

# Sydney Opera House Policy

<b>Title:</b>	Fitness for Duty Policy
<b>Policy Number:</b>	SOH153
<b>Effective Date:</b>	18 February 2019
<b>Authorisation:</b>	Chief Executive Officer
<b>Authorisation Date:</b>	18 February 2019
<b>Accountable Director:</b>	Executive Director, Building, Safety & Security
<b>Responsible Officer:</b>	Head of Safety

## 1. CORE PROPOSITION

- 1.1. Safety is our greatest responsibility and our workplace and environment must be safe and healthy for everyone. Ensuring that Opera House employees are fit for duty helps us to achieve this objective.
- 1.2. This policy describes when, how and why the Opera House will assess potential and current employees' fitness for duty and what outcomes there may be.

## 2. SCOPE

- 2.1. This policy applies to all of the Opera House employees and all applicants recommended for employment at the Opera House.
- 2.2. This Policy applies to non-work-related injuries and health conditions. Work-related injuries and health conditions are managed through other Opera House WHS policies, procedures and NSW workers' compensation legislation.
- 2.3. Fitness for duty processes may be applied at the same time as other management processes, including performance management and disciplinary matters.

## 3. DEFINITIONS

- 3.1. **Applicant** – either an applicant for employment at the Opera House or a current employee of the Opera House who is in the process of applying for or being assigned to a different role at the Opera House.
- 3.2. **Fit for duty** – An employee is fit for duty if the person is able to perform the inherent requirements of their role without posing a risk to the health and safety of the general public or another employee of the Opera House, or without risking seriously affecting their own health. Fitness for duty is confirmed by a health assessment.
- 3.3. **Health assessment** – any assessment undertaken at the request of the Opera House for the purposes of ascertaining if an employee or an applicant is fit for duty. This includes making a health declaration, having an internal health screening at the Opera House Health Centre, undergoing a functional health assessment, or an external medical assessment.
- 3.4. **Inherent job requirements** – inherent requirements and demands of an employee's role which must be met by the employee so that they can perform their role as it is specified in their role description. The demands may include physical, sensory and psychological capacities, and also any physical, biological and chemical hazards or accident risks which may be associated with a job.
- 3.5. **Reasonable adjustment** – changes to the work environment or systems to enable employees to work more effectively, with regards to their capabilities. The requirement to make reasonable adjustments is set out in the *Disability Discrimination Act 1992 (Cth)*. Examples of reasonable adjustments include modified or flexible work arrangements or equipment that assists the employee. The Act does not require workplace changes to be made if the relevant adjustment will cause major difficulties or unreasonable costs to a person or organisation. This is called 'unjustifiable hardship'.

## 4. PRIVACY

- 4.1. All personal information and health information obtained for the purposes of this policy will be dealt with in accordance with the *Privacy and Personal Information Protection Act 1998 (NSW)* and the *Health Records and Information Privacy Act 2002 (NSW)*. The SOH Privacy Management Policy and Plan (PMP) outlines how the Opera House applies this legislation, including when health information relating to capacity to work and work restrictions will be communicated to necessary Opera House employees, for example managers, members of the Human Resources department, and Injury Management.
- 4.2. When the Opera House requires an employee to attend a health assessment for the purposes of this policy, the employee will be given an *Authority to Release Medical Information* form to complete. This form allows the medical practitioner to release to the Opera House all information relevant to the non-work-related injury or health condition. The employee may choose to sign this either at the time of referral, or after discussing with their practitioner what information they wish to be released to the Opera House.

## 5. OVERARCHING PROVISIONS

- 5.1. Any person required by this policy to attend a health assessment may choose to be accompanied by a support person.
- 5.2. All health assessments are advisory in nature. The final decision regarding action taken, or not taken, following consideration of the health assessment rests with the Opera House.
- 5.3. Applicants and employees have the right to seek review of medical assessments, within the terms of this policy. They must be notified of this right at the time they receive notification of the outcome of the assessment/s.

## **6. HEALTH ASSESSMENTS RELATING TO OFFERS OF EMPLOYMENT OR ASSIGNMENT**

- 6.1. All offers of employment at the Opera House are conditional upon the applicant being fit for duty.
- 6.2. Health assessments will generally be completed prior to commencement of duties. The Executive with responsibility for Human Resources may in limited circumstances approve commencing duties prior to the health assessment being completed, subject to the assessment occurring within the first week of employment.
- 6.3. All successful applicants must complete a health declaration. The form of any other health assessment required for a role, and any change from the required form, is determined by the Opera House health assessment standard criteria and process approved by the appropriate member of the Executive, or the CEO in accordance with the *SOH Delegations of Authority Manual*.
- 6.4. Where the Opera House requires that an applicant undertake an external medical assessment, the Opera House will decide whether the external medical assessment is to be undertaken by:
  - The applicant's nominated treating doctor; or
  - The Opera House's nominated medical assessor.

