

# Comcare's management of medical examinations

COMCARE'S ADMINISTRATIVE FRAMEWORK FOR MANAGING  
MEDICAL EXAMINATIONS UNDER SECTION 57 OF THE *SAFETY,  
REHABILITATION AND COMPENSATION ACT 1988*

October 2022

Report by the Commonwealth Ombudsman,  
Iain Anderson, under the *Ombudsman Act 1976*

REPORT NO. **05** | 2022

## CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	<b>2</b>
<b>RECOMMENDATIONS</b> .....	<b>4</b>
<b>PART 1: BACKGROUND TO INVESTIGATION</b> .....	<b>6</b>
Introduction.....	6
The Commonwealth Ombudsman’s powers and functions.....	6
Investigation approach .....	7
<i>Objective and scope</i> .....	7
<i>Methodology</i> .....	7
<b>PART 2: OVERVIEW</b> .....	<b>9</b>
Comcare’s role administering the workers’ compensation scheme.....	9
Legislative requirements of section 57 of the SRC Act.....	9
Comcare’s decision-making process for section 57 examinations .....	10
<i>Using third-party providers to organise section 57 examinations</i> .....	11
<b>PART 3: COMCARE’S DECISION-MAKING FRAMEWORK FOR SECTION 57 EXAMINATIONS – FINDINGS</b> .....	<b>13</b>
Developing a policy statement for requesting medical examinations.....	13
Develop a policy to record reasons for section 57 decisions.....	14
Develop a policy to communicate reasons for section 57 decisions to claimants.....	16
Strengthening procedural guidance for section 57 examination decisions.....	17
Strengthening approaches to data capture and analysis .....	18
Strengthening agreements with third-party providers .....	20
<b>PART 4: SECTION 57 EXAMINATION COMPLAINT HANDLING – FINDINGS</b>	<b>21</b>
Complaint handling requirements and procedures for third-party providers ...	24
Publishing information about how to submit a complaint.....	25
<b>APPENDIX A: COMCARE’S RESPONSE</b> .....	<b>27</b>
<b>APPENDIX B: COMCARE’S PROCEDURAL GUIDANCE SUB-FINDINGS</b> ....	<b>34</b>

## EXECUTIVE SUMMARY

This report is the result of the Commonwealth Ombudsman’s investigation into Comcare’s administrative framework for managing medical examinations under s 57 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). Comcare commonly refers to these medical examinations as *independent medical examinations* or *IME*.

### Why we did this investigation

This investigation was informed by media coverage of Comcare’s use of independent medical examinations, which was raised during our Office’s Senate Estimates appearance in May 2021. An ABC article focused on Comcare’s use of its s 57 powers, including alleged examples where Comcare had reportedly selected certain medical practitioners or sent claimants to multiple medical practitioners to get a report it could use to deny a compensation claim or cancel a claimant’s existing compensation payments – a practice referred to as ‘doctor shopping’.<sup>1</sup>

The ABC article also included allegations that some claimants were required to attend medical examinations with medical practitioners who did not have appropriate qualifications, or with practitioners who had been the subject of repeated complaints.

### What we did

Comcare is responsible for making decisions under multiple pieces of legislation. The objective of this investigation was to assess the appropriateness of Comcare’s administrative framework for managing medical examinations under one section of one piece of legislation – s 57 of the SRC Act.

We conducted a point-in-time desktop review of the internal policies and procedures Comcare has to support its decision-makers to use its s 57 powers and the information Comcare records about its independent medical examinations. We also assessed Comcare’s written policies and procedures for managing complaints about actions it takes under s 57, including complaints about the conduct of medical practitioners it chooses to assess claimants.

### What we found

We found while Comcare’s procedures and internal guidance are consistent with s 57 of the SRC Act, there are opportunities to strengthen its administrative framework to better support consistent and reasonable decision-making. In particular, there is an opportunity for Comcare to address gaps and inconsistencies in its internal guidance to better support decision-makers to make consistent, reasonable and transparent decisions, as well as strengthen its communication with claimants.

We found Comcare does not require decision-makers to consistently record the reasons for medical examination decisions. We also found limitations in Comcare’s data capability,

---

<sup>1</sup> Clayton R ‘[Federal Government workers compensation authority Comcare accused of unethical behaviour](#)’, ABC (Australian Broadcasting Corporation), 5 February 2021, accessed 25 January 2022.

meaning Comcare is unable to quickly retrieve, analyse and report information about its use of medical examinations.

Due to these data limitations and the absence of a clear requirement for Comcare decision-makers to record reasons for their assessments under s 57, Comcare is not well placed to provide assurance that individual medical examination decisions are appropriate, or to monitor how s 57 powers are used across the agency. As a result, in our view, Comcare cannot quickly and easily provide assurance that its decision-making is appropriate in practice.

We also identified several areas for improvement in Comcare's procedures and published information about its complaint handling processes.

As this investigation focuses on Comcare's administrative processes for s 57 medical examinations, rather than its decision-making in practice, we have not identified significant compliance concerns or evidence of unethical decision-making by Comcare in practice.

### **What we recommend**

We made 9 recommendations aimed at improving Comcare's decision-making framework and how it manages complaints that arise from using its s 57 medical examination powers.

These recommendations go to 4 themes of good public administration which broadly apply to all Australian Government agencies to:

- provide decision-makers with good policies and procedural guidance to support reasonable, appropriate, consistent and transparent decision-making
- require decision-makers to record reasons for decisions, and communicate reasons for decisions to claimants to support transparency and accountability in decision-making
- establish strong data analysis and reporting to support continuous improvement and the ability to provide assurance of good decision-making
- develop clear complaints-handling procedures that are communicated with decision-makers and those affected by decisions.

We are confident that implementing the recommendations will assist Comcare to improve its ability to provide assurance and accountability over its use of s 57 powers. This will enable Comcare to assure claimants, Parliament and the public that its medical examination decision-makers are following clear guidance to make consistent, reasonable and transparent decisions and appropriately identify and manage complaints.

## RECOMMENDATIONS

### **RECOMMENDATION 1 – DEVELOP POLICY**

We recommend Comcare develop an agency-wide policy statement setting out expectations for interpreting and exercising s 57 of the SRC Act.

**Comcare’s response: ACCEPTED**

### **RECOMMENDATION 2 – DEVELOP RECORD-KEEPING POLICY**

We recommend Comcare develop a policy and supporting procedure requiring its decision-makers to record reasons for s 57 decisions.

**Comcare’s response: ACCEPTED**

### **RECOMMENDATION 3 – DEVELOP COMMUNICATION POLICY**

We recommend Comcare develop a policy and supporting procedure requiring its decision-makers to communicate reasons for s 57 decisions to claimants.

**Comcare’s response: ACCEPTED**

### **RECOMMENDATION 4 – AMEND PROCEDURAL GUIDANCE**

We recommend Comcare expand its procedures to ensure decision-makers consider relevant factors for exercising s 57 of the SRC Act.

Procedures should provide additional explanations to support decision-makers to:

- determine when a s 57 examination is necessary, including outlining how to seek authorisation of the decision
- select appropriate medical practitioners to conduct a s 57 examination
- identify, assess and weigh claimants’ personal circumstances when arranging a s 57 medical examination
- determine whether an excuse not to attend a medical examination is reasonable.

**Comcare’s response: ACCEPTED**

### **RECOMMENDATION 5 – DATA ANALYSIS**

We recommend Comcare develop a process to collect and analyse data about its s 57 decisions. This analysis should enable Comcare to provide assurance that its decision-making is consistent with Comcare’s policies and procedures.

**Comcare’s response: ACCEPTED**

### **RECOMMENDATION 6 – DEVELOP WRITTEN AGREEMENTS**

We recommend Comcare develop written agreements with third-party providers it uses for s 57 medical examinations that include requirements to:

- check medical practitioner licensing and registration
- inform Comcare of any medical practitioner licensing or registration issues when they arise
- flag any investigations or inquiries into medical practitioners with Comcare.

**Comcare's response: ACCEPTED**

#### **RECOMMENDATION 7 – AMEND COMPLAINT PROCEDURES**

We recommend Comcare amends its complaint handling procedures to support staff to capture and manage complaints about s 57 examinations, including the conduct or behaviour of medical practitioners.

**Comcare's response: ACCEPTED**

#### **RECOMMENDATION 8 – DEVELOP WRITTEN AGREEMENTS FOR COMPLAINT HANDLING**

We recommend Comcare develop written agreements with third-party providers it uses for s 57 medical examinations that include requirements to:

- manage and respond to complaints about medical practitioners
- notify Comcare when complaints about medical practitioners are received, and of the outcome of any complaint investigation action.

**Comcare's response: ACCEPTED**

#### **RECOMMENDATION 9 – PUBLISH INFORMATION ABOUT COMPLAINT HANDLING**

We recommend Comcare publishes information about how to submit s 57 examination-related complaints and its complaint handling process. This information should be included in its s 57 decision letters, factsheets and other online materials relating to s 57 examinations.

**Comcare's response: ACCEPTED**

#### **Summary of entity response and possible next steps**

Comcare accepted all 9 recommendations made in this report (see **Appendix A**). Comcare advised it has implemented 3 recommendations since our point-in-time assessment, being recommendations 6, 7 and 8.

Following publishing this report on our investigation, we will formally follow up on Comcare's implementation of this report's recommendations, as part of our recommendations monitoring program. At the same time, we will continue to monitor any complaints about medical examinations our Office receives. Based on reviewing this information, we may consider the feasibility of a future investigation about Comcare's use of s 57 powers in practice.

## **PART 1: BACKGROUND TO INVESTIGATION**

### **Introduction**

1.1. Comcare is an Australian Government agency and the national authority for workers' compensation. Established under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), it is responsible for making decisions about, and administering claims for, workers compensation by injured Australian Government employees.<sup>2</sup> When making a decision about a workers' compensation claim, s 57 of the SRC Act gives Comcare the power to require a claimant to undergo a medical examination by a medical practitioner of Comcare's choice.<sup>3</sup>

1.2. On 27 May 2021, then Ombudsman, Mr Michael Manthorpe PSM, appeared at the 2021–22 Budget Estimates hearing, where the Legal and Constitutional Affairs Legislation Committee (the Committee) raised concerns about allegations of unethical behaviour by Comcare.<sup>4</sup> The Committee referred to an article published by the Australian Broadcasting Corporation (ABC) in February 2021 that alleged instances where Comcare engaged in unreasonable practices when arranging medical examinations.

