S1 Medicals and medical retirement

S1.1 Reasons for medical examinations
Attendance at scheduled Independent Medical Capacity Assessment (IMCA) with a Nominated Medical Assessor is obligatory. The Department of Education and Communities (the Department) will require teachers to undergo a medical examination under the following circumstances:
a) the teacher is in such a state of health as to render her/him a danger to their fellow teachers and/or pupils
b) the state of health of a teacher on duty is likely to be seriously affected by permitting them to remain on duty
c) the state of health of a teacher absent from duty is likely to be seriously affected by permitting them to resume duty
d) for permanent appointment
e) to determine fitness for continued employment as a teacher
f) at the request of a teacher seeking medical retirement.
The Department may also request those teachers with active workers compensation claims to attend a medical for the purpose of gaining advice for rehabilitation. Refer to S1.16 Workers compensation.

S1.2 Who conducts medicals?
Medical examinations are conducted by a Nominated Medical Assessor chosen by Medibank Health Solutions. This can occur in a rural/regional centre. Guidelines are provided for the conduct of medical examinations. Federation has received complaints that some examinations have been excessive and a cause of personal distress. Members who have concerns should contact Federation immediately.

S1.3 Access to medical records
Sick leave records are online and are kept at Employee Services, Wollongong and Newcastle. Other medical records are held at the DEC Injury Management Centre, Oxford Street or at the local School Education Area office. The State Authorities Superannuation Trustee Corporation does not normally hold medical records on teachers. However, if a teacher, who is a fund member, and the Board are in dispute about a medical matter, the Board seeks authorisation from the teacher concerned to obtain medical information. In the course of the dispute this information is placed before the teacher so that she/he can comment on it. It is Federation policy that teachers should have access to their medical records.

S1.4 Medical for permanent appointment
All applicants for permanent employment must complete a Pre-Employment Health Declaration. Depending on the contents, applicants may be medically examined. Where teachers located in rural/regional centres are required to travel to another centre for medical examination in connection with permanent appointment, they may be granted special leave to cover the time they are necessarily absent from duty. Refer to Welfare and Information leaflet L2 Special leave. Allowances are also available for use of a private motor vehicle, meals and overnight accommodation. Prior approval is required from the School Education Area office/TAFE Institute.

S1.5 Medicals for workers compensation
Expenses incurred in attending medical examinations arranged by the insurer can be claimed. The School Education Area office/TAFE Institute will meet costs in the first instance. When the insurer has arranged the medical, it will forward details of the appointment to the teacher and also forward a copy to the School Education Area office/TAFE Institute. The advice to the teacher will contain an instruction to contact the School Education Area office/TAFE Institute to obtain the necessary travel expenses. In cases of seriously incapacitated teachers, however, when road or air ambulance may be involved, the insurer will inform the School Education Area office/TAFE Institute accordingly.

S1.6 Medicals for the purpose of medical retirement
Non-work-based injuries
A teacher may be retired from the service on the grounds of ill health or physical or mental incapacity to perform her/his duties. Medical retirement often comes after a long period of sick leave, and can be initiated either by the teacher or the Department.

Work-based injuries
The Department will not arrange a medical, for the purposes of retirement, for teachers who have an open workers compensation claim as the Department has a responsibility to fulfil the WorkCover Work Goal Hierarchies. Those hierarchies are:
• same duties/same employer
• different duties/same employer
• same duties/different employer
• different duties/different employer.
If an injured worker is fit for duties, even if restricted, the Department must first attempt to place them into suitable work. It is advisable to seek advice from the Federation Welfare section as there can be considerable delays in organising appropriate work/workplace modifications. The Federation Organiser is often involved to assist in the negotiation between worker and workplace representative (principal/manager) around what may be appropriate suitable modifications.
It is only when the Department is unable to find suitable...
duties, after the first two Work Goal Hierarchies options have been exhausted, that they will even consider organising an Independent Medical Assessment.

It is Federation’s position that if the Department cannot provide suitable duties, or the member’s doctor believes that their condition is such that they cannot return to duty and to return to duty would cause the member’s condition to be aggravated, the member ought to be allowed to seek medical retirement.

**S1.7 Department responsibilities to injured/unwell employees in relation to medical retirement**

The Department’s *Medical Retirement Guidelines* (September 2011) state that to fulfil their commitment to ensuring the health, safety and well-being of employees in the workplace the Department will seek medical advice as to how to safely manage the employee’s health condition prior to considering medical retirement.

