

# MEDICAL EXAMINATIONS

## Employment Instruction Number 5

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### 1. **Scope**

1.1. This Employment Instruction:

- a) sets out rules for requiring an employee to attend a medical examination;
- b) is issued in accordance with section 16 of the *Public Sector Employment and Management Act* (the Act);
- c) is to be read in conjunction with, and subject to, section 45 or 49B of the Act, or the provisions of any relevant award or enterprise agreement; and
- d) is to be read in conjunction with Employment Instruction Number 3 (Natural Justice).

Note:

*The provisions of this Employment Instruction relating to section 45 or 49B of the Act do not apply to fixed period or casual employees.*

### 2. **Chief Executive Officer may engage a health practitioner**

2.1. A Chief Executive Officer may engage a health practitioner to undertake an examination of an employee in accordance with:

- a) section 45 of the Act in the case of inability or unsatisfactory performance matters;
- b) section 49B of the Act in the case of breach of discipline matters; and
- c) relevant provisions (if any) contained within the relevant award or enterprise agreement (e.g. personal leave clauses).

2.2. A Chief Executive Officer must notify the employee in writing of the direction to attend and the purpose of the examination.

### 3. **Medical examination and report**

3.1. If a Chief Executive Officer engages a health practitioner and directs an employee to submit to examination by that health practitioner, the health practitioner must be provided with:

- a) a copy of the employee's job description;
- b) relevant information regarding the employee's work performance or behaviour; and
- c) any other relevant information.

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- 3.2. The employee must be advised in writing of the information that will be provided to the examining health practitioner. If a Chief Executive Officer is concerned that advising the employee of this information may be prejudicial to the employee's well being, the Chief Executive Officer must ensure that the employee is given the option of having a support person present at the time of receiving the advice.
  - 3.3. The Commissioner may approve such forms, details and other requirements as are considered necessary to facilitate an examination by a health practitioner.
  - 3.4. A Chief Executive Officer can rely on a report from a health practitioner obtained under another process (e.g. in accordance with a relevant enterprise agreement process), or voluntarily provided by the employee, if the report sufficiently covers the matters set out in section 45(5) or 49B(5) of the Act as relevant.

#### **4. *Conflict of medical opinion***

- 4.1. A conflict of medical opinion between the employee's registered health practitioner and the findings of the medical examination must be referred to the Northern Territory Medical Advisor for consultation and resolution with the Chief Health Officer.
- 4.2. The Northern Territory Medical Advisor or the Chief Health Officer has the discretion to arrange a further examination by another approved health practitioner and any associated costs must be borne by the referring Agency.

#### **5. *Chief Executive Officer's decision***

- 5.1. Following consideration of a health practitioner's examination report obtained under section 45 or 49B of the Act, along with any advice from the NT Medical Advisor, and provided the other requirements set out in section 48 of the Act have been met, a Chief Executive Officer may decide that an employee is totally and permanently incapacitated under section 48 and retire the employee on the grounds of invalidity.
- 5.2. Where a health practitioner's report has been obtained in accordance with a relevant award or enterprise agreement, a Chief Executive Officer, after considering the report and any information he or she considers relevant, may:
  - a) deal with the matter under Parts 7 or 8 of the Act;
  - b) direct the employee to resume duty; or
  - c) direct the employee to attend for a further medical examination.
- 5.3. Prior to taking any action the employee must be given a reasonable opportunity to show why the action should not be taken.

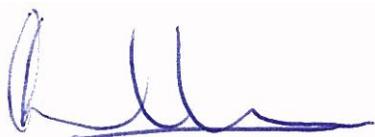
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## **6. Cost of examinations or tests**

- 6.1. Where a Chief Executive Officer directs an employee to submit to examination by a health practitioner, the cost of the examination(s) will be borne by the agency.

## **7. Employees receiving workers compensation benefits**

- 7.1. Employees receiving workers compensation benefits should continue to have their medical status reviewed under the workers compensation provisions by the determining authority. Any medical examinations for such employees are to be arranged through the determining authority with the cost of the medical examination being borne by the employing agency, in line with other workers compensation costs.
- 7.2. Where it is considered unlikely that the employee will be able to resume employment (after all reasonable rehabilitation has occurred) a Chief Executive Officer should commence to deal with the matter under Part 7 of the Act (Employee Performance and Inability).



**GRAHAM SYMONS**  
**Commissioner for Public Employment**

14 December 2011