

**INTERNAL ONLY**  
**ISLHD PROCEDURE**  
**COVER SHEET**



**Health**  
 Illawarra Shoalhaven  
 Local Health District

<b>NAME OF DOCUMENT</b>	Management of Non-Work Related Injury or Health Condition
<b>TYPE OF DOCUMENT</b>	Procedure
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<b>AUTHOR</b>	Manager Recover at Work Services, Recovery Unit
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<b>FUNCTIONAL GROUP OR HUB</b>	District Wide
<b>NSQHS STANDARD</b>	Standard
<b>SUMMARY</b>	This procedure outlines relevant processes for managers and employees to follow when an employee has a non-work related physical or psychological injury or health condition which impacts on their ability to safely perform the inherent requirements and demands of their position.

**COMPLIANCE WITH THIS DOCUMENT IS MANDATORY**

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**1. POLICY STATEMENT**

Illawarra Shoalhaven Local Health District (ISLHD) will manage employees with non-work related injuries, illnesses or health conditions with a consistent risk management approach in consideration of the period of time to achieve pre-injury status, availability and approval of suitable duties and whether reasonable modifications are required and able to be accommodated. Whilst ISLHD is committed to providing a safe Return to Work program, due care must be applied to ensure that any provision of duties does not aggravate the non-work related injury or health condition, and/or place staff or the organisation at an unacceptable level of risk.

The primary mechanism for employees and managers to manage non-work related injuries, illnesses or health conditions are the sick leave provisions contained in each industrial award. A non-work related Return to Work Plan must not be utilised simply as a substitute for a lack of available sick leave.

When an employee who has a non-work related injury or health condition asks to return to work on suitable duties or reduced hours, the employee's circumstances must be reviewed by their manager. This can be done in consultation with the relevant Recover at Work Coordinator (R@WC) and/or the Workforce Support Coordinator (WSC). If the provision of suitable duties is considered a viable option, then a signed time-limited Return to Work Plan (attachment 10) must be in place prior to commencement.

**2. BACKGROUND**

The NSW Government [Premier and Cabinet document 'Procedures for Managing Non-Work Related Injuries or Health Conditions'](#) provides guidelines for all public sector agencies in applying a consistent approach in managing situations where an employee is suffering from a non-work related injury or health condition which is impacting on their ability to perform the inherent requirement/s and demands of their position.

ISLHD also has a duty of care under the *Work Health and Safety Act 2011* to manage risk and to ensure the health, safety and welfare of employees and others at work.

**Definitions**

**Non-work related injury or health condition:** an injury or health condition that is determined to be pre-existing or, to which the employee's work is not a substantial contributing factor i.e.: an injury that is sustained outside of work. A pregnancy-related medical condition, supported by a medical certificate, is also included in this definition.

**Workplace adjustment:** The Disability Discrimination Act 1992 stipulates employers are obligated to make adjustments to accommodate an individual's disability, unless that adjustment would result in unjustifiable hardship. Previously referred to as a 'reasonable adjustment', a workplace adjustment is a change to a work process, practice, procedure or environment that enables an employee with a disability to perform their job in a way that minimises the impact of their disability. Workplace adjustments can be permanent or temporary, depending on the circumstances of the employee.

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Workplace adjustments allow a person to:

- perform the inherent or essential requirements of their job safely in the workplace;
- have equal opportunity in recruitment processes, promotion and ongoing development;
- experience equitable terms and conditions of employment;
- improve efficiency.

Adjustments are provided in consultation between the employer, the individual and relevant medical experts which lead to a mutually acceptable arrangement for employment. Any adjustments made must not adversely impact on the health and safety of others in the workplace or cause unjustifiable hardship on the organisation.

**Reasonably Practicable:** the requirement for an employer to make adjustments to the workplace is measured against reasonableness. Relevant factors might include practicality, complexity, effect on service delivery, the degree of disruption or benefit to the business or other people, cost and time.

Adjustments are not required where it would impose unjustifiable hardship on the employer or where it is not reasonable.

