



Fitness for Duty Guidelines

A handwritten signature in black ink, appearing to read 'Daryl Karp', is positioned above the printed name.

Daryl Karp
Director

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Version control

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V2.3	June 2021	EMG	Review & Comment	Draft
V2.4	June 2021	Director	Endorse/Signature	Final

Team responsible for overview and updates of the policy

People & Strategy Team

hr.helpdesk@moadoph.gov.au

1. General information

The Museum of Australian Democracy at Old Parliament House (the agency) is committed to supporting employees with an injury or illness, whether or not workers compensation provisions apply. Effective rehabilitation and return to work programs are key to minimising the cost of workplace injury for both the employee and the agency.

The agency is committed to providing and maintaining a safe and healthy work environment, and has responsibilities and obligations under the [Work Health and Safety Act 2011](#) (WHS Act), the [Work Health and Safety Regulations 2011](#) to ensure:

- ill or injured employees are fit for normal duty
- appropriate mechanisms are in place to manage injured employees returning to work.

This guideline supports the agency's commitment by providing information to assist employees with health conditions to remain at work, to the extent possible, or to return to work following treatment. The guideline outlines:

- processes to assist managers and employees with early intervention of non-compensable illnesses and injuries, noting the management of health and safety of all employees is an integral responsibility under the WHS Act
- roles and responsibilities of supervisors and employees.

The procedures for rehabilitation and return to work relating to the [Safety, Rehabilitation and Compensation Act 1988](#) are outlined in the agency's Rehabilitation and Return to Work Management.

2. Injury / illness in the workplace

The agency has a duty of care to all employees, particularly those who are ill or injured, under the WHS Act and to provide a safe working environment and to make reasonable adjustments in responding to the needs of employees. Ensuring that employees are fit for normal duties is integral to this principle and extends to non-compensable injury or illness.

Early intervention is key to assisting ill and injured employees. The earlier support is offered, the more effective the recovery and return to work will be. Early intervention remedies should be applied as soon as the injury / illness becomes known.

Managers and employees are encouraged to have open, timely and honest communications about any injury or illness which may affect the employee's ability to undertake their duties or impact on their fitness for duty.

Generally, extended illnesses or injuries that are non-compensable in nature will be managed in conjunction with the employee's treating doctor, their direct supervisor and People & Strategy (P&S) Team. Employees with prolonged or complex health matters may be referred for an independent fitness for duty assessment.

3. Fitness for duty

In accordance with Regulation 3.2 of the [Public Service Regulations 1999](#), a delegate may by written notice, direct any employee to undergo a medical examination by a medical

practitioner nominated by the agency where it is believed that the employee's state of health:

- may be affecting the employee's work performance
- may be a danger to the employee at work
- has caused, or may cause the employee to be a danger to other employees or members of the public
- may cause extended periods of absence from work (with or without pay), or
- may be affecting the employee's standard of conduct.

Examples of absences that could be treated as extended absences are:

- an absence from work of at least four continuous weeks
- a combined total of absences from work, within a 13 week period, whether based on a single or separate illness or injury, of at least four weeks
- the employee presents a doctor's report stating that they are unfit for duty and the prognosis is unfavourable.

The decision to direct an employee to attend a medical examination will be made on a case-by-case basis and in consultation with the Deputy Director.

The process

The health assessment provides independent medical advice about the employee's current state of health and includes the following:

- diagnosis and prognosis of the employee's condition(s)
- effects of the condition(s) on the employee's capacity to work
- medical restrictions
- guidance on shared supportive action that can be taken
- canvasses redeployment and retraining options (if appropriate)
- outlines a return to work timetable

Following a decision by the delegate to direct an employee for a health assessment, written advice to the employee will be prepared outlining the following:

- time, date and location of the assessment
- purpose of the assessment
- provisions under the [Privacy Act 1988](#)
- the employee's right to submit background information and supporting statements / material to the independent medical assessor
- the employee's right to have a support person attend the appointment

The People and Strategy Team will provide the independent medical assessor with a history of the case including:

- the reason for the referral and a schedule of questions
- major developments in the case
- recommendations previously obtained for redeployment, retraining or rehabilitation
- action taken by the agency to achieve a return to work or an improvement in the employee's work performance, including measures taken to implement redeployment, retraining or rehabilitation
- any reports available from other medical practitioners who have assessed the employee's condition.

The outcome

The medical examiner will prepare a report for the delegate based on the results of the examination and on any other information available. Where the recommendations of the medical examiner are that the employee will be unfit for duty for a specified period, such a report will be treated as a medical certificate for the purposes of approving sick leave. The report must specify a period in which the employee will be unfit for duty to qualify for this purpose.

