

MENTAL HEALTH IN THE WORKPLACE

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MENTAL HEALTH IN THE WORKPLACE

Relevant considerations/references:

- Public Sector Act 2009 – ss 5, 15, 9 and 47, 56, 53, 54, 61, 62
- Code of Ethics for the South Australian PS
- Work-wage bargain and common law duties (i.e. duties of obedience and cooperation and fidelity, care and skill)
- Occupational Health, Safety and Welfare Act 1986 – s 19

MENTAL HEALTH IN THE WORKPLACE

- Disability Discrimination Act 1992 (Cth) – ss 5, 6, 11, 21A
- Equal Opportunity Act 1984 – ss 5, 67, 71
- Fair Work Act 1984 (SA) – ss 4, 26, Part 3, Div 3, Part 6
- Commissioner's Guidelines: Managing Unsatisfactory Performance (Including Misconduct) and Power to Require Medical Examination
- Human Rights Commission – 2010 Workers with Mental Illness: a Practical Guide for Managers

MENTAL HEALTH IN THE WORKPLACE

- Utilising section 56 of the Public Sector Act 2009
 - administrative/employment decision
 - unsatisfactory performance – broadly defined
 - it appears to be caused by mental or physical incapacity
 - chief executive or delegate may direct employee to undergo medical examination
 - panel of medical practitioners
 - employee bound to comply without reasonable excuse. Compliance includes attendance and cooperation with medical practitioner

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- Utilising section 56 of the Public Sector Act 2009
 - consequences of not complying (procedural fairness)
 - informing the medical practitioner – relationship is with chief executive or delegate
 - provision of report to employee
 - opportunity for employee to furnish reports

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- Utilising section 56 of the Public Sector Act 2009
 - management of the employee pending report(s)
 - OHS&W – should the employee remain in the workplace? - informed by observations and other evidence (i.e. reports in possession)
 - s 47 – inherent requirements - reasonable adjustments
 - employee's rights of review – application does not stay process

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- After the s 56 process – what then?
 - further report(s) may be necessary
 - mental or physical incapacity is cause of unsatisfactory performance:
 - inherent requirements - reasonable workplace adjustment
 - period of leave
 - ss 9 or 47, 53 or 54 Public Sector Act 2009

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- After the s 56 process – what then?
 - no incapacity or incapacity is not the cause of the unsatisfactory performance
 - performance management
 - ss 9 or 47, 53 or 54 Public Sector Act 2009

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Each matter turns on its own facts
and circumstances