Medical Examinations in the NTPS

Commissioner's Guideline

NORTHERN TERRITORY GOVERNMENT

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Acronyms	Full form
CEO	Chief Executive Officer
Commissioner	Commissioner for Public Employment
DCDD	Department of Corporate and Digital Development
EI	Employment Instruction
GOC	Government Owned Corporation
NTG	Northern Territory Government
NTPS	Northern Territory Public Sector
OCPE	Office of the Commissioner for Public Employment
PSEMA or the Act	*Public Sector Employment and Management Act 1993* (NT)

Term	Definition
Approved Health Practitioner	Health practitioners include those authorised to practice under the *Health Practitioners Act 2004* and those registered under the *Health Practitioner Regulation National Law* (excluding students)
Chief Executive Officer (CEO)	Means the Chief Executive Officer of the relevant agency or their delegate.
Commissioner	Means the Commissioner for Public Employment in the Northern Territory.
Employee	Is an employee of the Northern Territory Public Sector (NTPS) employed under the *Public Sector Employment and Management Act 1993* (PSEMA).
Totally and permanently incapacitated	As defined in s 48(1) of the PSEMA: an employee is totally and permanently incapacitated if, because of a physical or mental condition, it is unlikely the employee will ever be able to work in any employment or hold any office for which he or she is reasonably qualified by education, training or experience or could become reasonably qualified after retraining.

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Purpose

This guideline provides guidance on the engagement and use of medical examinations for NTPS employment purposes. It is intended to promote a consistent and procedurally fair approach to the use of medical information in employment decision-making, while making clear that medical advice informs, but does not determine, employment outcomes. The guideline also clarifies the respective roles of agencies, health practitioners, the NT Medical Advisor and other key stakeholders in the assessment process.

The guideline does not create new powers or obligations. They must be applied consistently with the PSEMA, applicable Enterprise Agreement (EA) and Employment Instructions (EIs) and cannot override statutory requirements.

Legislative and policy framework

These guidelines operate within the framework established by the PSEMA, particularly:

- *Public Sector Employment and Management Act 1993*
- Public Sector Employment and Management – Employment Instruction 3 – Natural Justice
- Public Sector Employment and Management- Employment Instruction 5 – Medical Examinations
- Public Sector Employment and Management – Employment Instruction 6 - Employee Performance and Inability
- Public Sector Employment and Management – Employment Instruction 9 – Employment Records
- Public Sector Employment and Management – Employment Instruction 12 Code of Conduct
- Commissioners Guideline – Natural Justice
- Commissioners Guideline – Performance and Inability
- Enterprise Agreements

When medical assessments may be required

Employee performance and inability (Part 7)

Under section 44 of PSEMA, there are inability or performance grounds for an employee where the employee is:

- unable to perform their duties (whether because of physical or mental illness or disability or any other reason),
- not suited to perform or capable of efficiently performing their duties,
- not licensed or registered for the performance of the duties, or
- not performing their duties efficiently or satisfactorily.

Where a CEO suspects, on reasonable grounds, that inability or unsatisfactory performance may be caused or contributed to by a physical or mental illness or disability, the CEO may obtain a medical report from a health practitioner, approved by the Commissioner, under section 45 of PSEMA, as part of an inability or unsatisfactory performance process. Medical assessments assist the CEO to:

- determine whether medical factors are affecting performance or capacity;

- understand the likely impact and duration of any illness or disability;
- consider appropriate and reasonable remedial action under section 46 of PSEMA; and
- ensure decisions are evidence-based and procedurally fair.

Medical assessments form one part of the information considered by the CEO and do not, of themselves, determine the outcome of a performance or inability process.

Discipline - Part 8 of the PSEMA

Where a CEO suspects that a breach of discipline may have been caused or contributed to by a physical or mental illness or disability, the CEO may obtain a medical report under section 49B of PSEMA as part of the discipline process.

The purpose of the medical report is to assist in determining whether, and to what extent, a physical or mental illness or disability may have caused or contributed to an alleged breach of discipline. Medical reports should not be relied on to determine whether a breach of discipline occurred.