1.3. The Committee asked the Ombudsman to look at the published material and consider whether the issues raised warranted an investigation into Comcare by the Commonwealth Ombudsman.

1.4. After considering the published material and reviewing complaints received by the Office of the Commonwealth Ombudsman (the Office), the then Ombudsman, Mr Michael Manthorpe PSM, wrote to Comcare's CEO on 14 July 2021 advising he had decided to commence an own motion investigation, under section 5(1)(b) of the *Ombudsman Act 1976* (Ombudsman Act), into Comcare's policy and procedural framework for administering medical examinations.

### **The Commonwealth Ombudsman's powers and functions**

1.5. The Office provides independent oversight of public administration by Australian Government agencies and certain prescribed authorities. The Ombudsman cannot be directed to undertake an investigation or to arrive at a certain conclusion. The Ombudsman also decides what matters should be considered as part of an investigation.

1.6. The Ombudsman is limited to investigating action relating to a matter of administration taken by Australian Government agencies or prescribed authority.<sup>5</sup> Accordingly, the Office focuses on how Australian Government agencies and prescribed authorities apply legislation and policy. The Ombudsman can make recommendations to improve administration by Australian Government agencies and prescribed authorities.

---

<sup>2</sup> Comcare, [About Comcare](#), Comcare website, accessed 10 November 2021.

<sup>3</sup> *Safety, Rehabilitation and Compensation Act 1988*, s 57.

<sup>4</sup> Australian Senate Legal and Constitutional Affairs Committee (2021) [2021-22 Budget Estimates 27 May 2021 Transcript](#), Parliament of Australia website, accessed 25 January 2022.

<sup>5</sup> *Ombudsman Act 1976*, s 5(1)(b).

## Investigation approach

### *Objective and scope*

1.7. The objective of this investigation was to examine the appropriateness of Comcare's administrative framework for managing medical examinations under s 57 of the SRC Act. This includes the policies and procedures Comcare has in place to support its staff to use s 57 powers and to manage complaints about actions taken under s 57.

1.8. The investigation did not consider:

- the administration of s 36 of the SRC Act, which gives the claimant's employer the power to arrange a medical assessment about the claimant's capability to undertake a rehabilitation program<sup>6</sup>
- Comcare's end-to-end process for assessing claims for compensation under the SRC Act – including decisions it makes to accept or cancel compensation claims
- Comcare's payments or financial documents in relation to s 57 of the SRC Act
- administrative actions of self-insured licensees or agencies who have delegated management arrangements under the SRC Act, such as Services Australia and the Australian Taxation Office
- actions or decisions of medical professional boards in relation to complaints about medical practitioner conduct or behaviour
- training Comcare provides to its staff about administering s 57 of the SRC Act.

### *Methodology*

1.9. We conducted a desktop investigation to inform our understanding of Comcare's decision-making framework for its s 57 powers and how it manages complaints about medical examination issues. This investigation is a 'point-in-time' assessment of written policies, procedures and guidelines Comcare provided to us by 3 December 2021. We examined these documents to determine how Comcare:

- supports decision-makers to assess and establish whether a s 57 examination is required in order to decide whether to accept, reject or cancel a claim for workers' compensation
- guides decision-makers to select and engage suitable medical practitioners to conduct s 57 examinations
- monitors its use of s 57 examinations
- manages complaints about s 57 examinations, including those about the conduct of medical practitioners.

1.10. While we did not consider Comcare's use of medical examinations in practice, we considered Comcare's policies and procedures in the context of the February

---

<sup>6</sup> *Safety, Rehabilitation and Compensation Act 1988*, s 36.

2021 ABC article – which was tabled during Senate Estimates. This article alleged instances where Comcare:<sup>7</sup>

- sent claimants to multiple medical practitioners until they got a medical report that could be used to justify denying or cancelling a claim for compensation
- requested claimants undergo an unreasonable number of medical examinations until it got a report that could be used to deny or cancel a claim for compensation
- engaged medical practitioners who were accused of bullying and harassment or not appropriately qualified to assess the claimed condition.

1.11. We considered whether Comcare’s policies and procedures are appropriate to support reasonable and consistent decision-making and complaint handling, in light of the above allegations. Our assessment of Comcare’s administrative framework was also informed by better practice approaches to administrative decision-making and our Office’s *Better Practice Complaint Handling Guide*.<sup>8</sup> Where relevant, we also considered how Comcare’s decision-making framework and complaints management align with the priorities and commitments in its Service Charter<sup>9</sup> and Annual Report 2020–21.<sup>10</sup>

1.12. We met with representatives from Comcare’s Legal Group and Claims Management Group to gain an understanding of how they use powers under s 57 of the SRC Act. These meetings informed our requests for information and supporting documentation.

1.13. The Office provided the acting CEO of Comcare with the opportunity to comment on the draft report. Comcare’s response is attached to this report at **Appendix A** and summarised in the Executive Summary.

1.14. The Office thanks the Comcare staff who provided information to assist this investigation.

---

<sup>7</sup> Clayton R ‘[Federal Government workers compensation authority Comcare accused of unethical behaviour](#)’.

<sup>8</sup> Commonwealth Ombudsman, [Better Practice Complaint Handling Guide](#), 2021.

<sup>9</sup> Comcare, [Service charter](#), Comcare website, accessed 4 March 2022.

<sup>10</sup> Comcare, [Annual Report 2020–21](#), Comcare website, 2021, accessed 14 April 2022.

## PART 2: OVERVIEW

### Comcare’s role administering the workers’ compensation scheme

2.1. Australian Government agency employees, and certain private sector employees, may make claims for compensation for work-related physical or psychological injury or illness, under the SRC Act. Comcare is responsible for assessing whether compensation is payable to Australian Government agency employees who make claims under the SRC Act. To make this assessment, Comcare considers information provided to support the claim, including medical evidence of the claimed condition.

2.2. When a claim is accepted, claimants may be eligible for support and financial assistance, such as medical treatment, income support, or care and household services.<sup>11</sup> Comcare is responsible for ongoing management of the claim, which may include making decisions about whether – or not – a claimant remains entitled to compensation.

2.3. In this report, the term ‘claim’ can mean Comcare’s initial decision about whether a claimant is entitled to compensation, as well as Comcare’s actions and decisions in managing ongoing claims including where Comcare decides compensation is no longer payable – and payment stops.

2.4. Where Comcare decides to deny, stop or change the payment rate of a compensation claim, claimants can request Comcare reconsider this decision. If a claimant is not satisfied with Comcare’s reconsideration decision, they may apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

2.5. For the purposes of the report, we use the terms ‘cancel’, ‘stop’ and ‘deny’ compensation claims or payments, when referring to Comcare’s determinations about a claimant’s rights to compensation. The SRC Act does not include the terms ‘cancel’, ‘stop’ or ‘deny’ and these have been used to assist with general understanding of the report.

### Legislative requirements of section 57 of the SRC Act

2.6. Where a claimant makes a claim for workers’ compensation under the SRC Act, s 57 gives Comcare the power to require the claimant undergo a medical examination by a legally qualified medical practitioner (medical practitioner) chosen by Comcare.<sup>12</sup> Section 57 states that where an employee refuses or fails to undergo a medical examination without providing a ‘reasonable excuse’, the employee’s rights to compensation are suspended until the examination takes place.<sup>13</sup>

2.7. The frequency of s 57 examinations are set out in legislative instrument. Currently, Comcare cannot require a claimant to undergo a s 57 examination by the same medical practitioner more than once a month.<sup>14</sup>

---

<sup>11</sup> Comcare, [Workers' compensation claims](#), Comcare website, accessed 11 May 2022.

<sup>12</sup> *Safety, Rehabilitation and Compensation Act 1988*, s 57(1).

<sup>13</sup> *Safety, Rehabilitation and Compensation Act 1988*, s 57(2).

<sup>14</sup> *Safety, Rehabilitation and Compensation Act 1988*, s 57(6) and *Safety, Rehabilitation and Compensation (Specification of Medical Examinations Interval) Instrument 2019*.

2.8. In this report we refer to ‘s 57 decision-making’, ‘medical examination decisions’ and ‘Comcare decision-makers’ when discussing a Comcare’s use of s 57 powers. This includes when Comcare requires a claimant to attend a medical examination, nominates a medical practitioner for the medical examination and determines whether a claimant’s excuse for failing to attend a medical examination is reasonable.

2.9. An exercise of power under s 57 is not a reviewable decision or a determination under the SRC Act and therefore a claimant or employer who is dissatisfied with an exercise of power under s 57 of the SRC Act cannot apply to the AAT directly seeking a review.

2.10. Claimants can complain to our Office or seek judicial review under the *Administrative Decisions (Judicial Review) Act 1977* about the exercise of the power.

### **Comcare’s decision-making process for section 57 examinations**

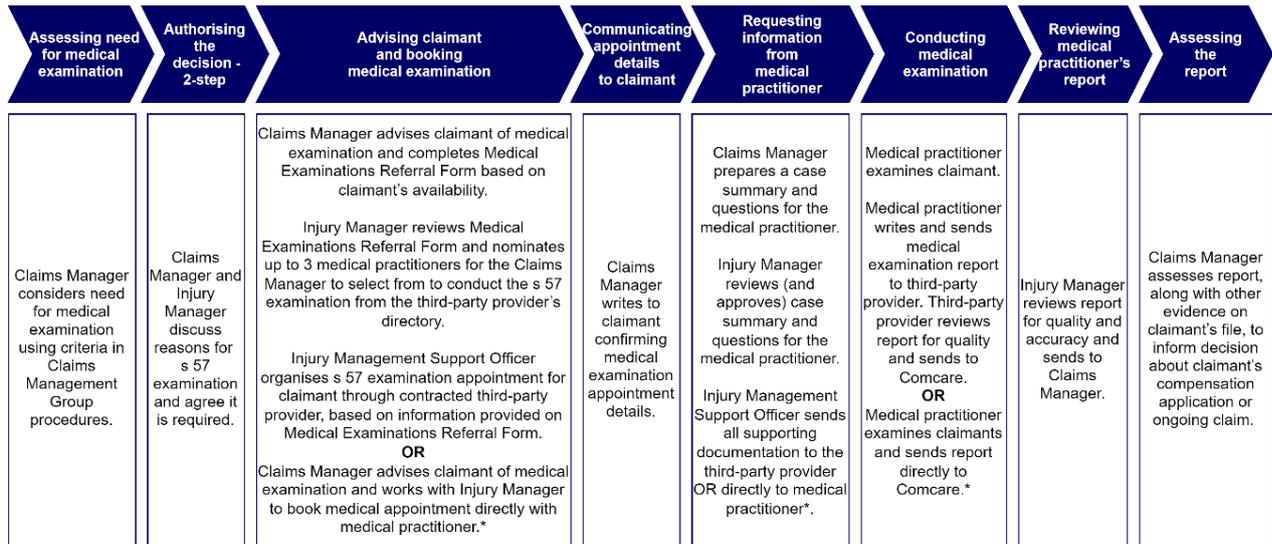
2.11. Comcare’s Claims Management Group and Legal Group are the 2 main branches responsible for using s 57 powers to obtain additional medical evidence or a specialist assessment in relation to a claimed condition.