**Return to Work Plan:** a documented, temporary and time-limited plan aimed at assisting the employee to recover their physical and/or psychological capacity in order to return to their substantive position with no restrictions on duties and hours of work. The Return to Work Plan includes the details about suitable duties, work restrictions and work hours and is formulated in consultation with the injured worker, their treating doctor and management, in accordance with the medical certification.

**Line Manager:** The direct Line Manager responsible for the employee.

**Senior Manager:** the manager directly above the Line Manager in the organisational hierarchy. The senior manager may also include higher levels of authority, such as the Service Director or General Manager, depending on the circumstances of the case.

**Suitable duties:** duties identified as suitable on the basis of restrictions set out in an employee's medical certificate. Restrictions can be physical and/or psychological. Suitable duties may relate to an employee's usual role or another role. Unlike the provision of duties for compensable injuries/illnesses, suitable duties provided in this instance should at all times be against a funded position and be reasonably practicable.

### **3. RESPONSIBILITIES**

#### **3.1 Employee will:**

- Not put themselves or others at risk by undertaking work whilst injured or ill that they don't have the capacity to perform safely;

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- Immediately report to their manager any non-work related injury or health condition that has the potential to temporarily or permanently affect their ability to safely undertake the inherent requirements of their role;
- Take responsibility for their own health, safety, wellbeing and their ability to perform the duties for which they are employed. This includes taking appropriate steps to address any non-work related health issues they may have/develop if these impact on their capacity to safely perform the inherent requirements and demands of their position whether it be permanent or temporary;
- Utilise their sick leave entitlement appropriately to ensure they can manage their non-work related injuries and/or health conditions;
- Provide notice as soon as possible if upcoming leave is required i.e.: planned surgery and or treatment along with relevant medical clearance prior to their return to work;
- Keep their manager regularly updated when on sick leave;
- Seek medical or other appropriate advice when directed to do so by the employer in the case of an employee having reduced capacity to safely perform the inherent requirements and demands of their position; and
- Comply with all relevant policies.

**3.2 Line Manager will:**

- Ensure the health, safety and welfare of all employees at work;
- Ensure a timely risk assessment of the employee's non-work related injury or health condition is conducted where it impacts on the employee's ability to safely perform the inherent requirements, and demands of their position; and/or business continuity. This risk assessment is undertaken in consultation with the employee;
- Implement actions required to ensure compliance with this procedure, in consultation with R@WC, SA or WSC as required;
- Maintain confidentiality regarding the employees medical condition in accordance with the authority provided;
- Regularly monitor and review non-work related Return to Work Plans and/or any flexible workplace arrangement to ensure they remain viable;
- Regularly liaise with employee to review progress and wellbeing particularly when staff are on leave; and
- Ensure the worker is aware of and can access all relevant support services available to assist them if needed during the process.

**3.3 Recover at Work Coordinator (R@WC) will:**

- Provide expert advice and interpretation of complex medical restrictions;
- Provide expert advice in relation to referrals for an independent medical examination;
- Provide expert advice to the relevant manager to assist with the development of a non-work related Return to Work Plan as needed;
- Assist when requested, with the implementation of any complex or difficult Return to Work Plan; and

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- Collaborate with the WSC to provide support to managers responsible for managing an employee with a non-work related injury or health condition.

**3.4 Workforce Support Coordinator (WSC) will:**

- Provide expert advice on complex or long term sick leave matters within the context of this procedure;
- Where required, provide advice in relation to redeployment and job-seeking for employees who are unable to successfully complete the Return to Work Plan; and
- Facilitate the termination on medical grounds of employees who are unable to return to their substantive position or be redeployed in an alternate position.

**3.5 Safety Advisor (SA) will:**

- Provide expert advice in relation to safety matters within the context of this procedure;
- Provide expert advice in completion of the Risk Assessment and management of safety controls associated with the risk rating;
- Assist in the identification of safety concerns in relation to any suggested or actual workplace adjustments; and
- Provide expert advice in relation to any workplace ergonomic assessments including recommendation for related workplace adjustments.

