assessment. That situation is reflected in the definition of *rehabilitation examination*.
45. If the rehabilitation authority arranges a rehabilitation assessment without requiring the employee to undergo an examination as part of the assessment, the authority is only required to comply with sections 2 and 4.
46. Failure to substantively comply with the requirements of Part 1 for the purpose of making a determination under section 36 of the SRC Act may be a relevant consideration if the determination is the subject of a request for reconsideration under section 38 or 62 of the SRC Act, whichever applies.

Section 2 – Arranging rehabilitation assessments

47. Section 2 outlines the steps the rehabilitation authority must take, and the matters the rehabilitation authority must consider before arranging a rehabilitation assessment.
48. Subsection 2(1) provides that, before the rehabilitation authority arranges a rehabilitation assessment, the rehabilitation authority must consider whether it has sufficient information regarding the following matters to the extent the matters may be relevant to the employee's rehabilitation:
- (a) the employee's circumstances; or
 - (b) any change in the employee's circumstances; or
 - (c) any relevant matter specified in the Guidelines for Rehabilitation Authorities.
49. Compliance with subsection 2(1) is mandatory for all rehabilitation authorities.

Illustrative scenarios

Scenario one

An employee has recently suffered an injury and there has been no prior assessment of the employee's capability of undertaking a rehabilitation program. A delegate of the rehabilitation authority (**delegate**) reviews the case file for any material relevant to the employee's ability to undertake a rehabilitation program. The delegate considers there to be insufficient information regarding the employee's potential rehabilitation and considers that further information is needed. Accordingly, the delegate should request that information from the employee's treating practitioner.

Scenario two

The employee has previously undergone a rehabilitation examination. Since then, the employee's capacity for work has increased and the treating practitioner has provided updated rehabilitation information. The delegate reviews the information on the case file and considers there to be sufficient information regarding the change in the employee's circumstances such that they do not need to seek additional information from the employee's treating practitioner before arranging a further assessment (desk top assessment) of the employee's capability of undertaking a rehabilitation program.

Information to be sought from employee's treating practitioner

50. Subsection 2(2) provides that, if, in the opinion of the rehabilitation authority, there is insufficient or inconsistent information regarding a matter specified in subsection 2(1), to the extent the matter is relevant to the employee's rehabilitation, the rehabilitation authority should:
 - (a) request, verbally or in writing, the employee's treating practitioner to provide information regarding that matter; and
 - (b) specify that the information must be provided to the rehabilitation authority in writing; and
 - (c) specify a date being not less than 14 days after the date of the request for the information to be provided by the employee's treating practitioner.
51. While paragraph 2(2)(a) provides that a rehabilitation authority's request to the treating practitioner for information may be made verbally, it will be generally preferable for the request to be made in writing. It may be acceptable in some cases for the request to be made verbally, for example, during a rehabilitation case conference or telephone conversation between the treating practitioner and rehabilitation authority. Where a verbal request for information is made, the request should be recorded in writing (for example, in a file note) and/or confirmed in writing (for example, via email), consistent with best practice case management procedures.
52. Notwithstanding that a request for information may be made verbally by a rehabilitation authority, paragraph 2(2)(b) requires that the response from the treating practitioner be in writing, and the rehabilitation authority should advise the treating practitioner of this requirement. Importantly, the information requested and provided in accordance with subsection 2(2) need only address the matter(s) in relation to which there is insufficient or inconsistent information.
53. Paragraph 2(2)(c) provides that a request to the treating practitioner for information should specify a date for the information to be provided, being a date not less than 14 days after the date of the request. Given a comprehensive written response from the treating practitioner will not be required in most cases, the timeframe for complying should also be minimal.
54. In most cases, where the rehabilitation authority is satisfied there is insufficient or inconsistent information regarding a matter specified in subsection 2(1), to the extent the matter is relevant

to the employee's rehabilitation, it is expected that the rehabilitation authority will seek information from the employee's treating practitioner. However, it may be appropriate in exceptional circumstances (for example, emergencies, the treating practitioner is no longer practicing, genuinely time-limited rehabilitation opportunities, or to comply with work health and safety duties) for the rehabilitation authority to not seek information from the employee's treating practitioner.

Rehabilitation assessments without examination

55. Subsection 2(3) provides that the rehabilitation authority should rely on the employee's treating practitioner and the information (if any) provided by the treating practitioner in accordance with subsection 2(2) as much as possible before arranging a rehabilitation assessment by an independent medical practitioner, other qualified person or panel.
 - (a) The phrase 'as much as possible' is taken from subparagraph 57A(3)(a)(ii) of the SRC Act and, consistent with the object of the Guide (to support ethical, transparent and accountable decision-making in relation to arranging rehabilitation assessments), requires the rehabilitation authority to use its best endeavours.
 - (b) If the treating practitioner provides information before the specified date, the rehabilitation authority should proceed with arranging the rehabilitation assessment as soon as reasonably practicable.
 - (c) If the treating practitioner does not provide any information by the specified date, the rehabilitation authority may proceed with arranging the rehabilitation assessment. If the treating practitioner provides some or all of the requested information after a referral is made to the independent medical practitioner, other qualified person or panel, the rehabilitation authority may take that information into account but is not required to rely on that information.
56. In most cases, the rehabilitation authority should rely on the employee's treating practitioner and the information provided by the treating practitioner, to the extent the information provided is relevant to the employee's rehabilitation and the request made in accordance with subsection 2(2).
57. Subsection 2(4) provides that the circumstances in which it is appropriate for the rehabilitation authority to arrange for a rehabilitation assessment, without requiring the employee to undergo an examination, are where:
 - (a) in the opinion of the rehabilitation authority, there is sufficient information regarding the matters specified in subsection 2(1), to the extent the matters are relevant to the employee's rehabilitation, such that an examination of the employee is not required; and
 - (b) it is consistent with any obligation or function of the rehabilitation authority to arrange for the assessment, re-assessment or periodic monitoring of the employee's capability of undertaking a rehabilitation program.
58. Examples of obligations or functions of the kind covered by paragraph 2(4)(b) are those found in the SRC Act (for example, sections 40, 36 and 108E) and under work health and safety laws, public governance, performance and accountability laws, administration of public service laws, and employment laws, to extent those laws apply to the rehabilitation authority.
59. The note to subsection 2(4) provides that, where an employee suffers an 'injury' (within the meaning of the SRC Act: see subsection 4(3), and sections 5A and 123A) resulting in an incapacity for work or an impairment, the rehabilitation authority shall, on the written request of the employee, arrange for the assessment of the employee's capability of undertaking a

rehabilitation program. The note refers the reader to subsection 36(1) of the SRC Act. The rehabilitation authority is still required to comply with the Guide in these circumstances.