2.12. In the Claims Management Group, Claims Managers are responsible for communicating with claimants and making assessments and decisions about compensation claims. Claims Managers are supported by an Injury Management Team of health experts, including occupational therapists, physiotherapists, exercise physiologists, psychologists, rehabilitation counsellors and nurses. This team works with Claims Managers to assess the need for a medical examination, using their clinical knowledge and experience to identify the most appropriate medical specialty and sub-specialty to assess a claimant’s condition.

2.13. Comcare’s Legal Group may require a claimant undergo a medical examination when their compensation claim decision is reviewed by the AAT. In these circumstances, both the claimant and Comcare need to appear before the AAT and may provide evidence to assist the review. In the Legal Group, Legal Service Providers provide legal services to Comcare through a model made up of an in-house legal team and contracted external lawyers. Legal Service Providers are supported by Comcare’s Instructing Officers who provide legal instructions for AAT matters, including compensation decisions subject to appeal at the AAT.

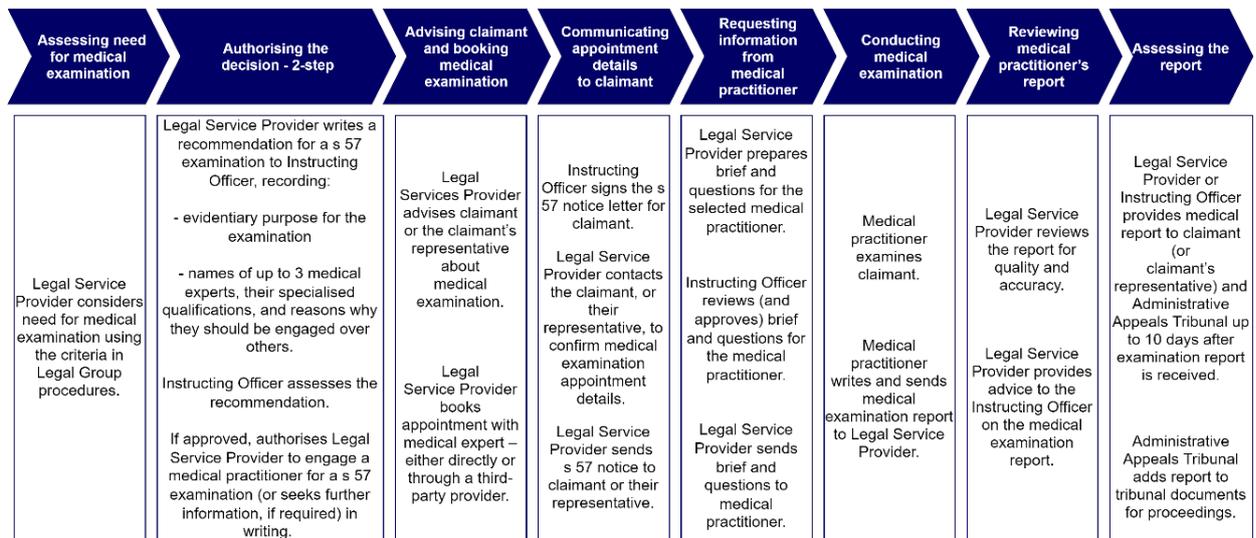
2.14. Based on our review of Comcare’s written procedural guidance, we set out the steps the Claims Management and Legal Groups follow to make s 57 decisions in figures 1 and 2.

Figure 1: Section 57 decision process flowchart for Claims Management Group



\*where Comcare decides to directly engage a medical practitioner

Figure 2: Section 57 decision process flowchart for Legal Group



2.15. Section 57 allows Comcare to request specific additional evidence from medical practitioners, which is considered and weighed against other information and evidence claimants provide. In cases where medical reports provide adverse information about a claimed condition, this may, but will not necessarily, lead to a claim being rejected or cancelled.

**Using third-party providers to organise section 57 examinations**

2.16. Comcare is responsible for all aspects of decisions made under s 57 of the SRC Act, including when to require a claimant to undergo an examination and which medical practitioner to select for the examination. Comcare uses third-party broker service providers (third-party providers) to assist its decision-makers (Claims Managers, Injury Managers and Instructing Officers) to select appropriate medical practitioners for medical examinations.

2.17. The role of these third-party providers is limited to maintaining and providing Comcare with a list of eligible medical practitioners who may be suitable and available to conduct a s 57 medical examination.

2.18. These third-party providers may also:

- provide Comcare decision-makers with access to online booking systems
- assist Comcare secure examination times and locations.

2.19. Comcare advised its Claims Management Group used 16 separate third-party providers in 2020–21 to assist booking medical examinations. Our investigation examined Comcare’s arrangements with eReports, its primary third-party provider. During our investigation, Comcare advised it was in the process of procuring additional third-party providers to assist with booking medical examinations. We discuss Comcare’s arrangements and procurement plans with these third-party providers further in paragraphs 3.37–3.43 and 4.12–4.18.

## **PART 3: COMCARE’S DECISION-MAKING FRAMEWORK FOR SECTION 57 EXAMINATIONS – FINDINGS**

### **Supporting good decision-making under section 57 of the SRC Act**

3.1. Administrative decisions by Australian Government agencies often directly or indirectly affect the rights and interests of individuals. Even where an agency may exercise a broad power, such as Comcare’s s 57 powers, all government decision-makers need to ensure the decisions they make are just and fair.<sup>15</sup>

3.2. Comcare can demonstrate its decision to refer a person for a medical examination is consistent with good administrative decision-making principles by ensuring the decision is:

- within power – the decision is made in accordance with the legislation
- reasonable – the decision is based on evidence and the decision-maker follows logical steps to arrive at the outcome
- appropriate and proportionate – the decision-maker identifies and applies the correct criteria and gives the appropriate weight to relevant factors
- consistent – the decision-making process is impartial (without bias or prejudice) and supports consistent outcomes when compared to decisions or actions in similar circumstances
- transparent and accountable – the reasons for the decision are clearly explained to the claimant.

3.3. Where legislation does not provide specific criteria to meet or factors decision-makers should consider, appropriate internal policies and procedures can help agencies support good administrative decision-making.<sup>16</sup> Internal policies set the parameters for administrative decision-making and show the ‘why’ behind actions. Procedures describe how decision-makers should complete specific tasks. Together, an effective policy and procedural framework should support an agency to make fair, consistent and predictable decisions, including deciding when to exercise a legislative power.

3.4. In our view, implementing a robust written policy and procedural framework should enable Comcare to provide assurance that its decision-makers approach medical examination decisions fairly and consistently.

### **Developing a policy statement for requesting medical examinations**

3.5. Comcare does not have a written agency-wide policy position or statement setting clear and explicit policy expectations for decision-makers exercising s 57 of the SRC Act.

3.6. In our view, Comcare would benefit from developing a formal policy that clearly states how Comcare interprets using its s 57 powers in practice and sets clear expectations

---

<sup>15</sup> Administrative Review Council, [Decision making: lawfulness, Administrative Best Practice Guides](#), Attorney-General’s Department website, 2007, accessed 15 December 2021.

<sup>16</sup> Administrative Review Council, [Decision making: lawfulness, Administrative Best Practice Guides](#).

to guide decision-makers exercising these powers. A clear policy statement may assist Comcare to provide assurance medical examination powers are exercised consistently, and only when considered reasonable and necessary by Comcare's s 57 decision-makers.

3.7. The written agency policy statement should include Comcare's policy position on:

- the criteria that should be met before requiring claimants undergo a medical examination – that is, when it is reasonable and necessary
- selecting appropriate medical practitioners for examinations, including any rules or preferences for checking qualifications or previous conduct complaints
- common requirements for s 57 decision-making across the Claims Management Group and Legal Group
- any other considerations relevant to the interpretation or application of s 57 of the SRC Act.

3.8. We also consider the policy statement should clarify what Comcare means for medical examinations to be 'independent'. Comcare commonly refers to s 57 examinations as *independent* medical examinations (or IMEs) – 'independent' is not used or defined in the SRC Act. Clarifying the term 'independent' and outlining how decision-makers should take this into account when selecting medical practitioners for examinations may support Comcare to provide assurance that its decisions are appropriate and consistent.

#### RECOMMENDATION 1 – DEVELOP POLICY STATEMENT

We recommend Comcare develop an agency-wide policy statement setting out expectations for interpreting and exercising s 57 of the SRC Act.

### Develop a policy to record reasons for section 57 decisions

3.9. It is good administrative practice for government decision-makers to record their reasons for making a particular decision, including the information relied upon to make that decision. Sound record-keeping practices provide transparency of decision-making and help ensure that government agencies remain accountable for their actions, consistent with requirements under the *Public Service Act 1999*.<sup>17</sup> Requiring and supporting decision-makers to keep a contemporaneous record of their decisions makes it easier for an agency to provide a statement of reasons, evidence or facts for a decision, if asked to do so.<sup>18</sup>

3.10. The Legal Group's procedure for using s 57 examinations to support AAT proceedings includes a requirement that Legal Service Providers address the following when recording their reason for a decision:

- why the injured employee needs to be examined by the medical expert, including noting any gaps in current medical evidence

<sup>17</sup> *Public Service Act 1999*, s 10(e).

<sup>18</sup> Administrative Review Council, [Decision making: reasons, Administrative Best Practice Guides](#), Attorney-General's Department website, 2007, accessed 22 December 2021.

- confirming the preferred medical expert has no conditions, limitations, restrictions, reprimands, suspensions or undertakings on their practicing license
- why the selected medical expert(s) should be engaged instead of other practitioners identified.

3.11. These reasons are included in the written recommendation to Comcare’s Instructing Officer, who is responsible for authorising the decision that a s 57 medical examination is required.