**3.6 Senior Manager will:**

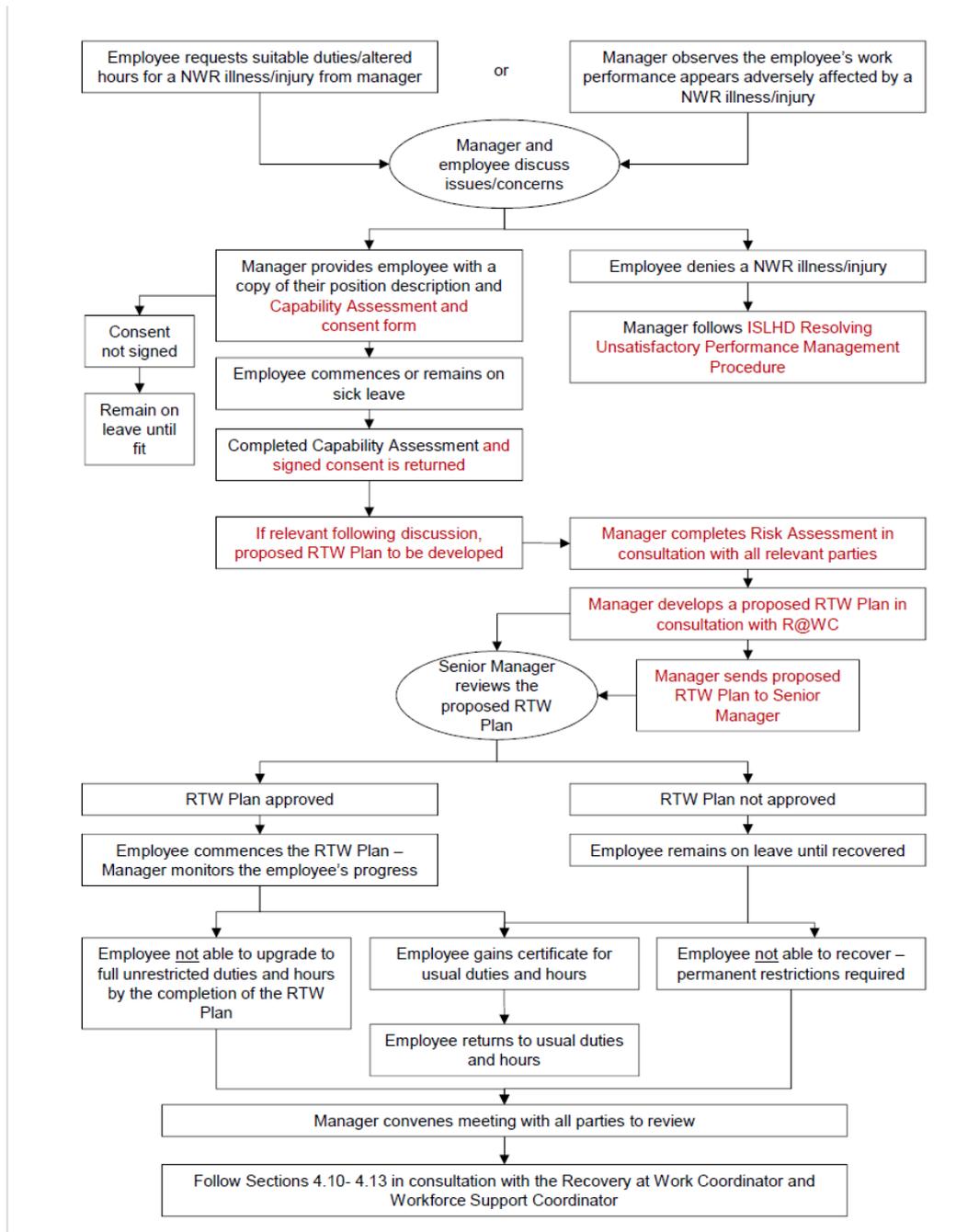
- Provide high-level support and advice to Line Managers regarding issues such as impact on service delivery, budget considerations and governance of non-work related Return to Work Plans as appropriate;
- Provide authorisation of temporary or permanent workplace adjustments to ensure consistency, appropriateness and overall organisational viability;
- Ensure adjustments, plans and risk assessments are regularly monitored and tested by the relevant Line Manager; and
- Provide authorisation in accordance with the Delegations Manual of costs related to Independent Medical Examinations (IME's).