60. Subsection 7(2) provides that, for the avoidance of doubt, Part 1 (including section 2) does not require the rehabilitation authority to require the employee to undergo a rehabilitation examination.
61. Subsection 7(3) relevantly provides that, for the avoidance of doubt, Part 1 (including section 2) does not prevent the rehabilitation authority from arranging a rehabilitation assessment by: the employee's treating practitioner; or a panel comprising the treating practitioner and one or more independent medical practitioners or other qualified persons as are nominated by the rehabilitation authority.

Section 3 – Requiring rehabilitation examinations

62. Section 3 specifies the circumstances in which it is appropriate for a rehabilitation authority to require an employee to undergo a rehabilitation examination and outlines the steps the rehabilitation authority must or should take. This section does not apply to rehabilitation assessments where the employee is not required to undergo an examination as part of the assessment.
63. Subsection 3(1) provides that the circumstances in which it is appropriate for the rehabilitation authority to require the employee to undergo a rehabilitation examination are where:
 - (a) the rehabilitation authority has complied with subsection 2(1) (that is, the rehabilitation authority has considered whether it has sufficient information regarding the matters specified in that subsection to the extent those matters may be relevant to the employee's rehabilitation) and subsection 2(2) (that is, the rehabilitation authority has requested the employee's treating practitioner to provide certain information in accordance with the requirements of that subsection); and
 - (b) in the opinion of the rehabilitation authority, there is still insufficient or inconsistent information regarding the matters specified in subsection 2(1), to the extent the matters are relevant to the employee's rehabilitation, such that an examination of the employee is required; and
 - (c) it is consistent with any obligation or function of the rehabilitation authority to require the employee to undergo an examination, re-examination or periodic monitoring of the employee's capability of undertaking a rehabilitation program.
64. Examples of obligations or functions of the kind covered by paragraph 3(1)(c) are those found in the SRC Act (for example, sections 40, 36 and 108E) and under work health and safety laws, public governance, performance and accountability laws, administration of public service laws, and employment laws, to extent those laws apply to the rehabilitation authority.
65. It may be relevant when considering the obligations or functions of the kind covered by paragraph 3(1)(c), on a case-by-case basis, whether it is appropriate to:
 - (a) require the employee to travel long distances to be examined by an assessor or panel if there is a suitably qualified assessor or panel closer to the employee's place of residence;
 - (b) require the employee to see a different assessor if a previous assessor is suitably qualified and available to examine the employee within a reasonable timeframe, particularly if the employee has expressed a preference to be examined by the earlier assessor.

Views to be sought from employee

66. Subsection 3(2) provides that, before the rehabilitation authority requires the employee to undergo a rehabilitation examination, the rehabilitation authority must:
- (a) request, verbally or in writing, the views of the employee, including the reason for those views, about the matters specified in subsection 3(3); and
 - (b) specify that the employee's views must be provided to the rehabilitation authority by a date being not less than 3 business days after the date of the request.
67. While paragraph 3(2)(a) provides that a rehabilitation authority's request to the employee for views may be made verbally, it will be generally preferable for the request to be made in writing. Where a verbal request for information is made, the request should be recorded in writing (for example, in a file note) and/or confirmed in writing (for example, via email), consistent with best practice case management procedures.
68. Paragraph 3(2)(b) provides that a request to the employee for views should specify a date for the information to be provided, being a date not less than 3 business days after the date of the request. If the employee requires more time, for example, to consult their treating practitioner or other professional adviser, it may be appropriate for the rehabilitation authority to grant the employee a reasonable amount of time to undertake that consultation.
69. Subsection 3(3) provides that the following matters are specified for the purposes of subsection 3(2):
- (a) the selection of the assessor or panel who is to conduct the rehabilitation examination; and
 - (b) whether the employee requires a support person; and
 - (c) any other relevant matter that should be considered by the rehabilitation authority before it requires the employee to undergo the rehabilitation examination.
70. The example in relation to paragraph 3(3)(c) notes that the employee might provide their views about their medical restrictions, geographical location and gender, and any language or communication barriers. The example is not intended to be exhaustive, and the employee may identify other relevant matters to be considered by the rehabilitation authority before it requires the employee to undergo the rehabilitation examination.
71. Paragraph 3(4)(a) provides that the rehabilitation authority must take into account the views of the employee (if any) provided by the employee in accordance with subsection 3(2).
- (a) If the employee provides their views by the specified date, the rehabilitation authority must take the employee's views into account. That means that the employee's views must be considered as part of all relevant considerations, which could include the qualifications of the assessor or panel, the location of the assessor or panel, whether a telehealth examination is appropriate, and the cost of a particular assessor or panel. However, the Guide does not limit the views that the employee may provide.
 - (b) The rehabilitation authority does not need to wait until the specified date to proceed with requiring the rehabilitation examination if the employee provides their views at any time before the specified date. This prevents unnecessary delays relating to decisions about an employee's rehabilitation.

- (c) If the employee does not provide their views by the specified date, the rehabilitation authority may proceed with requiring the employee to undergo the rehabilitation examination. If the employee provides their views after the rehabilitation authority 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.
 - (d) 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. See subsection 36(4) of the SRC Act, which provides, in effect, that the obligation on the employee to undergo the examination is subject to a reasonable excuse.
72. Paragraph 3(4)(b) provides that the rehabilitation authority should rely on the employee's treating practitioner and the information (if any) provided by the treating practitioner in accordance with subsection 2(2) as much as possible before requiring the employee to undergo a rehabilitation examination by an independent medical practitioner, other qualified person or panel.
- (a) The phrase 'as much as possible' is taken from subparagraph 57A(3)(a)(ii) of the SRC Act and, consistent with the object of the Guide (to support ethical, transparent and accountable decision-making in relation to requiring an employee to undergo an examination under subsection 36(3) of the SRC Act), requires the rehabilitation authority to use its best endeavours.
 - (b) If the treating practitioner provides information before the specified date, the rehabilitation authority should proceed with arranging the rehabilitation examination as soon as reasonably practicable.
 - (c) If the treating practitioner does not provide any information by the specified date, the rehabilitation authority may proceed with requiring the employee to undergo the rehabilitation examination. If the treating practitioner provides some or all of the requested information after a referral is made to the independent medical practitioner, other qualified person or panel, the rehabilitation authority may take that information into account but is not required to rely on that information.
73. In most cases, the rehabilitation authority should rely on the employee's treating practitioner and the information provided by the treating practitioner, to the extent the information provided by the treating practitioner is relevant to the employee's rehabilitation and the request made in accordance with subsection 2(2).
74. Subsection 3(5) provides that, before the rehabilitation authority requires the employee to undergo a rehabilitation examination, the rehabilitation authority must advise the employee that they may have a support person accompany the employee during part or all of the examination.
- (a) 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).
75. Compliance with subsections 3(2) and (5), and paragraph 3(4)(a), is mandatory for a rehabilitation authority who intends to require the employee to undergo a rehabilitation examination.