3.12. After this point in the decision-making process, there are no additional requirements for the Legal Group to record justifications for decisions – this includes any reasoning or assessment about whether a claimant provided a reasonable excuse for failing to attend a medical examination.

3.13. The Claims Management Group’s procedures do not require decision-makers to record reasons for s 57 decisions – this includes justifications for why medical examinations are regarded as necessary to assessing a compensation claim, or why specific medical practitioners are preferred and selected.

3.14. Without a clear requirement to record reasons for a decision at each step of the medical examination process, Comcare is limited in its ability to provide assurance that decisions are reasonable, appropriate and transparent.

3.15. In our view, Comcare should develop a written policy requiring its decision-makers to record the reasons for s 57 decisions. Along with this policy, Comcare should also update its documented procedures to include requirements that decision-makers record:

- the purpose – or evidentiary need – for a medical examination
- reasons why specific medical practitioners are to conduct a particular medical examination
- reasons for decisions about whether or not a claimant provides a ‘reasonable excuse’ for not attending a s 57 examination.

3.16. As the introduction of this report outlines, Comcare has been the subject of public criticism for its use of s 57 examinations when handling compensation claims. Strengthening its approach to recording reasons for medical examination decisions may assist Comcare to respond to any such criticism through reference to contemporaneous records showing the administrative steps taken to reach a decision and, where appropriate, explain the reasons for a decision.

**RECOMMENDATION 2 – DEVELOP RECORD-KEEPING POLICY**

We recommend Comcare develop a policy and supporting procedure requiring its decision-makers to record reasons for s 57 decisions.

## **Develop a policy to communicate reasons for section 57 decisions to claimants**

3.17. Comcare does not have to provide reasons for its s 57 decisions to claimants under the SRC Act. However, even where a government decision-maker is not legally required to provide reasons for their decision, as a matter of fairness and transparency, it will often be appropriate to do so. It is good practice for government agencies to communicate clearly and promptly with individuals who access government services, including providing reasons for decisions. In our experience, providing a clear and timely reason for a decision may assist individuals who access government services to understand why a decision was made, which may, in turn, reduce complaints to agencies and our Office.

3.18. We assessed the procedures and templates Comcare provided our Office to assess Comcare's approach to communicating reasons for medical examination decisions to claimants. This included considering whether these procedures and templates are appropriate and consistent with Comcare's service delivery commitments in its Service Charter.<sup>19</sup>

3.19. Comcare's publicly available Service Charter outlines its commitment to communicating appropriately with individuals accessing their services. The Charter states that Comcare will 'provide consistent, clear, quality information' and 'clearly explain how we make decisions, as well as [claimants'] rights to review or appeal those decisions'.<sup>20</sup>

3.20. Comcare does not have a policy that requires its decision makers to explain to claimants reasons for its s 57 decisions, consistent with its Service Charter commitments. Comcare's procedures require decision-makers to call claimants to discuss appointment details, followed by a template-supported email confirming the examination time, date and other details. The procedures do not require decision-makers to explain the reasons for a s 57 decision to claimants in writing, or over the phone. In practice, this means individuals may not understand why Comcare has asked them to attend a medical examination, see a particular medical professional, or attend multiple medical examinations, including with different practitioners.

3.21. Comcare would benefit from developing a policy requiring its decision-makers to explain reasons for s 57 decisions to claimants. Along with this policy, Comcare should update its procedures and supporting templates to include guidance to support decision-makers to communicate their reasons for decisions to claimants.

3.22. The policy, procedures and templates should assist decision-makers to:

- inform a claimant why Comcare requires them to attend a medical examination, or multiple examinations
- explain why Comcare selected a particular medical practitioner for a claimant's medical examination

---

<sup>19</sup> Comcare, [Service charter](#).

<sup>20</sup> Comcare, [Service charter](#).

- explain why a claimant’s reasons for failure to attend their medical examination are not considered a ‘reasonable excuse’, in circumstances where the claimant did not attend the medical examination.

**RECOMMENDATION 3 – DEVELOP COMMUNICATION POLICY**

We recommend Comcare develop a policy and supporting procedure requiring its decision-makers to communicate reasons for s 57 decisions to claimants.

**Strengthening procedural guidance for section 57 examination decisions**

3.23. While Comcare does not have an overall policy statement to guide medical examination decision-making, it has several written procedures outlining the steps decision-makers should take when using its s 57 powers.

3.24. This section summarises those areas where we think Comcare would benefit from improving existing procedures to better assist decision-makers make consistent and transparent decisions. Specific areas for improvement are discussed in greater detail in **Appendix B**.

3.25. Comcare’s written procedures for decision-makers include prompts on relevant factors they should consider when determining whether a medical examination is necessary and which medical practitioner to refer a claimant to. We consider Comcare should expand on this information to clearly outline the steps decision-makers should follow, including how decision-makers should identify, balance and weigh these relevant factors when referring claimants to medical examinations.

3.26. We identify 5 areas where Comcare could improve its procedures and strengthen its written guidance to provide assurance that its decision-makers are supported to approach medical examination decisions reasonably, consistently and appropriately. The 5 areas for improvement are:

- Determining when a medical examination is necessary – in other words, understanding the triggers for exercising s 57 powers, and assessing whether they are met.
- Explaining how to seek and provide authorisation for medical examination decisions under the 2-step authorisation process – including outlining any thresholds or criteria that must be applied and how to action any disagreements between decision-makers about the need for a medical examination.
- Explaining how to select an appropriate medical practitioner to conduct a medical examination – including how to assess practitioner qualifications and determine when to directly engage a medical practitioner or use a third-party provider.

- Identifying where a claimant’s personal circumstances may be relevant to selecting a medical practitioner or booking a medical examination, and how to take relevant factors into account – such as accessibility requirements.
- Determining the reasonableness of an excuse for failure to attend a medical examination.

3.27. In line with better-practice principles, procedural and guidance materials should be reviewed regularly. Any necessary variations in procedures across an agency’s business areas (such as differences between the Legal and Claims Management Groups) should be supported by a clear rationale and tailored appropriately. All procedures should align with Comcare’s agency policies for exercising s 57 powers and recording and communicating reasons for s 57 decisions.

**RECOMMENDATION 4 – AMEND PROCEDURAL GUIDANCE**

We recommend Comcare expand its procedures to ensure decision-makers consider relevant factors for exercising s 57 of the SRC Act.

Procedures should provide additional explanations to support decision-makers to:

- determine when a s 57 examination is necessary, including outlining how to seek authorisation of the decision
- select appropriate medical practitioners to conduct a s 57 examination
- identify, assess and weigh claimants’ personal circumstances when arranging a s 57 medical examination
- determine whether an excuse not to attend a medical examination is reasonable.

**Strengthening approaches to data capture and analysis**

3.28. Data held by government agencies about the services they deliver can be used to improve service delivery and inform further policy development and program design. Data may be in the form of numbers, figures, text, dialogue, recordings, measurements and images that are collected on various sources. For government agencies that deliver a service to the public, one important source of data is information about the administrative decisions that agency makes.

3.29. We asked Comcare to provide the following data for the previous 3 financial years:

- number of medical examinations requested by Comcare
- number of individual practitioners used to conduct medical examinations
- 10 most frequently used medical practitioners for medical examinations.

3.30. Comcare provided us with the total number of s 57 examinations its Claims Management Group requested, as well as a breakdown of how many of these examinations related to psychological or physical claimed conditions.

3.31. For medical examination data relating to its Legal Group, Comcare advised it was unable to provide this without ‘considerable manual intervention’. Comcare could not produce data on the number of individual medical practitioners used to conduct medical

examinations or the 10 most frequently used medical practitioners for s 57 examinations, as it ‘records the provider paid for the service, not the practitioner’.

3.32. Due to Comcare’s inability to provide data on its s 57 decisions, Comcare is not able to quickly and easily analyse its use of medical examinations across the agency. This limits Comcare’s ability to provide assurance at an organisational level that its s 57 decision-making is reasonable, appropriate and consistent.

3.33. Comcare advised it is progressing several initiatives to improve the quality of its claims management systems, including in support of effective data management. These include:

- Using appropriate technologies to improve its data quality and ability to quickly retrieve and analyse data, under the Data Technology stream of its Data Strategy,<sup>21</sup> which sets out Comcare’s plan to become a data-driven organisation.
- Undertaking a project to review and improve data governance by 2022–23, including in relation to Comcare’s claims management system.
- Developing standards and reporting requirements in contractual documents between Comcare and third-party providers, including additional requirements for third-party providers to record and share data with Comcare on the:
  - number of medical examinations by practitioner type
  - number of medical examinations by individual practitioner.

3.34. We acknowledge Comcare’s commitment to improve its approach to data governance and strengthen data capability. In our view, as part of these improvements Comcare should consider developing a process to capture and analyse data on its use of s 57 powers across the agency. In particular, Comcare may benefit from capturing data relating to how frequently s 57 examinations are requested for individual claimants by each Group, and how often particular medical practitioners are requested to conduct medical examinations.

3.35. Strengthening its approach to collecting and analysing data about s 57 decisions and the practitioners used may assist Comcare to identify risks and systemic issues, confirm expected results are being achieved and drive continuous improvement in its decision-making.<sup>22</sup> It may also assist Comcare to provide assurance that its decision-makers are using s 57 powers reasonably, appropriately and consistently across the agency.

3.36. In December 2021, the Department of Finance released its Commonwealth Evaluation Policy and supporting Toolkit. The Toolkit, amongst other things, helps entities use monitoring and evaluation to generate data and robust evidence to drive continuous improvement in accordance with relevant whole-of-government policies and frameworks.<sup>23</sup> In developing its process to capture, collate and analyse s 57 data, Comcare should consider

---

<sup>21</sup> Comcare, Annual Report 2020–21.

<sup>22</sup> Department of Finance, [Why evaluate?](#), Department of Finance website, accessed 22 April 2022.

<sup>23</sup> Department of Finance, [Commonwealth Evaluation Policy](#).

applying the better practice principles in the Policy and following the guidance in the Toolkit and any other relevant whole-of-government guidance.

**RECOMMENDATION 5 – DATA ANALYSIS**

We recommend Comcare develop a process to collect and analyse data about its s 57 decisions. This analysis should enable Comcare to provide assurance that its decision-making is consistent with Comcare’s policies and procedures.