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**4. PROCEDURE**

**Manager's Flowchart – Initial Steps**



NOTE: This flowchart has been developed as a summary with further details being provided throughout this document.

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**4.1 Consideration of modifications to duties**

A manager may consider making reasonable adjustments to enable an employee to remain at work whilst recovering from a non-work related injury or health condition if:

- An employee requests a temporary modification to their duties or hours;
- A manager received medical evidence that suggests an employee may benefit from reasonable workplace adjustments;
- An employee indicates they have an injury or health condition that is currently affecting or has potential to affect their ability to undertake their usual duties. This includes planned surgery;
- A Line Manager or colleague is concerned about the way an employee undertakes their usual duties noting that:
  - An observation is made that an employee appears affected by an injury or health condition, the **Line Manager** must in the first instance have a discussion with the employee to determine if there are any underlying injuries or health conditions to consider. Should the employee deny any injury or health condition as the cause of the change in performance, the employee is to be managed under ISLHD CORP PROC 06 Resolving Unsatisfactory Performance. Where the employee confirms an injury or health condition, they are to be managed as per this procedure.

**4.2 Actions for Line Manager following confirmation of non-work related injury or health condition**

The Line Manager is to arrange a meeting with the employee to discuss their intentions to remain at work or take sick leave during their recovery and/or while they receive treatment. This meeting should include a discussion around ISLHD's ability to provide temporary modifications to their duties and if required whether suitable duties may be available. This discussion is best to occur whilst undertaking an initial risk assessment with the employee. Discussion about the request should also include:

- Nature of the injury or health condition, if relevant any incidents that contributed and the risk of further aggravation of the injury/illness to the employee;
- Any relevant medical evidence;
- The impact of the injury or health condition and requested restrictions on the employees' expected work performance;
- The impact of the injury or health condition and requested restrictions on the work of the relevant unit/area/ward;
- The inherent demands of the employee's position as identified in the Position Description and Job Demands Checklist; and
- Length of time for which modifications and or suitable duties are being requested.

During the meeting, the Line Manager will provide the employee with a covering letter (attachment 1), copy of their Position Description, Job Demands Checklist and Capability Assessment (attachment 2) and request they complete and return following consultation with their doctor. The Manager also provides the employee with the authority to release

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information consent form (attachment 3) for their consideration. Refer to flowchart for action if not signed.

If it is deemed unsuitable for the employee to remain at work following the initial risk assessment, the employee must commence and/or remain on sick leave until the relevant medical information is received and a risk assessment has been undertaken in consultation with the employee (attachment 4). It is expected that an employee will comply with any reasonable direction given by their Line Manager.

Timeframes to review the risk assessment along with its recommendations and an ongoing communication plan should be agreed between the Line Manager and employee.

**4.4 Undertaking an Assessment of the Request**

Once all the relevant medical information is provided, the Line Manager is to undertake a risk assessment in consultation with the employee (attachment 4) to determine if any modifications can be made. Consideration of the safety of the worker and others in the workplace must take priority over all other considerations. Due care must be applied to ensure the organisation is not exposed to any additional safety or workers compensation risk.

Recover at Work Coordinators and Safety Advisors are able to provide assistance with interpretation of medical reports, risk identification and relevant workplace modifications. Relevant contact details are available on the intranet under the Work Health and Safety page.

Following the risk assessment, a decision is made regarding any workplace adjustments that can be made during the workers recovery. Consideration may also be given to a permanent modification if required (further info section 4.10.2). Due care must be applied to ensure that this does not aggravate the non-work related injury or health condition or increase the risk of a workers' compensation claim.

Should the Line Manager form an opinion that it is not appropriate or practicable to allow the worker to remain at work with modifications, a meeting must be arranged with the worker and a relevant support person to outline the reasons for this decision. All relevant documentation should be trimmed to the employees personnel file and advice also provided to the Senior Manager and Workforce Support Coordinator (WSC). A review of the risk assessment should be undertaken when and if the employee's condition changes and the employee is able to provide supporting medical evidence to the Line Manager.

