

Proposed changes to medical assessments for non-work related medical conditions and injuries

Under the Government Sector Employment Act 2013, agencies are entitled to direct employees to undertake a medical assessment if they believe an employee is suffering from a non-work related injury or health condition which is impacting on their ability to perform inherent requirements and demands of their role. At the end of this assessment, there is the possibility that an employee may be medically retired.

To date, this process has been managed by a sector-wide policy available [HERE](#). However, in draft guidelines issued on 11 November 2015, the NSW Public Service Commission (PSC) has proposed that this policy be devolved to the agency. This means individual agencies will be able to determine their own procedures surrounding medical assessments.

The PSA has significant concerns about the PSC's proposal

The PSA sent a letter to the PSC in response to the proposed change on 27 November 2015. You can read the letter [HERE](#). The PSA stressed the draft guidelines may make it easier for agencies to medically retire employees and leave individuals without adequate support. The letter also opposed the devolution of the policy on the grounds that inconsistencies in procedural fairness between agencies would likely emerge. What might be considered reasonable for a manager to do in one agency, may not be in another. The PSA also highlighted that the guidelines effectively removed various requirements currently incumbent upon agencies in relation to dealing with medical assessments. These requirements include the obligation to consult, make suitable adjustment, and to follow prescribed steps when determining if an employee is to be medically retired.

The PSA requested further consultation with the PSC on the issue. The PSC responded in a letter received 21 December 2015. Based on the issues the PSA brought to the PSC's attention, the PSC made some improvements to the proposed guidelines.

These include:

- More stringent requirements surrounding consultation with an employee prior to determining if a medical assessment is necessary;
- Mandatory steps that an agency must undertake when making a decision about an employee's medical retirement;
- The obligation on an agency to investigate if alternative duties are available if the employee's medical advice states alternative duties are an option.

The PSC also made changes which emphasised employee privacy and references to the *Disability Discrimination Act 1992*. The full text of the amendments can be found [HERE](#)

While the changes are welcome and it appears the PSC has taken on board a number of the issues raised by the PSA, some of the union's concerns remain, such as the devolution of the medical assessments policy. As such, the PSA is currently preparing a further response to the PSC and members will be kept informed.