**Strengthening agreements with third-party providers**

3.37. As outlined in paragraphs 2.12–2.15, Comcare uses third-party providers to assist in organising medical examination appointments. Where an agency uses an external provider to assist to deliver a product or service (a ‘third-party’), agencies need to be aware of the risks associated with relying on another party to deliver that product or service. Reliance on third parties may expose agencies to risks which may affect the agency’s ability to deliver timely and quality services to the public. By ensuring any formal agreement with a third-party includes appropriate governance and risk management processes, agencies are better positioned to manage potential risks.

3.38. Comcare advised that its third-party providers have robust recruitment and retention processes for engaging and retaining medical practitioners – including well-established systems and processes to ensure medical practitioners are, and remain, suitable to conduct s 57 medical examinations.

3.39. Comcare advised its third-party providers are responsible for monitoring whether the medical practitioners on their directories have restrictions or suspensions on their registration to practice. For example, as part of our virtual tour of eReports’ booking system, Comcare advised that eReports removes medical practitioners who have restrictions or conditions on their practising license from the directory. However, the contract between eReports and Comcare does not require eReports to do this.

3.40. Without a written requirement to check and monitor practitioner license issues, Comcare may find it difficult to provide assurance that its third-party providers are taking appropriate action to ensure that medical practitioners available to Comcare have appropriate qualifications, practising registrations and licenses.

3.41. Comcare advised it is currently procuring additional third-party providers to supply and maintain directories of medical practitioners to assist Comcare organise medical examinations. The draft tender documents and contracts provided to our Office contain additional and specific requirements, including that third-party providers:

- ensure any available medical practitioners are registered with the Australian Health Practitioner Regulation Agency (AHPRA)
- ensure the directory of practitioners (or other mechanism) alerts Comcare to any suspensions, restrictions, limitations, conditions or reprimands on a practitioner’s practising licence
- flag any investigations, inquiries or regulatory and complaint processes undertaken against a medical practitioner.

3.42. In our view, these future requirements are appropriate and may assist Comcare to ensure its decision-makers are fully informed of any relevant issues in relation to a medical practitioner’s suitability to conduct s 57 examinations. While these are positive inclusions that will apply to Comcare’s contracts with future third-party providers, we consider that Comcare should seek to ensure these conditions apply to all third-party providers it currently uses to select medical practitioners.

3.43. We consider Comcare should develop written agreements with all its third-party providers to ensure that Comcare decision-makers are aware of any relevant concerns about medical practitioner suitability to conduct medical examinations. Strengthening these requirements may assist Comcare to provide assurance that using these third-party providers as part of medical examination decision-making is reasonable and appropriate, and that Comcare is managing the risks associated with relying on third-party providers.

**RECOMMENDATION 6 – DEVELOP WRITTEN AGREEMENTS**

We recommend Comcare develop written agreements with third-party providers it uses for s 57 medical examinations that include requirements to:

- check medical practitioner licensing and registration
- inform Comcare of any medical practitioner licensing or registration issues when they arise
- flag any investigations or inquiries into medical practitioners with Comcare.

**Part 4: SECTION 57 EXAMINATION COMPLAINT HANDLING – FINDINGS**

4.1. Complaints are one way government agencies can be held accountable for their decisions and actions. A good complaint handling service can fix errors and address potential systemic issues before they escalate, increase customer satisfaction, enhance an agency’s reputation and strengthen public trust in government administration.<sup>24</sup> Complaints also give agencies an opportunity to collect feedback to improve their service.

4.2. Complaint handling systems should be supported by clear step-by-step guidance to help staff identify, receive, manage, resolve and record complaints. It is better practice for complaint systems to include regular reporting to agency executives about complaint volumes and trends, including data about complaint issues, possible causes and outcomes.

4.3. Comcare’s 2 guidance documents to support staff to handle complaints are its *Complaint Handling Framework* and *Complaints Procedures Manual*. We considered these documents to assess whether staff are appropriately supported to identify and manage complaints about s 57 examinations, including complaints about the behaviour

<sup>24</sup> Commonwealth Ombudsman, [Better Practice Complaint Handling Guide](#).

or conduct of medical practitioners. We assessed these documents against our Office’s *Better Practice Complaint Handling Guide 2021*.

4.4. Comcare’s *Complaints Handling Framework* provides an overview of better-practice complaint handling principles and outlines Comcare’s policy on the types of complaints considered within scope of the Framework – and handled by Comcare. The Framework includes flowcharts showing the steps and timeframes involved in handling complaints for different aspects of Comcare’s service delivery, such as the process flowcharts for medical examination complaints (see Figures 3 and 4 below). It also includes requirements for regular reporting on identified complaint issues, trends and outcomes to Comcare’s senior executive.

4.5. Comcare’s *Complaint Procedures Manual* provides more detailed, step-by-step guidance for complaint handlers. It includes guidance – and screenshots – for staff on how to register complaints, and record complaint issues and outcomes in Comcare’s complaint management system.

4.6. During our investigation, Comcare amended its approach to managing complaints about medical practitioner conduct. In August 2021, Comcare advised that complaints about medical examination issues were handled by third-party providers or referred to health practitioner oversight bodies, such as AHPRA. In November 2021, Comcare updated its *Complaints Handling Framework* to include an internal process for complaints about independent medical examinations and the conduct of medical practitioners undertaking these examinations.

*Figure 3: Comcare’s section 57 complaint process flowchart for medical practitioners engaged through a third-party provider*

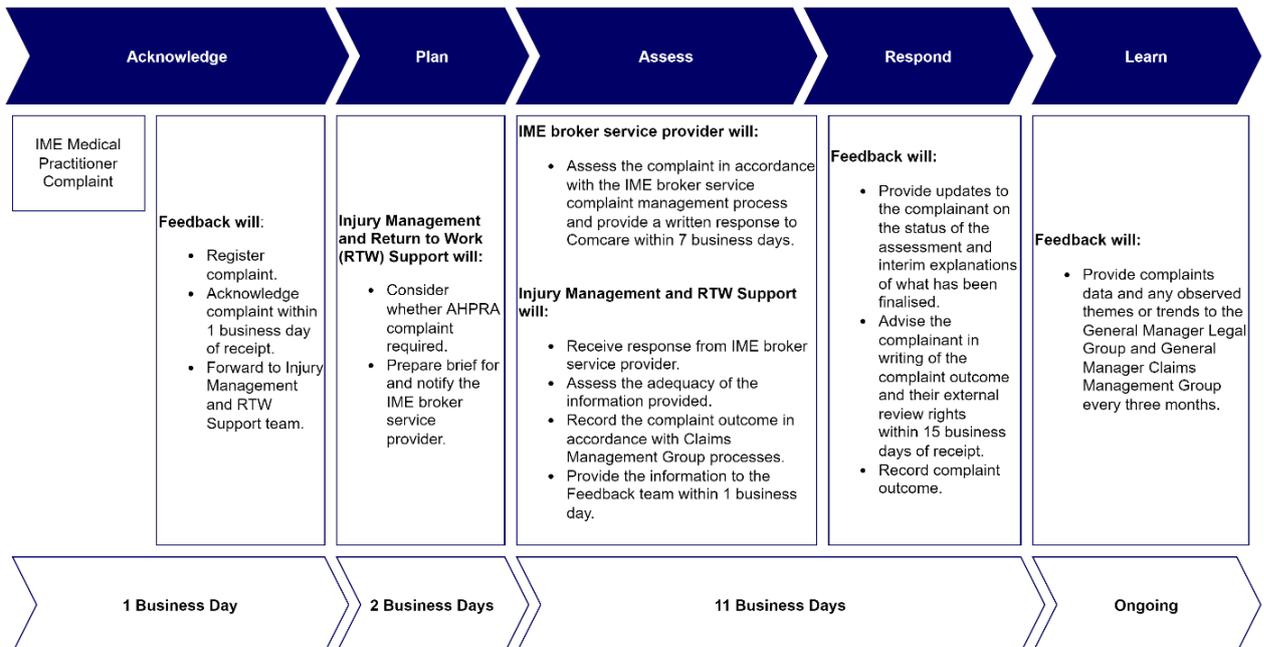
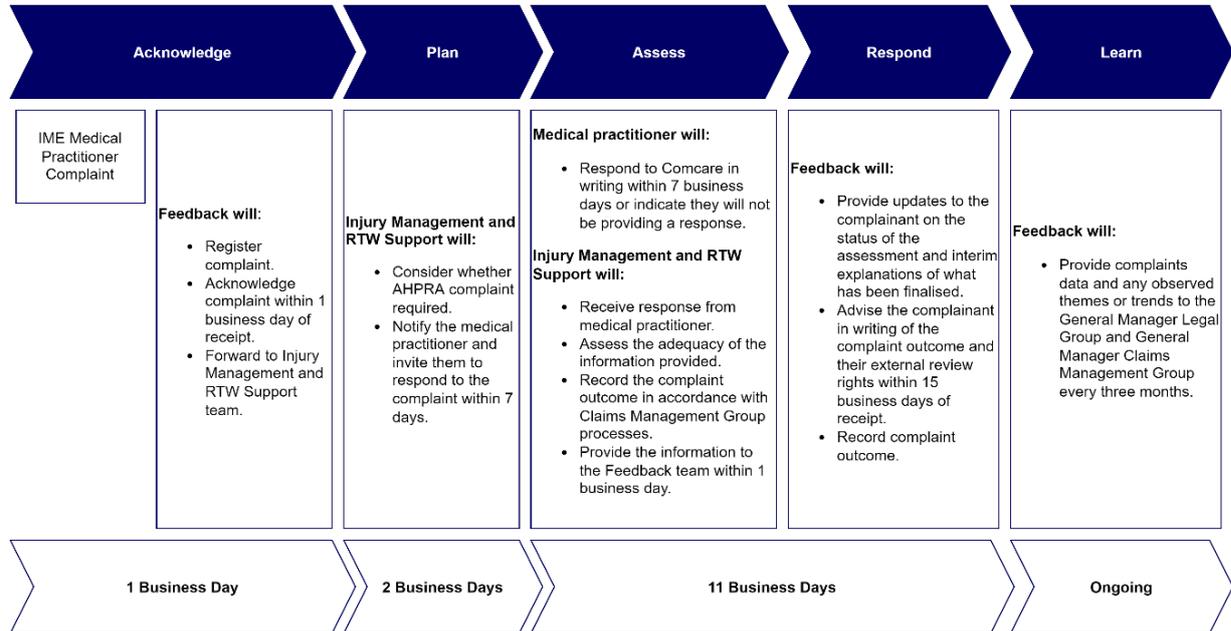


Figure 4: Comcare’s section 57 complaint process flowchart for directly engaged medical practitioners



4.7. In our view, it is appropriate Comcare updated its approach to internally manage complaints about medical examinations, rather than referring them to other bodies, such as AHPRA. While we acknowledge it is appropriate for Comcare to continue to refer aspects of complaints about a medical practitioner’s conduct to health complaint oversight bodies, complaints which also raise issues about Comcare’s administrative decision-making are best addressed by Comcare. By capturing, assessing and responding to complaints about medical practitioners as part of its complaints-handling processes, Comcare may improve its ability to monitor s 57 decision-making, and any issues arising with its third-party providers.