Any concurrent issues related to sick leave management are the responsibility of the Line Manager in consultation with a Workforce Support Coordinator (Sick Leave Management ISLHD OPS PROC 103). Ongoing employment with ISLHD should also be reviewed at a minimum every 12 weeks to ensure continued viability.

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**4.5 Provision of suitable duties**

Agreement to provide temporary suitable duties or changes to rostering by way of a Return to Work Plan (attachment 10) must be made after careful consideration of the circumstances surrounding the request.

Once all the relevant information is received from the employee and their treating practitioners, the manager must consider:

- The availability of funded suitable duties;
- The impact of work restrictions on other departmental employees;
- Length of time for which suitable duties is requested/anticipated (medical prognosis);
- The need for additional staff to replace the injured/ill employee;
- Current issues regarding the employee's employment and employer's ability to meet their duty of care to the employee; and
- Industrial or workforce implications around the employee's request.

Any concerns the Line Manager has should be discussed with the Senior Manager. If required, the R@WC, WSC and SA can also provide advice during this phase. See further details on modification to hours and flexible workplace arrangements in section 4.5.

**4.5 Return to Work Plan parameters**

The Line Manager completes a Return to Work Plan (attachment 10) for consideration and approval of all parties. Non-work related Return to Work Plans shall not exceed twelve (12) weeks. If an employee cannot upgrade to pre-injury duties and hours at this time, the employee should resume sick or other leave until they receive a full clearance to return to full duties and hours as per their employment contract, Position Description and Job Demands Checklist. Signatories on Non-Work related Return to Work Plans are employee, Line Manager and doctor.

The Line Manager **MUST** ensure the doctor has either signed the return to work plan, or has indicated, through the capability assessment that the workers capacity meets the inherent requirements of the duties being offered, prior to the employee returning to the workplace. A copy of this plan and all relevant documentation must be trimmed to the employee's personnel file. If the employee has no physical or task restrictions and is cleared to perform the inherent requirements of their position, however is unable to resume their pre-injury hours, a review will be undertaken to ascertain the possibility of offering a Temporary Individualised Roster Adjustment (reduced hours) for a maximum of six weeks.

**4.5.1 Long-term stable medical conditions**

A Flexible Work Practices agreement for up to one year may be the alternative arrangement in instances where the following conditions apply:

- the employee has an illness that is long-term but relatively stable (for example, undergoing treatment following a diagnosis of cancer), and;

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- is able to work the inherent requirements of their role, and;
- is able to work a full shift length, but;
- requires a reduced number of shifts per week.

A Return to work plan is not required in this instance.

#### **4.6 Monitoring the Return to Work Plan**

- Once the Return to Work Plan has been developed and approved by all parties, daily/weekly monitoring of the Return to Work Plan will be the responsibility of the Line Manager. The R@WC and SA are able to provide advice should it be required during this process;
- Prior to the employee completing their Return to Work Plan, the Line Manager is to provide them with a return to full duties letter (attachment 5) which directs them to obtain a final clearance from their Doctor as well as have them update the capability assessment (attachment 2);
- This information is required to be obtained and returned **prior** to completion of the current plan; and
- Should the employee not be able to upgrade to full unrestricted duties and hours by the completion of the Return to Work Plan, refer to 4.10.

#### **4.9 Certification for return to full pre-injury duties**

- An employee may return to pre-injury duties and hours after having been certified as fit to return to those duties following review of the Position Description and Job Demands Checklist by the treating doctor;
- Line Managers should not accept a medical clearance for pre-injury duties unless the treating doctor has seen the Position Description and Job Demands Checklist and noted this in their clearance report\*.

*\*Note: Minor surgical interventions or illnesses such as mole removal or gastroenteritis would not be managed under this policy thus the above would not apply*

#### **4.10 Unsuccessful completion of the Return to Work Plan**

- A meeting is to be convened by the Line Manager with the Senior Manager, where appropriate, to discuss options and ongoing employment. A further risk assessment may be undertaken at this point.
- Should the treating doctor's medical advice indicate:

##### **4.10.1 The prognosis is still a return to full unrestricted duties and hours, but in a longer timeframe:**

Should the employee be unable to return to pre-injury duties at the conclusion of the 12 week Return to Work Plan, but the prognosis clearly indicates return to pre-injury duties within a short-term timeframe, then management may choose to extend the return to work plan beyond 12 weeks. A review of the risk assessment should be undertaken to ensure continued viability of the Return to Work Plan modifications. The details and duration of the subsequent Return to Work Plan

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will be agreed to by the Line Manager and Senior Manager with a copy provided to the worker.