Upon receipt of a request for medical retirement the Department should refer the teacher to a Nominated Medical Assessor. The Department will be asking the Nominated Medical Assessor to determine one of the following recommendations. Is the teacher:

- fit for all the inherent duties of their substantive position in the Department; or
- fit for duty provided reasonable recommended adjustments are made to the workplace or work practice; or
- temporarily unfit for duties in the substantive position in the Department; or
- permanently unfit to carry out the inherent requirements and demands of the substantive position in the Department?

Prior to processing any medical retirement recommendation, the Department will consider all options, including determining whether reasonable adjustments based on any work restrictions recommended by the teacher’s doctor or Nominated Medical Assessor can be accommodated to allow the teacher to return to duty. This may cause a major delay while the Department attempts to determine whether reasonable adjustments can be accommodated by the workplace.

**S1.8 Applying for medical retirement**

1. **Teacher’s request** The teacher should complete the application form page 18 of the Department’s *Medical Retirement Guidelines* (September 2011). TAFE teachers apply to the Institute Human Resources Manager. Where teachers cannot access the application form they should write along the following lines:

“I wish to apply for medical retirement as I am no longer fit to perform the inherent tasks of my position and therefore cannot continue teaching. My doctor supports my application. I enclose two statements from my treating doctors in support of my application.” The statements should contain information consistent with the numbered points below.

2. **Information from doctors** A teacher who believes she/he is not medically fit to continue teaching will need supporting documentation from his/her doctor(s). The Department requires two medical reports dated within four weeks of the signed request for medical retirement. The Department also provides a template for the treating general practitioner to complete.

   If the template is unavailable the reports submitted by the employee from their medical practitioners should contain the following information.

   - a) How long the employee has been consulting the medical practitioner.
   - b) Confirmation of the diagnosis of the employee’s non-work related health condition.
   - c) How long the doctor has been treating the employee in regards to the particular health condition.
   - d) What treatment the employee has undertaken for their non-work related health condition, for example surgery, chemotherapy and so on.
   - e) What the barriers and issues are for the employee in returning to or remaining at the workplace performing their substantive duties (or alternative suitable duties, if applicable).
   - f) What the medical prognosis is in relation to the employee’s recovery from the identified non-work related health condition.
   - g) An opinion as to whether the employee’s non-work related health condition is permanent (or terminal).
   - h) A concluding opinion as to whether the employee should be medically retired from the Department.

   The teacher should provide information about all the physical and/or psychological medical conditions that impact upon his/her ability to fulfil the inherent requirements and demands of the position for which the teacher is employed.

3. This letter, together with the doctor or doctors’ statement(s), should be submitted to the school principal/campus manager or School Education Area office/TAFE.

4. The Department will refer the teacher’s application to:

   a) the appropriate area office staff/TAFE Institute human resources manager and subsequently to the Employee Performance and Conduct Directorate to ascertain any disciplinary issues that would prevent referral; and to

   b) the Workplace Health and Safety Directorate.

   If approved, the teacher may be referred for an appointment to a Nominated Medical Assessor and the teacher may receive a letter requesting them to attend an appointment with the Nominated Medical Assessor for an examination. The above must occur within four weeks of the application for medical retirement.

5. **Where a medical is not required** The Department may
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6. When a medical is required
If the Department requires further information they will provide the teacher with a copy of the documents forwarded to the Nominated Medical Assessor. If there are concerns with the contents of the documents provided by the Department a response/supporting documentation and further medical statements can be given to the Nominated Medical Assessor at the appointment.

S1.9 When medical retirement is not recommended
Federation strongly recommends that where teachers have applied for medical retirement and are told they are fit to resume duty that they should, in the first instance, appeal against that decision. Federation has advised many teachers who, although deemed unfit to continue teaching by their own doctors, have been rejected for medical retirement. Some of these were retired after applying a second or even a third time. If the appeal fails and the teacher is, in the opinion of her/his doctor, unfit to return to duty, the teacher should get a certificate from her/his doctor to that effect. It would be in the best interests of the teacher to seek further advice from Federation at this stage.

S1.10 When medical retirement is recommended
Where the Nominated Medical Assessor determines that the teacher’s condition may prove permanent, a letter to this effect is sent to the Department including a “fitness to work” summary.

In schools
The Regional Director has the authority to accept the recommendation and authorise medical retirement. The teacher is medically retired from the date the director signs the correspondence to the teacher.

In TAFE
The Managing Director of TAFE determines the teacher’s last day of service. This is done based on the date on which the Nominated Medical Assessor recommends that the teacher be medically retired and if the teacher has any special concessional sick leave to credit, up to a maximum of 22 days or to the next vacation (whichever is sooner).