4.8. Comcare has not reflected this changed approach to internally manage complaints about medical practitioners in its *Complaints Procedures Manual*, which states that complaints about the conduct or behaviour of medical practitioners performing s 57 examinations are ‘not managed or assessed by Comcare.’ It informs staff to refer complaints to the third-party provider used to schedule the appointment, AHPRA, the Health Commissioner or their local Human Rights Commission.

4.9. Without clear, consistent procedural guidance on managing medical examination-related complaints, there is a risk Comcare officers will not identify or appropriately respond to these complaints – and will instead refer these complaints elsewhere. This limits Comcare’s ability to provide assurance that it is aware of, addressing and learning from issues raised in these complaints. Comcare will also miss opportunities to use complaints to inform continuous improvement in its decision-making.

4.10. In our view, Comcare should amend its complaint handling procedural guidance to ensure that its complaint handling staff are adequately supported to identify, receive and respond to complaints about medical examinations – including any issues about Comcare’s administrative decision-making. Procedural guidance should include clear steps on when and how to refer complaints about conduct to medical practitioner oversight bodies.

4.11. Ideally, procedures should also guide staff to consistently record their assessments of medical examination complaints, so that Comcare can include information on medical examination complaint issues, including any trends and resolutions, in its regular reporting to its Senior Executive.

**RECOMMENDATION 7 – AMEND COMPLAINT HANDLING PROCEDURES**

We recommend Comcare amends its complaint handling procedures to support staff to capture and manage complaints about s 57 examinations, including the conduct or behaviour of medical practitioners.

**Complaint handling requirements and procedures for third-party providers**

4.12. Where government agencies use third-party providers, it is better practice for agencies to include requirements for third-party providers or contractors to handle complaints in accordance with better-practice principles and report complaint data and trends to agencies.<sup>25</sup>

4.13. We examined the contract between Comcare and its primary third-party provider, eReports. We also examined eReports’ procedures for handling and reporting complaints about s 57 examinations to see what obligations Comcare places on its third-party providers to manage medical examination complaints.

4.14. As Figure 3 on page 22 shows, Comcare’s process for complaints about medical examination issues requires third-party providers to assess the complaint, then send a written response to Comcare within 7 days. However, Comcare’s contract with eReports does not include a requirement to respond, or otherwise manage, complaints about medical practitioners engaged to conduct s 57 examinations. The contract also does not require eReports to take action when it receives a complaint about a medical practitioner engaged to conduct a s 57 examination, such as reporting the complaint to Comcare or when to consider removing the medical practitioner from its directory while a complaint is investigated.

4.15. Additionally, eReports’ complaint handling procedures do not refer to Comcare – including advising how or when to escalate complaints to Comcare. eReports’ complaint procedures also state that complaints should be responded to within 10 days, which is inconsistent with the 7-day timeframe in Comcare’s *Complaint Handling Framework* process shown in Figure 3. As our investigation did not consider Comcare’s written agreements with third-party providers other than eReports, we cannot verify whether there are similar limitations to Comcare’s arrangements with other third-party providers.

4.16. Without written requirements or obligations for its third-party provider to manage complaints, there is a risk that complaints are not identified or actioned in accordance with Comcare’s, or the public’s, expectations. This limits Comcare’s ability to provide assurance that it is aware of, and managing, complaints about s 57 examinations

<sup>25</sup> Commonwealth Ombudsman, [Better Practice Complaint Handling Guide](#).

and medical practitioners. This may erode public trust in Comcare’s complaint and decision-making processes.

4.17. Comcare provided us a copy of the draft contract it intends to use to select and engage third-party providers to assist arrange s 57 examinations. The draft contract includes specific obligations and requirements for third-party providers to identify, manage and escalate complaints appropriately, and report complaint details to Comcare. While we consider this a positive initiative, Comcare should take action to ensure there are consistent written requirements for future and current third-party providers to manage medical examination complaints in line with its *Complaint Handling Framework* process and timeframes.

4.18. In our view, Comcare should ensure its written agreements with all its third-party providers include requirements for managing complaints about s 57 examination issues. This may assist Comcare to provide assurance that complaints about medical practitioner conduct or third-party providers are identified, managed and appropriately escalated to Comcare.

**RECOMMENDATION 8 – DEVELOP WRITTEN AGREEMENTS FOR COMPLAINT HANDLING**

We recommend Comcare develop written agreements with third-party providers it uses for s 57 medical examinations that include requirements to:

- manage and respond to complaints about medical practitioners
- notify Comcare when complaints about medical practitioners are received, and of the outcome of any complaint investigation action.

**Publishing information about how to submit a complaint**

4.19. High-quality complaint handling systems are simple to access and easy to use. Our Office’s *Better Practice Complaint Handling Guide* outlines that it is better practice to publish clear information for individuals about how to submit complaints and agency complaints processes. This information should be provided in multiple formats, including online, in decision letters and other relevant correspondence, such as information pamphlets and posters.<sup>26</sup>

4.20. Communicating clear information about the complaints process to claimants can assist agencies to improve customer experience and minimise uncertainty or dissatisfaction claimants may experience during, or resulting from, the complaint handling process.

4.21. Comcare publishes clear, general information about how to submit complaints and general timeframes for responding to complaints on its ‘Feedback and Complaints’ webpage.<sup>27</sup> However, there is no publicly available information for claimants on how Comcare manages complaints about medical examinations. Comcare also does not include information about complaint pathways or its Feedback and Complaints area in the template s 57 examination letters decision-makers send to claimants.

<sup>26</sup> Commonwealth Ombudsman, [Better Practice Complaint Handling Guide](#).

<sup>27</sup> Comcare, [Feedback and complaints](#), Comcare website, accessed 11 February 2022.

4.22. Comcare publishes its Claims Management Group’s factsheet, *Information regarding your attendance at a medical centre*,<sup>28</sup> on its website and attaches it to letters about medical examination appointments. While the factsheet tells claimants to submit complaints to Comcare in writing, it does not include contact details for its Feedback and Complaints area. Comcare’s Legal Group are not required to provide claimants with this factsheet.

4.23. Publishing more information for individuals about how to submit complaints about medical examination decisions and providing information about the steps Comcare follows to respond to medical examination complaints may assist to make Comcare’s complaints system more accessible for individuals. The more accessible a complaint system is, the more representative and valuable the complaint data will be. Accessible systems improve the user experience and decrease the risk that people are frustrated or angered by the complaints process itself.

4.24. In our view, Comcare should update its publicly available information about medical examinations – such as its factsheet *Information regarding your attendance at a medical centre* – to include information about how to submit a complaint about medical examinations and the general steps in its medical examination complaint resolution process. Comcare should also update its s 57 template letters to include clear information about complaint pathways about medical examination issues, including contact details for the Feedback and Complaints area.

**RECOMMENDATION 9 – PUBLISH INFORMATION ABOUT COMPLAINT HANDLING**

We recommend Comcare publishes information about how to submit s 57 examination-related complaints and its complaint handling process. This information should be included in its s 57 decision letters, factsheets and other online materials relating to s 57 examinations.

---

<sup>28</sup> Comcare, [Information regarding your attendance at a medical centre](#), Comcare website, 14 December 2020, accessed 11 March 2022.



## APPENDIX A: COMCARE'S RESPONSE

OFFICIAL



CHIEF EXECUTIVE OFFICER  
[REDACTED]

15 September 2022

Mr Iain Anderson  
Commonwealth Ombudsman

By email [REDACTED]

Dear Mr Anderson

Thank you for your letter of 16 August 2022 providing Comcare the opportunity to respond to your own motion report into Comcare's Management of Medical Examinations (the Report).

Comcare welcomes your assessment that our administration of, and procedures established under, section 57 of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) are consistent with our obligations to administer the worker's compensation scheme and that you found no evidence of unethical decision making in our practice.

Comcare discharges our functions under the SRC Act consistently with our strategic priorities and our purpose to promote and enable safe and healthy work. Our claims management approach is multi-disciplinary to ensure our decisions can be made accurately and quickly. Any exercise of the medical examination power is carefully considered by our allied health professionals and claims managers to ensure we support the employee to minimise the duration and severity of their injury.

Of course, we appreciate that there are improvements that we can make to strengthen our administrative frameworks. Comcare's Claims Management Improvement Program commenced in 2020, aiming to improve Comcare's claims management function with a particular focus on employee recovery and return to work.

Since 2019, Comcare has been reviewing and improving its approach to Independent Medical Examinations (IME) in our claims management work. In the last three years we have reduced our usage of IMEs by 59% which has led to improved claims outcomes and contributed to the restored financial viability of the scheme.

In 2022, Comcare finalised a procurement process for the provision of IME services and contracted with two providers. Our new arrangements ensure our internal allied health professionals have improved clinical oversight of IME engagement. The new arrangements allow for greater participation by the claimant in the process, as well as access to timely IME services and quality-controlled reports which facilitates faster decision making. As part of these arrangements Comcare has established IME standards and data and reporting requirements for its IME arrangements, which allows Comcare optimal oversight of IME use.

Comcare's broader enterprise purpose and priorities, along with our claims management improvement activities, are designed to build a culture of continuous improvement towards our goal of improved claim outcomes.

We have set out below our response to your recommendations.

GPO BOX 9905  
CANBERRA ACT 2601  
P 1300 368 979  
[COMCARE.GOV.AU](http://COMCARE.GOV.AU)

OFFICIAL

1



**OFFICIAL**

I would like to extend my thanks to you and your investigation team for your efforts during this investigation. I look forward to ongoing cooperation and continued collaboration between our agencies.

Yours sincerely

Aaron Hughes

Acting CEO

**OFFICIAL**

2



**OFFICIAL**

**RECOMMENDATION 1 – DEVELOP POLICY**

We recommend Comcare develop an agency-wide policy statement setting out expectations for interpreting and exercising s 57 of the *Safety, Rehabilitation and Compensation Act 1988*.