Note: *an independent medical under Part 8 of the PSEMA cannot be undertaken in advance of alleged breaches of discipline being provided to the employee for response.*

Absences (Personal leave provisions under an Enterprise Agreement)

In addition to the PSEMA, CEOs may direct an employee to attend a medical examination in accordance with relevant EA provisions e.g *Northern Territory Public Sector 2025 – 2029 EA* clause 76.8.

These provisions allow a CEO to direct an employee to attend an examination by a registered health practitioner, in circumstances where an employee is frequently or continuously absent, or expected to be so, due to illness or injury. Other instances include where it is considered that an employee's efficiency may be affected by illness or injury, or where there is reason to believe the employee's state of health may render them a risk to themselves, other employees or the public.

Pre employment medical assessments

Some positions within the NTPS may require a medical assessment before an offer of employment is finalised e.g Police Officers or Fire Fighters. The purpose of the assessment is to determine whether an applicant is fit for the role and has the capacity to perform the inherent requirements of the position safely, without exposing themselves or others to an unnecessary level of risk.

A pre-employment medical assessment is not required for all positions and will only be used where the role requires an applicant to meet specific medical or physical standards.

This guideline is not intended to address pre-employment medical assessments and for more information in this regard, refer to the OCPE pre-employment screening guideline for further information. [1]

[1] https://ocpe.nt.gov.au/working-in-the-public-sector/recruitment-and-selection/pre-employment-screening

Scope of medical assessments

Medical assessments may be used to inform decisions relating to an employee's fitness for work, prognosis, capacity for ongoing employment, and the need for workplace adjustments, or return to work arrangements.

Medical assessments may only be arranged in accordance with the PSEMA, *Employment Instruction 5 – Medical Examinations* or applicable EA provisions, including circumstances relating to absence, efficiency, or risks to health and safety.

If an employee requires medical treatment arising from an IME, this is a personal matter and the employee should be referred to their treating medical practitioner.

Role of the health practitioner

Health practitioners undertake an independent clinical assessment of the employee, consider relevant information provided by the agency and employee, and provide a medical opinion about whether a physical or mental illness or disability may adversely affect the employee's capacity to perform duties or, where applicable, contribute to performance concerns or alleged breaches of discipline.

Health practitioners may also comment on the likely effects, expected duration and prognosis of a condition, and must complete approved medical examination forms and reports objectively and accurately.

Employees may provide relevant medical or supporting information directly to the health practitioner for consideration as part of the assessment process.

Health practitioners do not determine findings of inability, unsatisfactory performance or breaches of discipline. They do not make decisions regarding remedial action, disciplinary outcomes or invalidity processes, nor do they direct actions such as suspension, transfer, retirement or termination. All employment decisions remain the responsibility of the CEO or appropriate delegate.

Agency responsibilities

Agency CEOs are responsible for ensuring there are reasonable grounds before directing a medical examination under section 45 or 49B of the PSEMA, or under applicable EA provisions to ensure that examinations are directed and conducted in accordance with EI No 5.

Health Practitioners must be provided with accurate, relevant and sufficient information to inform their assessment. This includes, at a minimum, a copy of the employee's current job description, relevant information regarding the employee's work performance or conduct, the purpose of the assessment and the employee's leave records for the relevant period.

Health practitioners must consider any medical reports alongside performance records, leave history and any other relevant material.

CEOs must ensure that all procedural fairness, notification and review steps are undertaken when referring an employee for an IME.

Natural justice and disclosure

Where a medical report is relied upon in making a decision that may adversely affect an employee, the CEO must comply with the principles of natural justice and the disclosure requirements set out in EI No 3 and section 45 or 49B of the PSEMA.

CEOs must:

- provide the employee with a copy of the medical report as soon as practicable; and
- give the employee a reasonable opportunity to respond before a decision is made.

If a health practitioner advises that disclosure of information may be prejudicial to the employee's health or wellbeing, the CEO must manage disclosure by providing the report to a health practitioner nominated by the employee, in accordance with section 45(7) or 49B(7) of the PSEMA. The same principle applies to IMEs conducted in accordance with EA provisions.

Fitness for continued duty or resumption of duty assessments

Fitness for work assessments focus on an employee's capacity to perform duties safely and effectively. In this context, a health practitioner may provide medical opinions about whether the employee is fit to resume or continue duties, whether a graduated return to work may be appropriate, or whether temporary or permanent work restrictions are indicated. A health practitioner may also comment on the general type of duties the employee may be capable of performing, expressed in generic rather than role-specific terms.