In both TAFE and schools
All other forms of leave are stopped after the date on which medical retirement is determined. Therefore, a teacher who still has ordinary sick leave to credit would not be entitled to take it.

Teachers are entitled to apply to have the date of medical retirement extended. Each application will be considered on a case by case basis.

Long service leave in accordance with the teacher’s entitlement is paid as a gratuity (lump sum).

Where the teacher has been a contributor to the State Superannuation Scheme, and the Scheme accepts the recommendation of the Department, the pension commences on the day after she/he is medically retired.

It is advisable that the member make direct enquiries to the State Superannuation Advisory Service to clarify the process required to have their superannuation benefit released upon medical retirement, as it is not automatic. (Refer to S1.11 and S1.24)

S1.11 Medical retirement and accessing superannuation benefits
Following the Department recommending and processing a medical retirement, the information relating to last date of employment and salary at time of retirement is forwarded to the State Superannuation Authority.

However, this does not automatically mean that the administrator of State Superannuation Scheme, State Authorities Superannuation Scheme and First State Super will accept the Department’s recommendation.

The administrator of the scheme may require the teacher to undergo an independent medical assessment before the teacher can access any invalidity benefit or lump sum. Teachers should be aware that this can cause significant delay, sometimes two to three months between the last day of employment and the decision to release benefits.

S1.12 Is a medical retirement for the rest of the retiree’s life?
Not necessarily. For teachers who contributed to the State Superannuation Scheme (SSS), payment of pension is normally reviewed every 12 months until normal retirement age is reached. After normal retirement age the pension is paid regardless of the teacher’s medical condition. Prior to normal retirement age the State Superannuation Scheme can call a medical retiree for a medical at any time and if the teacher is found fit to resume duty, arrangements will be made to re-employ the teacher.

Teachers may reapply for employment either casual/temporary or permanent. They must:
• complete an application for re-employment and attach a certificate of fitness from a registered medical practitioner
• undertake a personal suitability interview
• if successful, undertake a medical examination by a Nominated Medical Assessor.
The teacher will have compassionate transfer status if found fit for permanent work.

When permanent employment is found, the teacher’s State Superannuation Scheme pension ceases and the teacher re-contributes to the scheme.

S1.13 Requesting a review of the medical decision
Teachers have the right ask for a review when they con-
sider themselves adversely affected by an assessment provided by the Nominated Medical Assessor. Requests for a review must be lodged within 21 days of receipt of formal advice of the result of the examination.

The criteria required for a review:
1. the employee can demonstrate that relevant information about their medical condition was available and offered but not considered at the time of the assessment; and/or
2. the employee can demonstrate that the reasons for the Nominated Medical Assessor’s recommendation were not consistent with the available information.

Where a right to appeal exists against the assessment, no administrative action based on that assessment will be taken until the period of lodgement of appeal has elapsed, or until any appeal lodged within that time is determined, whichever is later. Reviews are considered by the independent review panel. Teachers should contact Federation to seek advice.

S1.14 Removal costs payable on retiring
Subject to certain conditions, a teacher who retires at the prescribed retiring age or is medically retired may be refunded the costs incurred in moving her/his personal household effects to a location of her/his choice. Telephone the School Education Area office/TAFE Institute for information. Refer to Welfare and Information leaflet M2 Transfer and transfer expenses.

S1.15 Outstanding allegations
All applications for resignation and retirement (including medical retirement) are being forwarded to the Employee Performance and Conduct Directorate (EPAC) to ascertain if allegations have been made against the teacher. If delays are experienced, Federation should be contacted immediately.

S1.16 Workers compensation
Where a teacher medically retires, and has an approved workers compensation claim, workers compensation benefits continue. Treatment and medical expenses continue for as long as needed or until the claim is disputed.

With conditions, weekly payments continue, on the production of medical certificates, until one year after reaching the age where the member would, subject to satisfying any other qualifying requirements, be eligible to receive the age pension under the Social Security Act 1991.

Refer to Welfare and Information leaflet TR12 Workers compensation.

S1.17 Membership of Federation, Teachers Mutual Bank and Teachers Federation Health on medical retirement
On medical retirement, teachers who have been members of Federation and have not resigned from Federation (prior to retirement) are entitled to join the Retired Teachers Association as per Rule 2.2.1.2. Application for retired membership status should be forwarded to Federation’s Membership section. Membership of this Association entitles retired teachers to editions of Education and the facilities of Teachers Federation House.