Comcare's response: **ACCEPTED**

Comcare publishes Worker's Compensation Scheme guidance on our website about the application of s 57. This guidance is aimed at decision makers and claimants and was published in November 2021. Scheme guidance is written, non-binding information issued to scheme participants that outlines Comcare's understanding and application of a SRC Act provision and is aimed at promoting scheme consistency.

The guidance provides advice on the process for selecting and engaging an appropriate legally qualified medical practitioner (LQMP) to conduct an IME. It covers issues such as when to consider using an IME, how to select an appropriate LQMP, monitoring and managing the engagement process.

Comcare is finalising additional guidance to supplement the current Scheme guidance. This guidance will cover issues such as the purpose of seeking a s 57 IME, who can conduct an IME, frequency of examinations, when and how to arrange a s 57 assessment, instructing the LQMP and actioning a s 57 report. Comcare is continuing to engage with stakeholders including the ACTU on the guidance. Comcare will publish the further guidance within coming weeks.

Comcare will adapt this guidance to implement an internal policy for Comcare employees.

**RECOMMENDATION 2 – DEVELOP RECORD-KEEPING POLICY**

We recommend Comcare develop a policy and supporting procedure requiring its decision-makers to record reasons for s 57 decisions.

Comcare's response: **ACCEPTED**

This recommendation has been partially implemented. Comcare will ensure this recommendation is fully implemented.

The Comcare Claims Manual which sets out guidance and procedures for management of claims has been updated and was launched on 4 July 2022. All content was reviewed as part of the update, and the content will continue to be reviewed and updated as needed.

The new Claims Manual includes guidance on considering the need for an IME. An IME Consideration Checklist has been created to guide the discussion between the claims manager and our internal allied health professionals.

In March 2021 Comcare updated our process for engaging and briefing medical experts in the Administrative Appeals Tribunal (AAT) requiring our Legal Service Providers (LSPs) (external and internal) to seek instructions and financial approval prior to engaging a medical expert. Comcare's LSPs are required to document the evidentiary purpose for the injured employee to be examined by a medical expert including detailing the medical experts specialist qualifications and confirming that the medical expert has no conditions, limitations, restrictions, reprimands, suspensions or undertakings on their practicing licence.

Comcare will implement a policy and relevant procedures to ensure our claims managers document reasons for exercising s 57 powers.



**OFFICIAL**

**RECOMMENDATION 3 – DEVELOP COMMUNICATION POLICY**

We recommend Comcare develop a policy and supporting procedure requiring its decision-makers to communicate reasons for s 57 decisions to claimants.

Comcare's response: **ACCEPTED**

Currently an appointment confirmation (s 57) letter is sent to the claimant, with details of the appointment that they are required to attend.

Comcare will update our internal procedures to ensure that communications to claimants about their s 57 appointment include the reasons for the s 57 as far as reasonably practicable.

Our current letter templates will be amended to include more details about why Comcare requires the claimant to attend an IME under s 57.

While we expect this letter to be a template Comcare will make changes as necessary in individual circumstances to ensure that the information provided in the letter will not cause undue stress or harm to the claimant.

**RECOMMENDATION 4 – AMEND PROCEDURAL GUIDANCE**

We recommend Comcare expand its procedures to ensure decision-makers consider relevant factors for exercising s 57 of the SRC Act.

Procedures should provide additional explanations to support decision-makers to:

- determine when a s 57 examination is necessary, including outlining how to seek authorisation of the decision
- select appropriate medical practitioners to conduct a s 57 examination
- identify, assess and weigh claimants' personal circumstances when arranging a s 57 medical examination
- determine whether an excuse not to attend a medical examination is reasonable.

Comcare's response: **ACCEPTED**

This recommendation has been partially implemented. Comcare will ensure this recommendation is fully implemented.

As noted above, the updated Comcare Claims Manual was launched on 4 July 2022. The updated Claims Manual includes guidance on what constitutes a reasonable excuse for failure to attend a medical examination, factors to consider when arranging an IME, selecting an LQMP, and reasons to arrange an IME.

Comcare's process (updated in March 2021) for engaging and briefing medical experts in the AAT also includes guidance on factors to consider when selecting a medical expert and where reasonable, the employee's personal circumstances and when to engage a medical expert in AAT proceedings.

Comcare will review and where necessary update our procedures, Claims Manual and templates to ensure our claims managers continue to be guided and supported to exercise s 57 powers reasonably and consistently.



**OFFICIAL**

**RECOMMENDATION 5 – DATA ANALYSIS**

We recommend Comcare develop a process to collect and analyse data about its s 57 decisions. This analysis should enable Comcare to provide assurance that its decision-making is consistent with Comcare’s policies and procedures.

Comcare’s response: **ACCEPTED**

Following our pilot of third party providers in 2021, Comcare contracted two third party providers in February 2022. The two providers are responsible for delivering IME services across Comcare. Utilisation of the new providers aligns with the implementation of the revised IME administrative processes within Comcare and the internal guidance documents about Comcare’s requirements of an IME, report requirements, standard for engaging an IME as well as data and reporting requirements.

These providers are contractually required to provide Comcare with data relating to the provision of IME services. The contractually agreed reporting requirement includes the volume of IMEs commissioned in any given reporting period broken down by Comcare team commissioning the IME (such as Claims Management Group, Legal Group, LSP); volume of IMEs by consultant; cost of IMEs by consultant; reason for referral to IME; and reporting on quality assurance requirements and referrals for supplementary IMEs. The contract manager will provide analysis of this information and report to senior management.

There are instances where LSPs need to engage a medical expert directly. Comcare’s process for engaging and briefing medical experts in the AAT updated in March 2021 outlines what data must be provided to Comcare, in relation to medical experts engaged directly. This same practice is also being implemented for Asbestos related claims.

Comcare otherwise accepts this recommendation in principle. Comcare is in the process of sourcing a new claims management system. The build of this system is currently out for tender and we expect it to be implemented in 2024. This system will have enhanced capability to record s 57 requests including reasons, as well as better track how medical recommendations are incorporated into the ongoing management of a claim.

**RECOMMENDATION 6 – DEVELOP WRITTEN AGREEMENTS**

We recommend Comcare develop written agreements with third-party providers it uses for s 57 medical examinations that include requirements to:

- check medical practitioner licensing and registration
- inform Comcare of any medical practitioner licensing or registration issues when they arise
- flag any investigations or inquiries into medical practitioners with Comcare.

Comcare’s response: **ACCEPTED**

This recommendation has been implemented by Comcare. The current contracts with our third party providers, signed in February 2022 provide that the IME Consultants must maintain registration with AHPRA and keep Comcare aware of the registration status of each IME Consultant. Comcare may request copies of any IME Consultant’s registration certificates and other credentialing and accreditation information.

If the providers become aware of any current investigation, inquiry, regulatory or formal complaint process involving an IME Consultant, they must tell Comcare of the nature of the investigation and the identity of the IME Consultant if they are legally permitted to do so and comply with any



**OFFICIAL**

instructions from Comcare whether to suspend or remove that IME Consultant from the directory. If they are not legally permitted to inform Comcare, they must suspend the IME Consultant from the directory.

There are also further obligations regarding training, clinical practice hours, communication skills and ethical standards in line with AMA Guidelines.

If an IME is being engaged directly, Comcare's LSPs (internal and external) are required to check the IME's practicing licence through AHPRA.

**RECOMMENDATION 7 – AMEND COMPLAINT PROCEDURES**

We recommend Comcare amends its complaint handling procedures to support staff to capture and manage complaints about s 57 examinations, including the conduct or behaviour of medical practitioners.

Comcare's response: **ACCEPTED**

This recommendation has been implemented by Comcare. Comcare amended its Complaint Handling Framework in November 2021 to include a separate process specifically for management of s 57 examination related complaints.

Relevantly, Comcare's complaint procedures have changed considerably since the completion of the Report. To better support Comcare strategic priorities of excellence in service provision, engagement with stakeholders with insight driven and risk and evidence-based practice, Comcare's complaints function was re-aligned on 31 January 2022 to embed complaints teams within their relevant Group. This move ensures that any operational dispute underlying a complaint is sought to be resolved quickly to improve the claimant's experience.

In March 2022 Comcare created a procedure for our complaints staff to manage s 57 complaints which mirrors our Complaint Framework. As a result of these changes Comcare's procedures and policies are aligned and we are now better placed to manage complaints about s 57 examinations.

**RECOMMENDATION 8 – DEVELOP WRITTEN AGREEMENTS FOR COMPLAINT HANDLING**

We recommend Comcare develop written agreements with third-party providers it uses for s 57 medical examinations that include requirements to:

- manage and respond to complaints about medical practitioners
- notify Comcare when complaints about medical practitioners are received, and of the outcome of any complaint investigation action.

Comcare's response: **ACCEPTED**

This recommendation has been implemented by Comcare. Comcare's new third party arrangements detail comprehensive requirements for our providers to engage in complaint management.

These have been tailored to Comcare's requirements and cover the provision of services, deliverables and reporting requirements. The process includes monthly reporting to Comcare on the number of complaints by category of timeliness, quality and conduct and details of the complaint resolution.

The process ensures that there is a consistent approach to the handling of incidents, complaints and feedback, within an established framework to enable the timely effective management of any complaints.



**OFFICIAL**

Comcare's process for engaging and briefing medical experts in the AAT was updated in March 2021 to include complaint management information for our LSPs to notify Comcare of any complaints.

**RECOMMENDATION 9 – PUBLISH INFORMATION ABOUT COMPLAINT HANDLING**

We recommend Comcare publishes information about how to submit s 57 examination-related complaints and its complaint handling process. This information should be included in its s 57 decision letters, factsheets and other online materials relating to s 57 examinations.

Comcare's response: **ACCEPTED**

Comcare will publish our complaint framework on our website which clearly outlines our complaint handling process about s 57 examinations.

We otherwise accept the recommendation to include information about making a s 57 examination complaint in relevant communications and publications.

**OFFICIAL**

7

## APPENDIX B: COMCARE'S PROCEDURAL GUIDANCE SUB-FINDINGS

5.1. Appendix B provides additional detail and expands on our analysis and findings (see 3.23–3.27) in relation to Comcare's s 57 procedural guidance. We do not make additional recommendations, instead we provide our views about specific areas of Comcare's written guidance that could be strengthened to better assist decision-makers.