Any recommendations made by a health practitioner relate to medical capacity only. Decisions about duties, workplace adjustments, transfers or redeployment remain the responsibility of the employing agency and delegated officer.

Medical incapacity and invalidity

Under section 48 of the PSEMA, an employee may be retired on the grounds of invalidity where an employee is 'totally and permanently incapacitated' because of a physical or mental condition, it is unlikely the employee will ever be able to work in any employment or hold any office for which he or she is reasonably qualified by education, training or experience or could become reasonably qualified after retraining.

An employee may only be retired on the grounds of invalidity where the CEO is satisfied, on reasonable grounds, that the employee meets the definition of 'totally and permanently incapacitated' as outlined above.

Note: "Invalidity", as defined in the *Superannuation Act 1986 and the Northern Territory Government and Public Authorities' Superannuation Scheme Rules*, means that a person has become physically or mentally incapacitated to the extent that they are unable to perform any available work for which they are reasonably qualified by education, training or experience with any employer participating in the schemes. In addition, invalidity retirement is subject to the provisions of the *Superannuation Industry Supervision (SIS) Act 1993* and its associated regulations, as well as the *Income Tax Assessment Act 1997 (ITAA).*

To be retired on the grounds of invalidity, two medical reports are required by the Commissioner of Superannuation. These reports must clearly state that the employee meets the definition of totally and permanently incapacitated. The reports must address the likely long-term course of the employee's illness or injury and its impact on the employee's capacity to work.

The required reports must be obtained in one of the following ways:

- Medical reports from two independent medical practitioners, each of whom is a medical specialist and neither of whom has been involved in the employee's care or treatment: or
- One medical report from an independent medical practitioner who is a medical specialist and not involved in the employee's care or treatment, together with one medical report from the employee's treating specialist; or

- Medical reports from two medical practitioners, one of whom must be an independent medical specialist and the other a general practitioner, provided that neither has been involved in the employee's care or treatment.

Medical reports relied upon for invalidity assessments must address the definition of total and permanent incapacity, consider whether the employee could perform any employment for which they are, or could become, reasonably qualified (including through retraining), and be supported by appropriate specialist opinion where required. It is not sufficient to recommend that an employee be "retired on medical grounds". Where a health practitioner concludes that an employee is precluded from any reasonable employment, the practitioner must expressly state that the employee is totally and permanently incapacitated.

Where an employee is assessed as medically unfit to perform the normal range of their duties, but not totally and permanently incapacitated, alternative employment options, including redeployment or retraining, may be considered along with remedial action under section 46 of PSEMA (where relevant).

The medical examination report and approved invalidity retirement documentation are to be returned to the DCDD Workforce Health Management (WHM) as the requesting area, or relevant human resource team if within a GOC. WHM will progress the documentation to the Commissioner of Superannuation for consideration. Where a specialist opinion is not readily available, WHM is responsible for arranging an appropriate specialist consultation.

Where the Commissioner of Superannuation determines that the employee does not meet the requirements for invalidity retirement, this does not prevent the agency from continuing to consider the matter under Part 7 (Inability) of the PSEMA. In these circumstances, the agency should continue the formal inability process and determine what action, if any, is appropriate having regard to the available evidence and the requirements of the PSEMA.

Before retiring an employee on invalidity grounds, the CEO must provide the employee with written notice of the proposed action and a reasonable opportunity to respond.

Failure to attend an independent medical examination

Failure by an employee to attend their medical examination, any subsequent examinations or failure or refusal to cooperate with the process without reasonable cause may result in disciplinary action being taken under Part 8 of the PSEMA. Further, any cost incurred by the Agency as a result of a failure to comply with a direction to attend an examination, may be invoiced to the employee.

Conflict of medical opinion

Where there is a conflict between the opinion of an employee's registered practitioner and an assessment provided by a health practitioner, the matter may be referred to the NT Medical Advisor for consultation and resolution with the Chief Health Officer. The role of the NT Medical Advisor is advisory and may include recommending clarification of clinical information, obtaining additional specialist opinion, or assessment by another health practitioner.