Illustrative scenarios

Scenario three

A delegate of the rehabilitation authority (**delegate**) confers with the employee to discuss their rehabilitation needs and the need for a rehabilitation examination. The delegate explains that the rehabilitation authority has a panel arrangement with a third-party service provider that it may use when selecting an assessor. The delegate asks the employee if they have any views on the selection of the assessor who will conduct the examination.

The employee may express a variety of views about the assessor (but is not required to do so) including:

- the assessor's gender;
- the location of the assessor's practice;
- a preference for the same or a different assessor as a prior examination;
- a preference for a telehealth consultation;
- any other views that may be relevant to the employee's attendance or participation in the examination.

The delegate may either:

- document the employee's views or that the employee did not express any views about the selection of the assessor who is to conduct the examination (this should be confirmed in writing such as via an email); or
- ask the employee to respond with their views in writing by a specified date being not less than 3 business days after the date of the request (this should be confirmed in writing such as via an email).

The delegate must take into account the employee's views, if any are provided before the specified date, when making a decision on which rehabilitation assessor to nominate from the panel. The delegate should document their reasons for that decision.

Note: In this scenario, the term 'panel' has its ordinary meaning.

Scenario four

The delegate identifies an 'other qualified person' or an independent medical practitioner who has qualifications relevant to the employee's injury and who is available to provide their services at a reasonable cost. The delegate confers with the employee to discuss the examination, setting out the reasons why the particular assessor has been proposed and asks the employee for their views on the selection of the assessor, to be provided within 3 business days.

The employee provides their views via email 1 business day after the request, which the delegate considers in deciding which assessor to nominate and records the reasons for that decision. Where the employee provides their views before the specified date, the rehabilitation authority may proceed to require the employee to undergo the rehabilitation examination without waiting until after the specified date.

Scenario five

The delegate confers with the employee with a choice of several assessors who have qualifications relevant to the employee's injury, who are available to provide their services at a reasonable cost. The delegate explains the reasons for the proposed selection and asks for the employee's views on the selection of the assessors. The employee requests 5 business days to provide their views to allow them to consult with their treating practitioner, which the delegate grants.

The employee provides their views during a subsequent telephone call with the delegate 6 business days after the request, which the delegate may (but does not have to) consider in deciding which assessor to nominate and must record the reasons for that decision.

Section 4 – Qualifications of assessors

76. Section 4 provides that, before the rehabilitation authority arranges a rehabilitation assessment or requires the employee to undergo a rehabilitation examination by an assessor, whether separately or as a member of a panel, the rehabilitation authority must be reasonably satisfied that the assessor:
- (a) in the case of an other qualified person—is a workplace rehabilitation provider (that is, a person or body approved under section 34F or 34H of the SRC Act as a rehabilitation program provider including a person or body so approved whose approval is renewed under section 34L of the SRC Act) or has the equivalent qualifications of a workplace rehabilitation provider; or
 - (b) in any other case—is a medical practitioner (that is, a person who is registered with the Australian Health Practitioner Regulation Agency as a medical practitioner) who is qualified, by their training or registration, to assess the employee’s injury.
77. Compliance with section 4 is mandatory for all rehabilitation authorities.

Section 5 – Notice requirements

78. Section 5 contains additional notice requirements in relation to a rehabilitation examination of the employee. These are additional notice requirements because the usual notice requirements in section 38 or 61 of the SRC Act, whichever applies, do not require the notice to address the employee’s rights and obligations relating to the examination.
79. The additional notice requirements in this section do not apply to a rehabilitation assessment where the employee is not required to undergo an examination as part of the assessment. However, the usual notice requirements in section 38 or 61 of the SRC Act, whichever applies, continue to apply to a rehabilitation assessment where the employee is not required to undergo an examination as part of the assessment.
80. Subsection 5(1) provides that, as soon as practicable after a rehabilitation authority makes a determination requiring the employee to undergo a rehabilitation examination by an assessor or panel (that is, a determination under subsection 36(3) of the SRC Act), the rehabilitation authority must give the employee a notice of the employee’s rights and obligations relating to the examination. This is in addition to the usual notice requirements in section 38 or 61 of the SRC Act, whichever applies.
81. The first note to section 5 provides that the requirements for notifying determinations under section 36 are contained in section 38 (for a rehabilitation authority other than a relevant authority) or section 61 (for a rehabilitation authority that is a relevant authority) of the SRC Act.
- (a) Section 38 of the SRC Act relevantly provides that the notice shall be in writing and set out: the terms of the determination; the reasons for the determination; and a statement to the effect that the employee may, if dissatisfied with the determination, request Comcare for a review of the determination under section 38.
 - (b) Section 61 of the SRC Act relevantly provides that the notice shall be in writing and set out: the terms of the determination; the reasons for the determination; and a statement to

the effect that the employee may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 62(2).

82. The second note to section 5 provides that the employee has rights and obligations under sections 36 of the SRC Act, and under either section 38 or 62 of the SRC Act. The notice of rights and obligations under section 5 should include reference to and describe the effect of these sections.
- (a) The employee is able to refuse to undergo a rehabilitation examination without sanction but only if the employee has a reasonable excuse to do so. Subsection 36(4) of the SRC Act provides that, where an employee refuses or fails, without reasonable excuse, to undergo an examination in accordance with a requirement, or in any way obstructs such an examination, the employee's rights to compensation under the SRC Act, and to institute or continue any proceedings under the SRC Act in relation to compensation, are suspended until the examination takes place. However, subsection 36(4) does not operate to suspend the employee's right to compensation for the cost of medical treatment that is payable under section 16 (SRC Act, subsection 36(4A)). Where an employee's right to compensation is suspended under subsection 36(4), compensation is not payable in respect of the period of the suspension (SRC Act, subsection 36(7)).
 - (b) The employee has a right of reimbursement of reasonable expenses incurred in relation to the rehabilitation examination. Subsection 36(5) of the SRC Act provides that the relevant authority shall pay the cost of conducting any examination of an employee and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose. In deciding questions arising under subsection 36(5), a relevant authority shall have regard to the matters in subsection 36(6).
 - (c) The employee has a right to request a review of a determination that the employee is required to undergo a rehabilitation examination. Subsection 38(2) of the SRC Act provides that an employee in respect of whom a determination under section 36 is made by a rehabilitation authority (other than a relevant authority) may, by notice in writing given to Comcare, request Comcare to review the determination. A request shall: set out the reasons for the request; and be given to Comcare within 30 days after the day on which the determination first came to the notice of the employee, or within such further period (if any) as Comcare, either before or after the expiration of that period, allows (SRC Act, subsection 38(3)).
 - (d) The employee (if employed by a licensee) has a right to request reconsideration of a determination that the employee is required to undergo a rehabilitation examination. Subsections 60(1) and 62(2) of the SRC Act provide, in effect, that a request to a determining authority (that is, in relation to a determination, the person who made the determination) to reconsider a determination made by it under section 36 may be made by the claimant (that is, a person in respect of whom a determination is made). A request for reconsideration of a determination shall: set out the reasons for the request; and be given to the determining authority within 30 days after the day on which the determination first came to the notice of the person making the request, or within such further period (if any) as the determining authority, either before or after the expiration of that period, allows (SRC Act, subsection 62(3)).
83. Subsection 5(2) provides that the notice required by subsection 5(1) must also include the rehabilitation authority's reasons for:
- (a) accepting or not accepting, whether in whole or part, the views of the employee (if any) provided by the employee in accordance with subsection 3(2); and