### *Determining a medical examination is required*

5.2. Comcare provides public s 57 scheme guidance on its webpage 'Engaging a legally qualified medical practitioner to undertake an independent medical examination under the SRC Act'.<sup>29</sup> This webpage includes the following list of broad triggers that can prompt decision-makers to use s 57 powers:

- uncertainty on diagnosis of the claimed condition
- difficulty establishing a link between employment and the claimed condition
- insufficient or conflicting medical evidence on the employee's claim file
- treatment being received does not appear to be clinically justified and/or an opinion on treatment needs is required
- a claim is complex
- an employee develops a new or secondary condition
- an employee submits a claim for permanent impairment
- concerns about the current medical evidence or circumstances of the claim
- the condition seems to stabilise
- recovery stalls.

5.3. We reviewed Comcare's written guidance to support its Legal Group and Claims Management Group decision-makers to decide when a medical examination is required. The lists of reasons in both sets of procedural guidance documents are broad and permissive. We found this is not inconsistent with the wording of s 57 in the SRC Act.

5.4. In our view, it is positive that Comcare's procedures include triggers for s 57 powers. However, we consider that Comcare should document additional detailed explanations to better assist its decision-makers to determine that a trigger is satisfied and demonstrate a s 57 examination is warranted. Specifically, Comcare should expand its procedural guidance to better assist decision-makers to:

- know when and how to contact a claimant's treating practitioner for additional or supporting medical evidence before making a s 57 decision
- determine whether a claim is complex, a diagnosis is uncertain or there is insufficient medical evidence on the claimant's file

---

<sup>29</sup> Comcare, [Engaging a legally qualified medical practitioner to undertake an independent medical examination under the SRC Act](#), Comcare website, 26 July 2021, accessed 17 February 2022.

- determine it is necessary to seek additional medical evidence from an independent practitioner, rather than seeking the information from the treating practitioner.

***Strengthening guidance for 2-step authorisation process over section 57 decisions***

5.5. As Figures 1 and 2 in Part 2 show, decision-makers in both the Claims Management Group and Legal Group must use a 2-step authorisation process when deciding that a s 57 medical examination is warranted for a compensation claim. This process requires a second decision-maker to consider and agree that a claimant should attend a medical examination.

5.6. Claims Managers’ recommendations for s 57 decisions are discussed with an Injury Manager in the Claims Management Group, who must agree that a medical examination is warranted. In the Legal Group, Legal Service Providers seek written authorisation from Instructing Officers to require an employee to attend a medical examination.

5.7. In our view, Comcare’s 2-step authorisation and approval processes over s 57 powers are a positive initiative which may decrease the risk that medical examinations are unnecessarily or arbitrarily requested through mistake or fraud.

5.8. However, while this 2-step authorisation is a good practice, Comcare’s procedures do not include guidance for Injury Managers or Instructing Officers about what factors to consider when making these authorisations. The procedures do not explain what should happen if Injury Managers or Instructing Officers disagree with the proposal to require a claimant to attend a medical examination. The procedures also do not clarify when the decision to refer a claimant to a medical examination has been made, including which officer is the ultimate decision-maker.

5.9. Without clarifying these aspects of the decision authorisation process in writing, Comcare may find it difficult to provide assurance that its decision-making is within power, reasonable and consistent. In our view, Comcare should expand its written guidance about this authorisation process. Procedures should include:

- clear explanations of who, within Comcare, is the decision-maker who has the final delegation to authorise using s 57 powers
- factors Injury Managers and Instructing Officers should consider when making these authorisations, including whether a claimant’s treating practitioner should be asked to give further information
- steps to follow when Injury Managers or Instructing Officers disagree with proposals to require claimants to attend medical examinations, including what options are available and what information to record in the system.

***Strengthening guidance for selecting a medical practitioner to conduct a section 57 examination***

5.10. Comcare’s procedures across the Claims Management Group and Legal Group prompt decision-makers to consider medical practitioner qualifications and location when selecting practitioners to examine claimants.

5.11. The Legal Group’s written procedures provide decision-makers with clear steps to follow when engaging a medical practitioner to support action in the AAT. This guidance includes:

- requirements to check the AHPRA website to identify whether there are conditions or restrictions on a medical practitioner’s practising licence
- standards for medical practitioners conducting examinations, including qualifications, expertise, quality of reports, professional conduct, timeliness and performance.

5.12. The Claims Management Group’s written procedure for exercising s 57 powers prompts decision-makers to consider certain factors when selecting medical practitioners, such as the skills and expertise required to assess a claimant’s claimed condition. Apart from these prompts, these procedures do not include more guidance for decision-makers on steps to follow to assess that a medical practitioner is suitable to conduct a medical examination.

5.13. For example, the Claims Management Group’s s 57 procedural guidance outlines that an Injury Manager from its Injury Management Team nominates up to 3 medical practitioners to conduct a s 57 examination from a directory supplied by a third-party provider. Comcare advised us the Injury Manager uses their clinical knowledge and experience to assist with identifying the most appropriate medical specialty and sub-specialty to assess the claimed condition. Comcare did not provide any written step-by-step guidance material for Injury Managers to follow when selecting the 3 medical practitioners.

5.14. There is no written procedural guidance for Claims Managers or Injury Managers on how to complete the primary third-party provider eReports’ referral form, or how to access the eReports’ online portal to select practitioners, arrange appointments or contact eReports, if needed. Additionally, Comcare advised that it occasionally offers claimants an option within eReports to select a medical practitioner from the list of 3 identified medical practitioners nominated by Injury Managers. There is also no written guidance to advise decision-makers when and how this option should be available for claimants.

5.15. There is no written procedural guidance for Claims Managers or Injury Managers to assist them to determine when to directly engage a medical practitioner – instead of using a third-party provider.

5.16. Procedures for assisting decision-makers to select medical practitioners could be enhanced to address the gaps we identify above. Specifically, procedures to select medical practitioners for s 57 examinations should be expanded to give:

- additional guidance for assessing medical practitioner suitability for examinations – including additional information on how to assess medical practitioner qualifications, registration and location
- written guidance for determining when it is appropriate to directly engage a medical practitioner for a medical examination, instead of using a third-party provider

- written guidance for Claims Managers and Injury Managers to assist them complete third-party provider referral forms.

5.17. Comcare may also like to consider ensuring that, where appropriate, information about repeated or serious, substantiated complaints made about medical practitioners is available to decision-makers responsible for selecting medical practitioners for examinations. This may assist decision-makers to make well-informed decisions and to avoid future complaints.

***Strengthening guidance for considering personal circumstances when arranging a section 57 examination***

5.18. The Claims Management Group and Legal Group’s procedures both prompt decision-makers to consider a claimant’s personal circumstances when arranging a medical examination. The procedures include prompts for decision-makers to consider whether a claimant, for example, needs a translator, has physical accessibility requirements, or requires a support person. Prompting decision-makers to consider these circumstances is a positive inclusion that may assist to ensure decision-making is reasonable and that s 57 decisions take all relevant factors into account.

5.19. While we acknowledge that including these prompts is a positive foundation, Comcare could expand its guidance to better explain how its decision-makers should identify, assess claimants’ personal circumstances when selecting medical practitioners for examinations. For example, the Claims Group’s procedures state that decision-makers may consider ‘whether the gender of the [claimant] and examiner should be considered’. There is no additional guidance for decision-makers about how they should ask the claimant about their cultural background and needs, or how to use this information accommodate for a claimant’s circumstances or preferences when arranging an appointment.

5.20. The lack of detailed explanations for decision-makers in relation to how to identify and assess claimants’ personal circumstances, increases the risk that decisions will be wholly dependent on the individual decision-maker. This limits Comcare’s ability to provide assurance that its medical examination decisions are consistent and appropriate.

5.21. In our view, Comcare should expand its written guidance for considering claimants’ personal circumstances when arranging a medical examination to better assist decision-makers to apply and weigh relevant considerations as part of their decision-making. Specifically, procedures could be amended to include more detailed guidance for decision-makers to:

- seek information about, and to identify, relevant personal circumstances from claimants – including accessibility and diversity-related considerations
- identify, assess and take into account claimants’ personal circumstances when selecting appropriate medical practitioners and organising medical examinations.

***Strengthening guidance for determining whether an excuse or failure to attend a section 57 examination is reasonable***

5.22. The SRC Act does not define ‘reasonable excuse’ for failure to attend a medical examination. Comcare’s procedural guidance for the Claims Management Group includes guidance and steps to assist decision-makers to determine whether claimants have a reasonable excuse for failing to attend a medical examination – ‘To be reasonable an excuse must show that an employee was physically, mentally or emotionally unable to participate in or attend the examination rather than unwilling to do so.’ This guidance is supported by documentation outlining broad examples of excuses considered to be reasonable’.

5.23. The Legal Group’s written procedures provide limited guidance for determining a ‘reasonable excuse’ for failure to attend an examination. The procedures state that Instructing Officers are responsible for considering and deciding whether claimants have a ‘reasonable excuse’ for failing to attend an examination. There is no additional guidance to assist Legal Group decision-makers assess the ‘reasonableness’ of a claimant’s excuse.

5.24. In our view, Comcare should expand its written guidance to provide additional guidance to Claims Management and Legal Group decision-makers to assist them assess and decide whether an excuse for failing to attend an examination is reasonable. Expanding this guidance may assist Comcare to better ensure that its decisions on ‘reasonable excuses’ are consistent and appropriate. This is particularly important, as s 57(2) of the SRC Act gives Comcare the power to suspend a claimant’s compensation payments if they refuse or fail to attend a s 57 examination without a ‘reasonable excuse’.<sup>30</sup>

5.25. It is not inappropriate to include flexibility for decision-makers to determine circumstances that may be considered a ‘reasonable excuse’ for failure to attend a scheduled medical examination. This can assist to ensure that unforeseen or extenuating circumstances can be considered by decision-makers when determining reasonable excuses. In our view, Comcare should provide its decision-makers with additional explanations about the rules, criteria and weighting to apply when considering whether an excuse for failing to attend a medical examination is reasonable – particularly given that compensation payments can be suspended if an excuse is not assessed as being ‘reasonable’.

5.26. Comcare may also wish to draw upon case law definitions of ‘reasonable excuse’ from the AAT or Federal Court of Australia to inform expanding its procedural guidance.

---

<sup>30</sup> *Safety, Rehabilitation and Compensation Act 1988*, section 57(2).