The NT Medical Advisor does not determine employment outcomes. Responsibility for deciding how medical advice is weighed and relied upon remains with the CEO or delegate, and in accordance with the legislative framework.

Payment of fees

The approved fee for providing medical assessment services is the health practitioners standard consultation rate for the type of medical assessment required. The fee includes time taken for examination and preparation of reports.

On completion of the report, a claim for payment (invoice) from the health practitioner should be forwarded along with the completed medical report and the IME form to the DCDD Workforce Management, or human resources area within a GOC. The requesting agency is responsible for arranging the payment.

Important information for health practitioners

A health practitioner should contact the contact person detailed on the referral letter or the employee's general practitioner or treating specialist if they require further information about an employee.

Health practitioners must not give medical reports to employees nor should the report's findings be discussed with the employee. The employer is responsible for notifying the employee regarding outcomes of the report. An employee who wishes to seek further information regarding the contents of a report is required to make an appointment with their treating health practitioner.

The completed medical examination report and all accompanying documents are to be forwarded by the health practitioner to the contact officer, as soon as possible but normally within two weeks of the assessment being undertaken. A further delay of two weeks is accepted if there is a need to receive specialist reports.

Delays in excess of one month must be notified by the health practitioner to the originating agency so that necessary employment or administrative arrangements can be made.

Queries regarding these provisions or processes should be directed to the Workforce Management, or human resources unit within a GOC, identified contact person on the referral form.

Records management and confidentiality

Medical reports obtained for employment purposes form part of the employee's employment record and must be managed in accordance with the PSEMA, EI No 9 and the *Information Act 2002* (NT).

It is recognised that medical information is sensitive, and this sensitivity is respected throughout the medical examination processes. Health practitioners are therefore instructed to provide only medical and other personal information that is necessary to understand:

- an employee's capacity to perform their substantive duties, or an alternative role where such a role has been recommended; or
- the extent to which an alleged breach of discipline was caused or contributed by an illness or disability; or
- matters raised in a direction for medical examination made under the employee's EA.

Consistent with the requirements set out in the approved IME forms, irrelevant personal, family, health or sexual history must not be included in medical reports.

Medical information should be treated as highly sensitive. Medical examination reports are released only to the relevant CEO or delegate for employment decision-making purposes and must not be provided directly to the employee's workplace manager or other parties. A copy of each report is to be managed and recorded

on a classified and secure file maintained by DCDD, Workforce Management, or human resources unit within a GOC. Access to the reports is restricted only to those authorised access in order to provide Workforce Management support to agencies.

Where an employee is being assessed for medical invalidity retirement, the report may also be released to the Commissioner of Superannuation and, where required, to the Commonwealth Superannuation Scheme Board for the purposes of administering superannuation legislation.

Where necessary to support an employee's return to work or ongoing employment arrangements, a summary of relevant information may be provided to the employee's manager or delegate. Any summary must be limited to information required to understand the employee's functional capacity, work restrictions or suitable duties, and must not disclose unnecessary clinical detail.

Support and advisory options

There are a range of internal and external support and advisory options available to NTPS employees.

Workforce Services, DCDD

Workforce services for most NTPS agencies are centralised within DCDD. Employees from agencies with internal Human Resources teams should contact their local HR unit for assistance.

1800 225 547 | workforceservices@nt.gov.au

Public Sector Appeals and Grievance Reviews, Office of the Commissioner for Public Employment (OCPE)

The Commissioner for Public Employment may review certain actions or decisions of an agency. Employees concerned about how a complaint has been managed may seek further information from the Public Sector Appeals and Grievance Reviews team.

08 8999 4129 | grievance.ocpe@nt.gov.au

Employee Assistance Program (EAP)

The EAP provides confidential counselling and support services to NTPS employees and their immediate family members. Support is available for personal and work-related matters and may be delivered face-to-face, online or by telephone. Managers and supervisors can also access Manager Assist services.

Contact NTPS EAP providers

NT Work Safe

For support or assistance contact NT Work Safe, who provide information, advice, and regulatory guidance on workplace health and safety matters in the Northern Territory.
P: 1800 250 713
I: www.worksafe.nt.gov.au
E: datantworksage@nt.gov.au