Should management not be able to accommodate an extension of the 12 week Return to Work Plan, the employee should be advised to remain at home for the remainder of the time until certified fit for full unrestricted duties and hours. The employee is entitled to use their available leave entitlements (sick leave, annual leave, long service leave and up to 3 months leave without pay) for this period.

**4.10.2 The prognosis is now for permanent workplace adjustment indicating a permanent disability:**

The Line Manager should undertake a further risk assessment and discuss the opportunity for a permanent adjustment to be made to the employee's substantive role with the senior manager. Assessment of this option must consider the service demands of the department/ward, the impact on and safety of other staff, and the grading of the position should the duties be materially altered. Further advice in relation to this can be sought from the SA and WSC.

Should workplace adjustment not be practicable or reasonable, the Line Manager should advise the employee that the remaining options are:

- Applying for an alternate suitable position within ISLHD (see Section 4.12), or
- Medical Separation (see Section 4.13).

**4.11 Independent Medical Examinations**

The Line Manager is able to refer the employee for an independent medical examination (IME) to determine fitness for work where they require further and independent medical advice or they disagree with the medical evidence the employee has provided. An IME must only be considered following receipt of comprehensive information from the employee's treating practitioners. It is not to be used in the absence of the worker providing relevant information. Such requests are arranged by the Line Manager in consultation with the R@WC and any referrals for these assessments must be approved by a Senior Manager. The relevant department cost centre will be responsible for meeting the costs associated with the IME which includes the provision of wage payments for the time associated with the appointment. This may include any reasonable travel expenses.

Examples of conflicting information can be:

- If an employee presents a medical certificate or clearance that is at odds with their observed functional capacity;
- If sequential medical certificates have vastly different capacity indicated i.e.: total incapacity until the worker runs out of sick leave and subsequent certificate is full capacity.

This assessment will further clarify that the employee will not be placed at risk by returning to his/her pre-injury work environment and duties and that their return will not constitute a breach of WHS legislation. A list of Preferred Independent Medical Examiners can be accessed via the ISLHD Recovery @ Work (R@W) Unit.

#### **4.11.1 Preparing the referral documentation**

The referral documentation (attachment 6) must be drafted by the Line Manager and must:

- Include a current and accurate position description which sets out the inherent requirements and job demands of the position along with comprehensive details of the actual work undertaken;
- Provide all received medical information including medical certificates and capability assessment;
- If relevant, any objective information in relation to how the employee's work performance is affected and how this is preventing the employee from performing the inherent requirements of the role. This may include further sick leave or other leave records;
- Include objective evidence to support any assertions or conclusions the employer makes in regards to the employee's ability to perform the work;
- Outline any measures that the employer is able to consider to facilitate a Return to Work such as alternative duties, workplace adjustments, job redesign, flexible work practices, reallocation of existing duties or the provision of special equipment.

**4.11.2 The need for consultation with the employee**

Whenever the employer initiates a referral for an IME, referral information must be shared and the employee must be consulted so that they can prepare for the IME. Therefore, the Line Manager must provide the employee with:

- A formal letter advising of the referral (attachment 7);
- A copy of the referral documentation to the IME (attachment 6);
- The Fact Sheet at attachment 8; and
- Any other supporting documentation.

Whenever possible, this documentation should be handed to the employee in person in a private setting. If this is not possible, the material should be delivered by registered mail or courier marked "Private and Confidential" at least seven days prior to the scheduled appointment. The Line Manager is responsible for ensuring this document transfer is completed and that they explain if there is anything specific the worker needs to take with them to the appointment.