- (b) relying on or not relying on, whether in whole or part, the employee's treating practitioner and the information (if any) provided by the treating practitioner in accordance with subsection 2(2).
84. Subsection 5(3) provides that, if the rehabilitation authority makes a determination requiring the employee to undergo a rehabilitation examination by a medical practitioner, or a panel comprising one or more medical practitioners, the notice required by subsection 5(1) must be given to the employee:
- (a) at least 14 days before the date of the rehabilitation examination; or
 - (b) if the employee has agreed to a notice period of less than 14 days—a period before the date of the rehabilitation examination being not less than the notice period agreed to by the employee.
85. It is generally preferable that an employee's agreement to a period specified in paragraph 5(3)(b) should be confirmed in writing by the employee. If there is a verbal agreement for a notice period of less than 14 days, the agreement should be recorded in writing (for example, in a file note) and/or confirmed in writing (for example, via email), consistent with best practice case management procedures.
86. Compliance with section 5 is mandatory for a rehabilitation authority who has required an employee to undergo a rehabilitation examination.

Section 6 – Limitations on frequency and number of rehabilitation examinations

87. Section 6 limits the frequency and number of rehabilitation examinations of an employee in respect of the injury. This section does not apply to rehabilitation assessments where the employee is not required to undergo an examination as part of the assessment.
88. Subsection 6(1) provides that the employee shall not be required to undergo more than one rehabilitation examination in respect of the injury more frequently than at 6-month intervals, where each interval commences the day after the last day on which the last examination took place (the **minimum interval**).
89. Subsection 6(2) provides that the minimum interval *only* applies in relation to a rehabilitation examination if: the employee undergoes the examination; and the employee does not in any way obstruct the examination; and the support person (if any) does not in any way obstruct the examination. For example, if the employee is unable to attend an examination (for whatever reason), the rehabilitation authority may choose to reschedule the examination and require the employee to undergo the rescheduled examination as soon as reasonably practicable.
90. Subsection 6(3) provides that the minimum interval *does not apply* in relation to a rehabilitation examination in certain specified circumstances. If any of the circumstances arise, the rehabilitation authority may require the employee to undergo a rehabilitation examination (in accordance with the Guide) within the minimum interval.
91. Paragraph 6(3)(a) provides that the minimum interval does not apply if the employee has made a written request for a rehabilitation assessment in accordance with subsection 36(1) of the SRC Act during the minimum interval.
92. Paragraph 6(3)(b) provides that the minimum interval does not apply if the employee's treating practitioner has recommended a rehabilitation assessment during the minimum interval.

93. Paragraph 6(3)(c) provides that the minimum interval does not apply if an earlier rehabilitation assessment recommended a further examination or re-examination by a specific date or after a specific period, and the date is, or the period ends, during the minimum interval.
94. Paragraph 6(3)(d) provides that the minimum interval does not apply if there has been a change in the employee's circumstances. For example, if:
- (a) there is an improvement or deterioration in the employee's injury affecting their need for medical treatment, household services or attendant care services; or
 - (b) there is an improvement or deterioration in the employee's injury, or any other medical condition suffered by the employee, affecting their capacity for work; or
 - (c) there is an improvement or deterioration in the impairment resulting from the employee's injury affecting their capability of undertaking a rehabilitation program or their need for aids or appliances; or
 - (d) the employee relocates their place of residence affecting the availability of suitable employment.
95. Paragraph 6(3)(e) provides that the minimum interval does not apply if the injury requires multidisciplinary medical treatment and:
- (a) it is not reasonably practicable for a single assessor or panel to address all the matters that are the subject of paragraph 3(1)(b); and
 - (b) it is appropriate for the rehabilitation authority to require the employee to undergo more than one rehabilitation examination, with a different assessor or panel, during the minimum interval.
96. For example, some back injuries affect the bones and muscles, and the nervous system, and require treatment from multiple medical disciplines (such as an orthopaedic surgeon, a neurosurgeon, a urologist and/or a pain specialist).
97. Paragraph 6(3)(f) provides that the minimum interval does not apply if the assessor or panel nominated by the rehabilitation authority to conduct the rehabilitation examination fails, for any reason, to provide a written assessment of the employee's capability of undertaking a rehabilitation program within: the timeframe specified by the rehabilitation authority as part of the arrangement; or such additional timeframe allowed by the rehabilitation authority.
98. Paragraph 6(3)(g) provides that the minimum interval does not apply if a request for reconsideration of any determination is made in accordance with section 38 or 62 of the SRC Act and: in the opinion of Comcare or the relevant authority, as the case may be, there is insufficient or inconsistent information regarding any matter relevant to the reasons for the request; and a reviewable decision has not yet been made in relation to the request.
99. Paragraph 6(3)(h) provides that the minimum interval does not apply if an application for review of any reviewable decision is made in accordance with section 64 of the SRC Act and: in the opinion of the person or body who made the reviewable decision, there is insufficient or inconsistent information regarding any matter relevant to the review; and a final decision has not yet been made in relation to the review. Section 64 of the SRC Act provides that applications may be made to the Administrative Appeals Tribunal (soon to be the Administrative Review Tribunal).

Section 7 – Other relevant matters

100. Subsection 7(1) provides that, nothing in Part 1 is to be construed so as to require a rehabilitation authority to comply with Part 1 separately or sequentially. That is, the rehabilitation authority may comply with the requirements of Part 1 at the same time or by the same conduct.
101. An example to subsection 7(1) provides that the rehabilitation authority may seek information from the employee's treating practitioner at the same time as, or before or after, seeking views from the employee.
102. Subsection 7(2) provides that, for the avoidance of doubt, Part 1 does not require the rehabilitation authority to require the employee to undergo a rehabilitation examination. The rehabilitation authority may consider it appropriate to arrange a rehabilitation assessment without an examination at any time, subject to sections 2 and 4.
103. Subsection 7(3) provides that, for the avoidance of doubt, Part 1 does not prevent the rehabilitation authority from arranging a rehabilitation assessment, or requiring the employee to undergo a rehabilitation examination, by: the employee's treating practitioner; or a panel comprising the treating practitioner and one or more independent medical practitioners or other qualified persons as are nominated by the rehabilitation authority.
104. Subsection 7(4) provides that the rehabilitation authority must keep a record of the views of the employee (if any) provided by the employee in accordance with subsection 3(2) for the period required by any law that applies to the record or records of that kind.
105. Subsection 7(5) provides that, if the rehabilitation authority makes a determination requiring the employee to undergo a rehabilitation examination, the rehabilitation authority must provide the assessor's or panel's report of the examination to certain persons in accordance with the Guidelines for Rehabilitation Authorities.
 - (a) At the time the Instrument commenced, the Guidelines for Rehabilitation Authorities relevantly provided (at subsection 8(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 (c) the relevant authority'*.
 - (b) The reference in subsection 8(4) of the Guidelines for Rehabilitation Authorities to *'a written rehabilitation assessment under section 36 of the Act'* includes the assessor's or panel's report of the examination.
 - (c) The reference in subsection 8(4) of the Guidelines for Rehabilitation Authorities to *'the employee's medical practitioner'* may be read as a reference to the employee's treating practitioner where that practitioner is a medical practitioner.