The employee will be provided with a copy of the medical report unless the medical examiner is of the view that disclosure of the information directly to the employee may be prejudicial to their health or well-being. In these instances the medical report will be released to the employee through their treating medical practitioner.

The employee will be advised of their right to:

- discuss the recommendations and any proposed action(s)
- submit written comments on these matters within 14 calendar days of receiving the report
- dispute the recommendation(s) of the report by providing new and updated medical evidence to the contrary within 14 calendar days of receipt of the report

The People and Strategy Team will discuss with the employee and manager the implementation of any actions recommended in the report. Where appropriate, interested parties, including the employee's manager, case manager, rehabilitation provider (if applicable) and treating doctor will be consulted on any action proposed.

Reassignment/Reduction

Where the medical examiner's recommendations indicate that the employee is unfit for normal duties but is fit for alternative duties, and the delegate considers this appropriate, all reasonable steps will be taken to ensure that the employee is assigned to suitable alternative duties. In seeking to facilitate the reassignment of an employee, the delegate will have regard to the employee's skills, experience, work preferences and any medical restrictions. Training may be provided as appropriate.

Where the medical examiner's recommendations indicate that the employee is unfit for normal duties or other alternative duties at the same level, the delegate may reduce the employee's classification level after discussion with the employee. Any reduction in classification must be to a classification that the employee is able to undertake efficiently and could be reasonably required to perform. The employee must be provided with a notice of the reduction of classification including reasons for the reduction and details of their right to apply for a review of action.

The authority for reduction of classification to occur is subsection 23(4) of the *Public Service Act 1999* and is determined on the grounds that the employee is unable to perform duties at the higher classification due to physical or mental incapacity. An employee who is reduced in classification may be entitled to a partial invalidity pension and should seek the advice of People and Strategy Team. Such actions would be in accordance with recommendations by the relevant Medical Examiner.

All employees will be expected to cooperate with all action taken by the agency to achieve a successful return to work. If an employee refuses to cooperate, the delegate will consider all circumstances and determine if such conduct is reasonable. However, the action may

constitute a breach of the Code of Conduct in accordance with breaches in the *APS Code of Conduct Procedures*.

4. Leave

Employees who are deemed unfit for work, or who are on a return-to-work plan are discouraged from taking any form of leave (e.g. study leave) due to absences impacting on the employee's rehabilitation and potentially their recovery. Nevertheless, annual leave may be granted to injured or ill employees during their rehabilitation, under exceptional circumstances.

5. Direction to return to work

Where there is no medical evidence to support an illness or injury and the independent medical assessor can find no corroborating evidence, the employee may be directed to return to normal duties.

If an employee fails to comply with the direction to return to work and no further medical evidence is supplied, it will be constituted as an unauthorised absence. Where appropriate, an APS Code of Conduct determination may also be made.

6. Invalidity retirement

Where medical evidence suggests that an employee is or is likely to become totally and permanently incapacitated (TPI), the employee will be referred to a medical examiner from a Commonwealth Superannuation Corporation (ComSuper) approved medical organisation to undertake an independent health assessment. The assessment must be undertaken for the purpose of determining whether an employee may be entitled to invalidity retirement benefits.

The medical examiner will report to the agency on whether the employee is fit to perform their usual duties, unfit to perform their current duties but able to perform alternative duties or is likely to be considered TPI. The independent medical assessor will also provide advice on suggested forms of rehabilitation or return to work programs that may benefit the employee, where they are not TPI.

An employee may not be retired on invalidity grounds until ComSuper has certified that the employee is entitled to invalidity retirement benefits. This can only be considered where the medical examiner has given the opinion that the employee is TPI.

7. Partial invalidity pension

An employee who has a long term health condition that has been certified by ComSuper approved medical organisation as not fit to work full time, may be entitled to be paid a Partial Invalidity Pension (PIP) whilst they remain employed. A PIP is a form of income maintenance and approved by ComSuper. A pension is paid in addition to salary when an employee incurs a permanent reduction in salary because a non-compensable permanent health condition causes them to be reduced in classification or to work reduced hours or a combination of both.

The medical examiner will provide a report to the agency certifying that the reduction in the employee's hours of work or a reduction in their classification was necessary for medical reasons.

8. Medical information and privacy

The handling of personal and medical information is subject to the provisions of the *Privacy Act 1988*. Of critical importance to assessment of an employee's capacity to undertake a rehabilitation program, fitness for continued duty and invalidity retirement, the agency:

- must inform the employee of the purpose that medical information is sought
- must protect the medical information from unauthorised use or disclosure
- must have in place arrangements for the employee to view on request the medical information held by the agency
- can only utilise an employee's medical information for the purpose it was obtained
- cannot disclose medical information about an employee to another party unless:
 - the employee has consented to the disclosure
 - the disclosure is required or authorised under law
 - the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the employee or of another person
 - disclosure is reasonably necessary

Medical information held by the agency under this policy will be securely stored in a file specific to the employee and separate from the employee's personal file.