**4.11.3 The IME report**

The independent medical report will be made available to the Line Manager and maintained in the secure TRIM and Personnel file. The Line Manager and Senior Manager will discuss the recommendations in the report and available options before meeting with the employee to discuss what options the Department/unit is able to offer. The R@WC may be requested to provide advice should the Line Manager require clarification of the report's recommendations.

**4.11.4 Appealing an IME assessment**

If the employee does not agree with the IME outcome or believes there is conflicting evidence about fitness for duty, the employee can appeal the IME assessment. In this instance, the employee must be able to provide additional medical information and or comment from their treatment providers which can be sent to the IME Doctor for further consideration. The IME Doctor will then provide a supplementary report which is funded by the relevant cost centre. The employee and the employer must agree to be bound by the findings of the supplementary report.

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**4.12 Redeployment**

An employee who is not able to upgrade to full unrestricted duties and hours by the completion of the Return to Work Plan and doesn't wish to be medically separated will immediately commence sick leave, other leave or Absence at Own Expense with the view that they will commence job seeking for a period of no more than 12 weeks. If the employee is unable to find alternative appropriate employment at the conclusion of the job seeking period then a meeting will be arranged by the Line Manager to discuss medical separation. The Workforce Support Coordinator (WSC) will provide assistance with this meeting and the employee must be given the opportunity to bring a support person.

Should the employee find and apply for a suitable alternative position, their appointment would be assessed based on merit only. The employee must declare any health related restrictions within the recruitment process and provide authority for the current Line Manager to release that information to the convenor should they be the preferred applicant.

**4.13 Medical Separation**

If an employee is unsuccessful in gaining alternative employment within a 12 week timeframe, the Line Manager, in consultation with Workforce Support Coordinator, will commence processes for medical separation. A worker is able to resign prior to completion of the 12 week job seeking period should they choose to do so.

**5. ATTACHMENTS**

1. [ISLHD CORP F 260 - Letter from Manager to Employee request medical advice](#)
2. [ISLHD CORP F 261 - Capability Assessment](#)
3. [ISLHD CORP F 118 - Authority to Release Information](#)
4. [ISLHD CORP F 119 - Risk Assessment Form Non Work Related Injury\(NWRI\) Letter requesting full clearance](#)
5. [ISLHD CORP F 262 - Letter request full clearance](#)
6. [ISLHD CORP F 263 - Letter from Manager referring employee for Independent Medical Examination\(IME\)](#)
7. [ISLHD CORP F 264 - Letter from Manager to employee advising of referral](#)
8. [ISLHD CORP F 265 - Fact sheet for employees Independent Medical Examination\(IME\) attendance](#)
9. [ISLHD CORP F 266 - Letter from Manager to Employee directing them on sick leave](#)
10. [ISLHD CORP F 271 - Return To Work Plan template](#)
11. [ISLHD CORP F 272 - Sample Information to include in Independent Medical Examination\(IME\) referral](#)
12. [ISLHD CORP F 273 - Sample questions to include in Independent Medical Examination\(IME\) referral](#)

**6. AUDIT**

Not required

**7. REFERENCES**

[Premier and Cabinet Procedures for Managing Non-Work Related Injuries or Health Conditions](#)

[NSW Health PD2012\\_021 Managing Excess Staff in the NSW Health Service](#)

[Resolving Unsatisfactory Performance ISLHD CORP PROC 06](#)

[Sick Leave Management ISLHD OPS PROC 103](#)

**8. REVISION & APPROVAL HISTORY**

Date	Revision No.	Author and Approval
May 2014	0	Manager Corporate Compliance Endorsed Workforce Committee February 2014 Draft for comment March 2014 Endorsed April 2014 Approved ECLC April 2014
July 2014	1	Manager Corporate Compliance Manager Workplace Health and Safety Manager Human Resources
June 2016	2	Senior Manager, Workforce Health and Safety
August 2017	3	Injury and Claims Manager
March 2018	4	Revised after Draft for Comments Approved for Publishing by Executive Director Strategic Improvement Programs
April 2020	5	<b>Author:</b> Manager Recover at Work Services, Recovery Unit  <b>Approval / Date:</b> Approval/Date: Corporate Policy Recommendation committee/ April 2020 Approval/Date: Executive Director Strategic Improvement Programs / April 2020