Part 2 – Medical examinations

Section 8 – Application of this Part

106. Section 8 provides that Part 2 is made for the purposes of section 57A of the SRC Act and applies in relation to medical examinations of an employee who suffers an injury, or claims to suffer an injury, and where the relevant authority considers that it is reasonable and necessary to obtain further medical evidence.
107. Subsection 8(2) provides that, in Part 2, a reference to an ***injury*** includes a reference to the effects of the injury. The effects of the injury include, for example: the need for medical

treatment in relation to the injury; the incapacity for work or impairment resulting from the injury; the need for household services or attendant care services as a result of the injury; the non-economic loss resulting from the injury or impairment; and the need for any alterations, modifications or aids or appliances as a result of the impairment.

108. If the relevant authority requires the employee to undergo a medical examination, the authority must comply with sections 9 to 13.
109. Failure to substantively comply with the requirements of Part 2 for the purpose of making a determination under section 57 of the SRC Act may be a relevant consideration if the determination is the subject of a request for reconsideration under section 62 of the SRC Act.

Section 9 – Requiring medical examinations

110. Section 9 specifies the circumstances in which it is appropriate for a relevant authority to require an employee to undergo a medical examination and outlines the steps the relevant authority must or should take.
111. Subsection 9(1) provides that, before the relevant authority requires the employee to undergo a medical examination, the relevant authority must consider whether it has sufficient information regarding the following matters:
 - (a) the employee’s circumstances; or
 - (b) any change in the employee’s circumstances; or
 - (c) the employee’s capability of undertaking a rehabilitation program.
112. The note to subsection 9(1) provides that paragraph 9(1)(c) may be relevant where, for example, a relevant authority has an obligation or function in relation to a matter concerning a claim for compensation under Division 3 of Part II (concerning injuries resulting in incapacity for work) or section 39 (concerning alterations, modifications or aids or appliances) of the SRC Act.

Information to be sought from employee’s treating practitioner

113. Subsection 9(2) provides that, if, in the opinion of the relevant authority, there is insufficient or inconsistent information regarding a matter specified in subsection 9(1), the relevant authority should:
 - (a) request in writing the employee’s treating practitioner to provide information regarding that matter; and
 - (b) specify that the information must be provided to the relevant authority in writing; and
 - (c) specify a date being not less than 14 days after the date of the request for the information to be provided by the employee’s treating practitioner.
114. The information requested and provided in accordance with subsection 9(2) need only address the matter(s) in relation to which there is insufficient or inconsistent information.
115. Subsection 9(2)(c) provides that a request to the treating practitioner for information should specify a date for the information to be provided, being a date not less than 14 days after the date of the request.
116. In most cases, where the relevant authority is satisfied there is insufficient or inconsistent information regarding a matter specified in subsection 9(1), it is expected that the relevant

authority will seek information from the employee's treating practitioner. However, it may be appropriate in exceptional circumstances (for example, emergencies, the treating practitioner is no longer practicing, genuinely time-limited medical treatment opportunities, or to comply with work health and safety duties) for the relevant authority to not seek information from the employee's treating practitioner.

117. The note to subsection 9(2) provides that the effect of a request made in accordance with subsection 9(2) is that subsection 11A(3) of the SRC Regulations will apply and the period in which days are not counted for determining a claim will start on the day the relevant authority requests the further evidence and end on the day the relevant authority receives the report, if: the employee's treating practitioner is a medical practitioner; and the claim is a claim for compensation under section 14 of the SRC Act. The note refers the reader to item 5 of the table in section 11A of the SRC Regulations.
118. Subsection 9(3) provides that the relevant authority should rely on the employee's treating practitioner, and the information (if any) provided by the treating practitioner in accordance with subsection 9(2), as much as possible before requiring the employee to undergo a medical examination by an independent medical practitioner.
 - (a) The phrase 'as much as possible' is taken from subparagraph 57A(3)(a)(ii) of the SRC Act and, consistent with the object of the Guide (to support ethical, transparent and accountable decision-making in relation to requiring an employee to undergo an examination under subsection 57(1) of the SRC Act), requires the relevant authority to use its best endeavours.
 - (b) If the treating practitioner provides information before the specified date, the relevant authority should proceed with requiring the employee to undergo the medical examination as soon as reasonably practicable. This prevents unnecessary delays relating to decisions about an employee's claim.
 - (c) If the treating practitioner does not provide any information by the specified date, the relevant authority may proceed with requiring the employee to undergo the medical examination. If the treating practitioner provides some or all of the requested information after a referral is made to the independent medical practitioner, the relevant authority may take that information into account but is not required to rely on that information.
119. In most cases, the relevant authority should rely on the employee's treating practitioner and the information provided by the treating practitioner, to the extent the information provided is relevant to the request made in accordance with subsection 9(2).
120. Subsection 9(4) provides that the circumstances in which it is appropriate for the relevant authority to require the employee to undergo a medical examination are where:
 - (a) the relevant authority has complied with subsection 9(1) (that is, the relevant authority has considered whether it has sufficient information regarding the matters specified in that subsection) and subsection 9(2) (that is, the relevant authority has requested the employee's treating practitioner to provide certain information in accordance with the requirements of that subsection); and
 - (b) in the opinion of the relevant authority, there is still insufficient or inconsistent information regarding the matters specified in subsection 9(1) such that an examination is required; and
 - (c) it is consistent with any obligation or function of the relevant authority to require the employee to undergo an examination, re-examination or periodic monitoring of the injury.

121. Examples of obligations or functions of the kind covered by paragraph 9(4)(c) are those found in the SRC Act (for example, sections 14 and 108E) and under work health and safety laws, public governance, performance and accountability laws, administration of public service laws, and employment laws, to extent those laws apply to the relevant authority.
122. It may be relevant when considering the obligations or functions of the kind covered by paragraph 9(4)(c), on a case-by-case basis, whether it is appropriate to:
 - (a) require the employee to travel long distances to be examined by a medical practitioner if there is a suitably qualified assessor closer to the employee's place of residence;
 - (b) require the employee to see a different medical practitioner if a previous medical practitioner is suitably qualified and available to examine the employee within a reasonable timeframe, particularly if the employee has expressed a preference to be examined by the earlier medical practitioner.