9. Responsibilities

Manager

Managers are positioned to ensure the incidence of workplace injury, absenteeism and lost productivity is minimised. However, when a workplace injury occurs, it is vital that managerial commitment is demonstrated and transparent and proper processes are followed. This maximises effective and efficient case management.

Managers are responsible for:

- developing and promoting a workplace culture that prevents injuries and supports injured employees
- fostering a supportive workplace encouraging safe work practices and early reporting of injuries immediately advising People and Strategy team if an employee has sustained a workplace injury
- ensuring an incident notification form is completed and forwarded to People and Strategy team
- understanding the causes of the workplace injury and implementing suitable safeguards to prevent further injury
- initiating and maintaining contact with the injured employee – be supportive and identify available assistance to enable a return to work
- ensuring employees have access to relevant documentation, claim forms, etc.
- providing information to People and Strategy team detailing the injured employee's pre-injury duties and, if appropriate, potential suitable duties to enable a safe and early return to work

- involvement and contribution in drafting the return to work plan for the injured employee then promptly informing People and Strategy team of concerns held by any involved stakeholders
- working with the injured employee, upon their return to work to ensure a desirable and sustained outcome
- demonstrating a commitment to the effective implementation of these guidelines

Employee

Injured / ill employees have responsibilities in relation to return to work, including:

- seeking medical attention as soon as possible if required
- informing their manager and People and Strategy team of the injury/illness as soon as is practicably possible and completing the incident notification form if the injury occurred in the workplace
- advising their supervisor if they are going to be absent from work
- applying for leave through ESS and providing medical certificates and obtaining a medical clearance to return to work if applicable
- liaising with People and Strategy team about their obligations and rights regarding return to work, undergoing an initial needs assessment and independent health assessment as required
- actively participating and cooperating in an approved RTWP and consulting their section manager about any concerns
- cooperating in re-training and rehabilitation as provided or arranged
- informing themselves about this Guideline and related processes

People & Strategy Team

The People and Strategy team coordinates the fitness for duty and RTWP process for injured employees. Their involvement is to ensure the fitness for duty process and where required an RTWP process is carried out in accordance with this Guideline and the *Public Service Act 1999*.

The People and Strategy team is responsible for:

- initiating, coordinating and monitoring the fitness for duty and RTWP process in consultation with all involved stakeholders including the section manager, injured employee and treating medical practitioner(s)
- ensuring that all stakeholders are aware of and understand their role and responsibilities maintaining regular communication with involved stakeholders
- deciding if referral for a fitness for duty assessment is required, particularly when the employee is likely to be away from work for more than 10 days. Subsequently coordinating this assessment and ensuring all stakeholders are appropriately informed
- coordinating a RTWP when necessary, in consultation with the section manager, injured employee and treating practitioner
- actively planning, assessing, selecting and managing an involved RTWP provider, when appropriate, to ensure an efficient and cost effective program ensuring decisions made regarding assessment or the RTWP are provided to the employee in writing
- liaising with the section manager to ensure the employee has access to suitable employment

- keeping secure, accurate, up-to-date records in line with the Guideline and the *Privacy Act 1988*.

10. Disputes

An employee not satisfied with the process followed or the decisions that have been taken should discuss their concerns with People and Strategy team, their manager, delegate, and/or an independent third party (e.g. the employee's union).

Where an employee disputes a recommendation outlined within a health assessment report, they must provide new or more detailed medical evidence. This information must be provided within 14 days of the employee receiving the assessment report.

If new or more detailed medical evidence is provided, it will be referred to the independent medical assessor. If the independent medical assessor remains of the opinion that the employee is fit to return to work and recommendations remain unchanged, the employee will be directed to do so.

In the interests of resolving the disputed medical evidence, the employee may request their medical practitioner or specialist to attend a case conference with the independent medical assessor and a representative of the agency. In the event of a case conference, the agency will pay the pre-agreed account of the independent medical assessor. The employee will need to pay the account of their medical practitioner or specialist.

Supporting Documentation

The legal framework and other resources for the development of the Guideline are:

[*Privacy Act 1988*](#)

[*Fair Work Act 2009*](#)

[*Public Service Act 1999*](#)

[*Public Service Regulations 1999*](#)

[*Work Health and Safety Strategy*](#)

[*Work Health and Safety Act 2011*](#)

[*Work Health and Safety Regulations 2011*](#)

[*First aid policy and procedures*](#)

[*Rehabilitation and Return to Work Policy*](#)