Federation members who are already members of the Teachers Federation Health and Teachers Mutual Bank may continue as members. The administration for State Superannuation Scheme pension recipients will deduct Teachers Federation Health contributions from a teacher’s pension and pay these direct to Teachers Federation Health. The pension application form has an appropriate space on which application to this effect can be made.

Members of other superannuation schemes will need to contact Teachers Federation Health and Teachers Mutual Bank to make arrangements for continuing membership and payment of contributions.

S1.18 When a teacher is medically retired, can the teacher take a lump sum?
If medical retirement occurs prior to age 55 a pension benefit will be paid. Since March 1, 1999 teachers who are medically retired at age 55 or over are able to access a lump sum benefit.

Teachers are advised to ring the State Super Advisory Service to confirm their entitlements and seek advice.

S1.19 When does the pension begin?
The pension starts from the day following the date of medical retirement. Typically there is a delay of six to eight weeks before receipt of the first pension payment which should include payment for the intervening period.

S1.20 Will the teacher get her/his superannuation pension?
The teacher will get an amount applicable to normal retirement, subject to requirements under Commonwealth legislation which may require preservation of a proportion of the pension entitlement. The teacher should contact the State Super Advisory Service for the State Superannuation Scheme (phone 1300 130 096) for further information.

S1.21 What if the teacher has a number of abandoned units?
Pension is not paid for abandoned units which were recovered less than 2.5 years prior to medical retirement. Contributions paid for such units are refunded on retirement. In some circumstances those units may
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S1.22 Will the pension always remain the same?
No. The pension is adjusted annually, currently each October, in line with movements in the Consumer Price Index, so it increases to keep pace with the cost of living.

S1.23 Can a medical retiree work while receiving the pension following medical retirement?
A teacher may engage in any employment other than teaching. This includes employment with the NSW Department of Education and Communities.

S1.24 Basic benefit
Members of the State Superannuation Scheme (and the State Authorities Superannuation Scheme) are automatically entitled to the Basic Benefit.

The Basic Benefit is an employer funded superannuation entitlement and is additional to the benefits received from the State Superannuation Scheme. The monies in a Basic Benefit account are maintained separately. It is made up of employer contributions plus interest, less taxes and charges.

The Basic Benefit is equal to three per cent of final average salary for each year of service from April 1, 1988. The benefit is payable from when a fund member ceases employment from age 60 or retires from the workforce at or after the fund member preservation age (which varies, depending on the member’s date of birth, between 55 and 60). A benefit is also payable if a fund member suffers permanent incapacity. (Note: medical retirement does not guarantee receipt of this benefit.) A benefit is also payable to the estate/beneficiaries in the event of death.

For members in the new scheme

S1.27 Superannuation Guarantee
If a teacher is not a contributor to either the State Superannuation Scheme or the State Authorities Superannuation Scheme the teacher will receive the Superannuation Guarantee. The Superannuation Guarantee is the minimum level of superannuation that the employer must pay on an employee’s behalf. This currently is set at the equivalent of nine per cent of salary. These contributions are placed into a superannuation account and they accumulate over time with interest, less taxes and administrative charges.

For members in the State Authorities Superannuation Scheme (the middle scheme)

S1.25 Lump sum
The State Authorities Superannuation Scheme (SASS) pays in the form of a lump sum. If a fund member is medically retired prior to age 55 and is not covered by the Additional Benefit and able to work again but not as a teacher the fund member will be paid the Partial and Permanent Invalidity Benefit, which is a lump sum comprising the fund member’s contributions plus an employer financed benefit.

The amount of the latter is based on a formula involving the years as a contributor and the level of contributions. If a fund member is covered by the Additional Benefit and is permanently unable to engage in any paid employment, the fund member will be paid the partial benefit as described above as well as the Additional Benefit which a further lump sum is called the Total and Permanent Invalidity Benefit. This additional amount represents the employer’s projected contributions to age 58.

For more details members should ring or write to the advisory service of the State Authorities Superannuation Scheme fund, 1 Margaret Street, Sydney 2000 or telephone toll free on 1300 130 095.

SASS payments on medical retirement may be subject to “preservation” rules under Commonwealth legislation.
These contributions can be directed to any fund that an employee chooses, so long as the fund is compliant with the requirements of Commonwealth legislation. If the employee does not choose a fund then these contributions are paid to First State Super.

At the point of retirement the accumulated entitlement is paid to the teacher as a lump sum.

A teacher may be a member of State Superannuation Scheme or State Authorities Superannuation Scheme and have a Superannuation Guarantee account as well if, for example, the teacher has worked as an HSC marker, undertaken relief teaching while on leave without pay or if the teacher was employed as a worker at a local, state or federal election.