Views to be sought from employee

123. Subsection 9(5) provides that, before the relevant authority requires the employee to undergo a medical examination, the relevant authority must:
 - (a) request, verbally or in writing, the views of the employee, including the reasons for those views, about the matters specified in subsection 9(6); and
 - (b) specify that the employee's views must be provided to the relevant authority by a date being not less than 3 business days after the date of the request.
124. While paragraph 9(5)(a) provides that a relevant authority's request to the employee for views may be made verbally, it will be generally preferable for the request to be made in writing. Where a verbal request for information is made, the request should be recorded in writing (for example, in a file note) and/or confirmed in writing (for example, via email), consistent with best practice claims management procedures.
125. Subsection 9(5)(b) provides that a request to the employee for views should specify a date for the information to be provided, being a date not less than 3 business days after the date of the request. If the employee requires more time, for example, to consult their treating practitioner or other professional adviser, it may be appropriate for the relevant authority to grant the employee a reasonable amount of time to undertake that consultation.
126. Subsection 9(6) provides that the following matters are specified for the purposes of subsection 9(5):
 - (a) the selection of the medical practitioner who is to conduct the medical examination; and
 - (b) whether the employee requires a support person; and
 - (c) any other relevant matter that should be considered by the relevant authority before it requires the employee to undergo the medical examination.
127. The example in relation to paragraph 9(6)(c) notes that the employee might provide their views about their medical restrictions, geographical location and gender, and any language or communication barriers. The example is not intended to be exhaustive, and the employee may identify other relevant matters to be considered by the relevant authority before it requires the employee to undergo the medical examination.
128. Subsection 9(7) provides that the relevant authority must take into account the views of the employee (if any) provided by the employee in accordance with subsection 9(5).

- (a) If the employee provides their views by the specified date, the relevant authority must take the employee's views into account. That means that the employee's views must be considered as part of all relevant considerations, which could include the qualifications of the medical practitioner, the location of the medical practitioner, whether a telehealth examination is appropriate, and the cost of a particular medical practitioner. However, the Guide does not limit the views that the employee may provide.
 - (b) The relevant authority does not need to wait until the specified date to proceed with requiring the medical examination if the employee provides their views at any time before the specified date.
 - (c) If the employee does not provide their views by the specified date, the relevant authority may proceed with requiring the employee to undergo the medical examination. If the employee provides their views after the relevant authority has selected the medical practitioner, the relevant authority may take that information into account but is not required to take the employee's views into account.
 - (d) 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 relevant authority should take those views into account. See subsection 57(2) of the SRC Act, which provides, in effect, that the obligation on the employee to undergo the examination is subject to a reasonable excuse.
129. Subsection 9(8) provides that, before the relevant authority requires the employee to undergo a medical examination, the relevant authority must advise the employee that they may have a support person accompany the employee during part or all of the examination.
- (a) Some medical practitioners 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 relevant authority should ensure the employee is aware of any potential limitations when advising the employee in accordance with subsection 9(8).
130. Compliance with subsections 9(5), (7) and (8) is mandatory for a relevant authority who intends to require the employee to undergo a medical examination.

Illustrative scenarios

Scenario six

A delegate of the relevant authority (**delegate**) confers with the employee to discuss the need for a medical examination. The delegate explains that the relevant authority has a panel arrangement with a third-party service provider that it may use when selecting a medical practitioner. The delegate asks the employee if they have any views on the selection of the medical practitioner who will conduct the examination.

The employee may express a variety of views about the medical practitioner (but is not required to do so) including:

- the medical practitioner's gender;
- the location of the medical practitioner's practice;
- a preference for the same or a different medical practitioner as a prior examination;
- a preference for a telehealth consultation;
- any other views that may be relevant to the employee's attendance or participation in the examination.

The delegate may either:

- document the employee's views or that the employee did not express any views about the selection of the medical practitioner who is to conduct the examination (this should be confirmed in writing such as via an email); or
- ask the employee to respond with their views in writing by a specified date being not less than 3 business days after the date of the request (this should be confirmed in writing such as via an email).

The delegate must take into account the employee's views, if any are provided before the specified date, when making a decision on which medical practitioner to nominate from the panel. The delegate should document their reasons for that decision.

Note: In this scenario, the term 'panel' has its ordinary meaning.

Scenario seven

The delegate identifies an independent medical practitioner who has qualifications relevant to the employee's injury and who is available to provide their services at a reasonable cost. The delegate confers with the employee to discuss the examination, setting out the reasons why the particular medical practitioner has been proposed and asks the employee for their views on the selection of the medical practitioner, to be provided within 3 business days.

The employee provides their views via email 1 business day after the request, which the delegate considers in deciding which medical practitioner to nominate and records the reasons for that decision. Where the employee provides their views before the specified date, the relevant authority may proceed to require the employee to undergo the medical examination without waiting until after the specified date.

Scenario eight

The delegate confers with the employee with a choice of several medical practitioners who have qualifications relevant to the employee's injury, who are available to provide their services at a reasonable cost. The delegate explains the reasons for the proposed selection and asks for the employee's views on the selection of one of the medical practitioners. The employee requests 5 business days to provide their views to allow them to consult with their treating practitioner, which the delegate grants.

The employee provides their views during a subsequent telephone call with the delegate 6 business days after the request, which the delegate may (but does not have to) consider in deciding which medical practitioner to nominate and must record the reasons for that decision.

Section 10 – Qualifications of medical practitioners

131. Section 10 provides that, before the relevant authority requires the employee to undergo a medical examination by a person, the relevant authority must be reasonably satisfied that the person:
- (a) is a medical practitioner (that is, a person who is registered with the Australian Health Practitioner Regulation Agency as a medical practitioner); and
 - (b) qualified, by their training or registration, to assess the employee's injury.
132. Compliance with section 10 is mandatory for all relevant authorities.

Section 11 – Notice requirements

133. Section 11 contains additional notice requirements in relation to the medical examination of the employee. These are additional notice requirements because the usual notice requirements in section 61 of the SRC Act do not require the notice to address the employee's rights and obligations relating to the examination.
134. Subsection 11(1) provides that, as soon as practicable after a relevant authority makes a determination requiring the employee to undergo a medical examination (that is, a determination under subsection 57(1) of the SRC Act), the relevant authority must give the employee a notice of the employee's rights and obligations relating to the examination. This is in addition to the usual notice requirements in section 61 of the SRC Act.
135. The first note to subsection 11(1) provides that the requirements for notifying determinations under section 57 are contained in section 61 of the SRC Act. Section 61 relevantly provides that the notice shall be in writing and set out:
- (a) the terms of the determination;
 - (b) the reasons for the determination; and
 - (c) a statement to the effect that the employee may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 62(2) of the SRC Act.
136. The second note to subsection 11(1) provides that the employee has rights and obligations under sections 57 and 62 of the SRC Act. The notice of rights and obligations under subsection (1) should include reference to and describe the effect of these sections.
- (a) The employee is able to refuse to undergo a medical examination without sanction but only if the employee has a reasonable excuse to do so. Subsection 57(2) of the SRC Act provides that, where an employee refuses or fails, without reasonable excuse, to undergo an examination, or in any way obstructs an examination, the employee's rights to compensation under the SRC Act, and to institute or continue any proceedings under the SRC Act in relation to compensation, are suspended until the examination takes place. Where an employee's right to compensation is suspended under subsection 57(2), compensation is not payable in respect of the period of the suspension (SRC Act, subsection 57(5)).
 - (b) The employee has a right of reimbursement of reasonable expenses incurred in relation to the medical examination. Subsection 57(3) of the SRC Act provides that the relevant authority shall pay the cost of conducting any examination required under section 57 and is liable to pay to the employee an amount equal to the amount of the expenditure reasonably incurred by the employee in making a necessary journey in connection with the examination or remaining, for the purpose of the examination, at a place to which the employee has made a journey for that purpose. The matters to which the relevant authority is to have regard in deciding questions arising under subsection 57(3) include: the means of transport available to the employee for the journey; the route or routes by which the employee could have travelled; and the accommodation available to the employee (SRC Act, subsection 57(4)).
 - (c) The employee has a right to request reconsideration of a determination requiring the employee to undergo a medical examination. Subsections 60(1) and 62(2) of the SRC Act provide, in effect, that a request to a determining authority (that is, in relation to a determination, the person who made the determination) to reconsider a determination made by it under section 57 may be made by the claimant (that is, a person in respect of whom a determination is made). A request for reconsideration of a determination shall: set out the reasons for the request; and be given to the determining authority within

30 days after the day on which the determination first came to the notice of the person making the request, or within such further period (if any) as the determining authority, either before or after the expiration of that period, allows (SRC Act, subsection 62(3)).

137. The third note to subsection 11(1) provides that the effect of a notice given in accordance with section 11 is that subsection 11A(3) of the SRC Regulations will apply and the period in which days are not counted for determining a claim will start on the day the relevant authority gives the employee the notice and end on the day the relevant authority receives the results of the medical examination.
138. Subsection 11(2) provides that the notice required by subsection 11(1) must also include the relevant authority's reasons for:
- (a) accepting or not accepting, whether in whole or part, the views of the employee (if any) provided by the employee in accordance with subsection 9(5); and
 - (b) relying on or not relying on, whether in whole or part, the employee's treating practitioner and the information (if any) provided by the treating practitioner in accordance with subsection 9(2).
139. Subsection 11(3) provides that, if the relevant authority makes a determination requiring the employee to undergo a medical examination, the notice required by subsection 11(1) must be given to the employee:
- (a) at least 14 days before the date of the medical examination; or
 - (b) if the employee has agreed to a notice period of less than 14 days—a period before the date of the medical examination being not less than the notice period agreed to by the employee.
140. It is generally preferable that an employee's agreement to a period specified in paragraph 11(3)(b) should be confirmed in writing by the employee. If there is a verbal agreement for a notice period of less than 14 days, the agreement should be recorded in writing (for example, in a file note) and/or confirmed in writing (for example, via email), consistent with best practice claims management procedures.
141. Compliance with section 11 is mandatory for a relevant authority who has required an employee to undergo a medical examination.

Section 12 – Limitations on frequency and number of medical examinations

142. Section 12 limits the frequency and number of medical examinations of an employee in respect of the injury.
143. Subsection 12(1) provides that the employee shall not be required to undergo more than one medical examination in respect of the injury more frequently than at 6-month intervals, where each interval commences the day after the last day on which the last examination took place (the **minimum interval**).
144. Subsection 12(2) provides that the minimum interval *only* applies in relation to a medical examination if: the employee undergoes the examination; and the employee does not in any way obstruct the examination; and the support person (if any) does not in any way obstruct the examination. For example, if the employee is unable to attend an examination (for whatever reason), the relevant authority may choose to reschedule the examination and require the employee to undergo the rescheduled examination as soon as reasonably practicable.

145. Subsection 12(3) provides that the minimum interval *does not apply* in relation to a medical examination in certain specified circumstances. If any of the circumstances arise, the relevant authority may require the employee to undergo a medical examination (in accordance with the Guide) within the minimum interval.
146. Paragraph 12(3)(a) provides that the minimum interval does not apply if the employee has requested a medical examination during the minimum interval.
147. Paragraph 12(3)(b) provides that the minimum interval does not apply if the employee's treating practitioner has recommended a medical examination during the minimum interval.
148. Paragraph 12(3)(c) provides that the minimum interval does not apply if a medical practitioner, following an earlier medical examination, recommended a further examination or re-examination by a specific date or after a specific period, and the date is, or the period ends, during the minimum interval.
149. Paragraph 12(3)(d) provides that the minimum interval does not apply if there has been a change in the employee's circumstances. For example, if:
 - (a) there is an improvement or deterioration in the employee's injury affecting their need for medical treatment, household services or attendant care services; or
 - (b) there is an improvement or deterioration in the employee's injury, or any other medical condition suffered by the employee, affecting their capacity for work; or
 - (c) there is an improvement or deterioration in the impairment resulting from the employee's injury affecting their capability of undertaking a rehabilitation program or their need for aids or appliances; or
 - (d) the employee relocates their place of residence affecting the availability of suitable employment.
150. Paragraph 12(3)(e) provides that the minimum interval does not apply if the injury requires multidisciplinary medical treatment and:
 - (a) it is not reasonably practicable for a single medical practitioner to address all the matters that are the subject of paragraph 9(4)(b); and
 - (b) it is appropriate for the relevant authority to require the employee to undergo more than one medical examination, with a different medical practitioner, during the minimum interval.
151. For example, some back injuries affect the bones and muscles, and the nervous system, and require treatment from multiple medical disciplines (such as an orthopaedic surgeon, a neurosurgeon, a urologist and/or a pain specialist).
152. Paragraph 12(3)(f) provides that the minimum interval does not apply if the medical practitioner nominated by the relevant authority to conduct the medical examination fails, for any reason, to provide a written report of the examination within: the timeframe specified by the relevant authority as part of the arrangement; or such additional timeframe allowed by the relevant authority.
153. Paragraph 12(3)(g) provides that the minimum interval does not apply if a request for reconsideration of any determination is made in accordance with section 62 of the SRC Act and: in the opinion of the relevant authority there is insufficient or inconsistent information

regarding any matter relevant to the reasons for the request; and a reviewable decision has not yet been made in relation to the request.

154. Paragraph 12(3)(h) provides that the minimum interval does not apply if an application for review of any reviewable decision is made in accordance with section 64 of the SRC Act and: in the opinion of the person or body who made the reviewable decision, there is insufficient or inconsistent information regarding any matter relevant to the review; and a final decision has not yet been made in relation to the review. Section 64 of the SRC Act provides that applications may be made to the Administrative Appeals Tribunal (soon to be the Administrative Review Tribunal).

Section 13 – Other relevant matters

155. Subsection 13(1) provides that, nothing in Part 2 is to be construed so as to require a relevant authority to comply with Part 2 separately or sequentially. That is, the relevant authority may comply with the requirements of Part 2 at the same time or by the same conduct.
156. An example to subsection 13(1) provides that the relevant authority may seek information from the employee's treating practitioner at the same time as, or before or after, seeking views from the employee.
157. Subsection 13(2) provides that, for the avoidance of doubt, Part 2 does not: require the relevant authority to require the employee to undergo a medical examination; or prevent the relevant authority from requiring the employee to undergo a medical examination by the employee's treating practitioner if that practitioner is a medical practitioner.
158. Subsection 13(3) provides that the relevant authority must keep a record of the views of the employee (if any) provided by the employee in accordance with subsection 9(5) for the period required by any law that applies to the record or records of that kind.
159. Subsection 13(4) provides that, if the relevant authority makes a determination requiring the employee to undergo a medical examination, the relevant authority must provide the medical practitioner's report of the examination to the employee, or the employee's nominated representative or the employee's treating practitioner. A nominated representative is any person who the employee has lawfully nominated as their representative, including a legal representative.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Safety, Rehabilitation and Compensation Act 1988 – Guide for Arranging Rehabilitation Assessments and Requiring Examinations 2024

This disallowable legislative instrument (this **Instrument**) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

The *Safety, Rehabilitation and Compensation Act 1988* (the **SRC Act**) establishes the workers' compensation and rehabilitation scheme for employees of the Commonwealth, Commonwealth authorities and licensed corporations. The SRC Act authorises relevant decision-makers to arrange rehabilitation assessments and require rehabilitation examinations and medical examinations, subject to the provisions in sections 36 and 57 of that Act.

Pursuant to section 57A of the SRC Act, which commenced operation on 14 June 2024, Comcare must, in consultation with the Safety, Rehabilitation and Compensation Commission, prepare a Guide for Arranging Rehabilitation Assessments and Requiring Examinations (the **Guide**). The object of the Guide is to support ethical, transparent and accountable decision-making in relation to arranging a rehabilitation assessment of an employee, or requiring an employee to undergo an examination, including appropriate consideration of the employee's personal circumstances. Section 57A further provides that the Guide:

- must provide that, for the purposes of a rehabilitation assessment or examination of an employee, information in relation to the employee should be sought from the employee's treating practitioner, and the employee's treating practitioner and the information (if any) provided by the treating practitioner should be relied on as much as possible before a referral is made to an independent medical practitioner, or other qualified person, in relation to the employee;
- must specify the circumstances in which it is appropriate to require an employee to undergo a rehabilitation assessment or examination;
- must specify limitations on the frequency and number of rehabilitation assessments or examinations that an employee may be required to undergo;
- must specify the qualifications of the person or, if required under section 36, the panel of persons who may conduct a rehabilitation assessment or an examination of an employee;
- must require the relevant decision-maker to seek, and take into account, the views of an employee, who is required to undergo a rehabilitation assessment or examination, about the selection of the person or, if required under section 36, the panel of persons who are to conduct the rehabilitation assessment or examination;
- must require that an employee who is required to undergo a rehabilitation assessment or examination be given a notice of the employee's rights relating to the rehabilitation assessment or examination; and
- may provide for any other relevant matter.

The purpose of this Instrument is to bring into existence the first edition of the Guide as required by section 57A of the SRC Act. The Guide appears at Schedule 1 to this Instrument.

Human rights implications

This Instrument engages the following rights:

Right to work

This Instrument engages the right to work as set out in Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (the **ICESCR**).

Article 6 of the ICESCR provides for the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Article 7 of the ICESCR provides for the right to enjoyment of just and favourable conditions of work, fair wages and a decent living.

The SRC Act ensures the protection of injured employees including by way of conferring rights for an employee to submit a claim for compensation and to have their entitlement to rehabilitation or compensation determined. The SRC Act provides the means by which a relevant decision-maker may investigate and assess an employee's claim, including by way of a rehabilitation assessment, a rehabilitation examination or a medical examination. This Instrument provides the means by which a relevant decision-maker is to arrange such assessments or examinations in an ethical, transparent and accountable manner.

This Instrument puts in place a number of protections for employees during the workers' compensation claims process, including by requiring the views of the employee to be sought, requiring the employee's treating practitioner to be consulted and limiting the number of rehabilitation or medical examinations which may be required. Decisions under sections 36 and 57 of the SRC Act may be subject to internal reconsideration and then external merits review by the Administrative Appeals Tribunal (soon to be the Administrative Review Tribunal).

To the extent this Instrument supports the access by employees to work and economic support after they suffer a work-related injury, including by access to compensation and vocational rehabilitation, the Instrument promotes the right to work.

Right to social security

This Instrument engages the right to social security as set out in Article 9 of ICESCR.

Article 9 of the ICESCR provides for the right of everyone to social security, including social insurance. General Comment 19 by the Committee on Economic, Social and Cultural Rights sets out the essential elements of the right to social security, including that '*States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work*'.¹ Workers' compensation is analogous to social insurance in that it provides for payment of wages and medical costs to employees for injuries occurring as a result of their employment.

As noted above, the SRC Act provides the means by which a relevant decision-maker may investigate and assess an employee's claim, including by way of a rehabilitation assessment, rehabilitation examination or medical examination. This Instrument provides the means by which a relevant decision-maker is to arrange such assessments or examinations in an ethical, transparent and accountable manner. As such, this Instrument promotes the right to social security.

Right to an adequate standard of living

This Instrument engages the right to an adequate standard of living as set out in Article 11 of the ICESCR.

Article 11 of the ICESCR provides for the right to an adequate standard of living including adequate food, clothing and housing, and to the continuous improvement of living conditions. As noted above,

¹ Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)*, U.N. Doc E/C.12/GC/19 (2008), [17].

the SRC Act provides the means by which a relevant decision-maker may investigate and assess an employee's claim, including by way of a rehabilitation assessment, rehabilitation examination or medical examination. This Instrument provides the means by which a relevant decision-maker is to arrange such assessments or examinations in an ethical, transparent and accountable manner. As such, this Instrument promotes the right to an adequate standard of living.

Conclusion

This Instrument is compatible with human rights because it promotes the protection of human rights.

Senator the Hon Murray Watt
Minister for Employment and Workplace Relations