### **Outcomes**

- 6.5. Where issues are identified in any health assessment relating to an offer of employment or assignment, the relevant line manager, Human Resources representatives, and Safety team members will consider whether reasonable adjustments can be made to the work environment and systems to enable the applicant to work more effectively with regard to their capabilities and whether these may be addressed by imposing conditions on any offer of employment or assignment.

### **Reviews**

- 6.6. Requests for a review of health assessment findings must be received in writing by Human Resources within 24 hours of the applicant being notified in writing by the Opera House of the adverse findings.
- 6.7. The Opera House will then:
  - assess the specific nature of the adverse findings and notify the applicant of the review mechanisms or further health assessments required to conduct the review; and
  - specify a reasonable period (of not less than three days), depending on the nature of any further assessment, from the notification of adverse findings in which the applicant may provide written evidence to supplement, clarify or dispute the results of the earlier health assessment, and present a signed medical release form for any medical practitioner providing the further opinion.

## **7. HEALTH ASSESSMENTS DURING EMPLOYMENT**

### **When health assessments may be required**

- 7.1. Employees are encouraged to discuss their work- and non-work-related injuries and health conditions with their supervisors and managers as they arise so that any issues can be proactively addressed.
- 7.2. The Opera House may seek medical advice on the safe management of a non-work-related injury or health issue that is affecting, or is reasonably considered likely to affect, an employee's ability to perform the inherent requirements of their role. Medical advice may relate to the:
  - Employee's ability to safely carry out the inherent role requirements and demands, in the short or long term;
  - Medical restrictions that may apply in the workplace; and
  - Temporary or permanent adjustments that may need to be made in order to facilitate a safe return to work, or to remain safely on duty.
- 7.3. An employee may be required to undertake a health assessment during the term of their employment if the employee has disclosed, or the CEO has reason to believe, that the employee is not, or may not be, fit for duty.
- 7.4. When an employee has been absent from work for six months or longer, the employee must undertake a health assessment as directed by the Opera House. This does not apply to persons returning from maternity leave.

### **Initial health assessments**

- 7.5. Where possible and practical, the employee's nominated medical assessor will conduct the initial health assessment. The Opera House will provide a referral letter to guide the assessment.

### **Further health assessments**

- 7.6. A further medical assessment with the Opera House's nominated medical assessor, or a further functional assessment, may be required when:
  - Medical evidence provided by the treating medical practitioner is considered inadequate for providing direction or advice in managing the employee's medical condition in the workplace;

- There are concerns around the practicality of implementing the practitioner’s advice; or
  - The employee is unable, or refuses, to provide any medical evidence to support or clarify the impact of their medical condition or fitness to undertake the inherent job requirements of their role (and reasonable alternative methods for obtaining relevant medical information have been unsuccessful).
- 7.7. Employees are required to promptly comply with a reasonable direction to attend and participate in a health assessment. This includes providing relevant information to enable the health assessment to take place. The Opera House will take reasonable steps to check that an employee is capable of attending the assessment. Employees who fail to comply with such a direction may be subject to misconduct procedures.
- 7.8. When an ongoing or temporary employee is directed to cease duty during the term of their contract, pending a health assessment, they will be granted special paid leave for the period from notification of, until attendance at the assessment. Following the health assessment, if the ongoing or temporary employee is deemed unfit to resume duties and an absence of work is recommended, then any available sick leave will apply from when the employee was directed to cease duty.

### Outcomes

- 7.9. The following table sets out possible recommendations for medical assessors and the range of outcomes that may be considered by the Opera House.

<b>Medical assessor’s recommendation</b>	<b>Options SOH will consider/outcomes may include</b>
Fit to undertake the inherent job requirements of the role.	<ul style="list-style-type: none"> <li>• <i>Return to full duties</i> is appropriate where the employee is found to be fit for duty and is expected to continue to be fit for duty.</li> </ul>
May safely continue to work with <b>reasonable adjustments</b> or <b>restrictions</b> .	<ul style="list-style-type: none"> <li>• <i>Temporary or permanent workplace adjustments</i> may be considered on a case-by-case basis where an employee’s non-work related injury or health condition impacts their fitness for duty and they are able to remain at, or return to, work with adjustments to either duties or environment.</li> <li>• Where modified duties are available on a temporary basis, the duties, support available to the employee and a review date must be clearly defined.</li> </ul>
Temporarily unfit but is likely to become fit to safely return to <b>normal duties</b> within an approximate timeframe.	<ul style="list-style-type: none"> <li>• <i>A period of leave related to the injury or health condition</i> may be necessary, with sick leave entitlements applying and available to the extent specified by the relevant industrial award or agreement.</li> </ul>
Temporarily unfit but is likely to become fit to safely return to <b>modified</b> or <b>alternative duties</b> within an approximate timeframe.	<ul style="list-style-type: none"> <li>• <i>A period of leave related to the injury or health condition</i> may be necessary, with sick leave entitlements applying and available to the extent specified by the relevant industrial award or agreement.</li> <li>• <i>Temporary or permanent workplace adjustments</i> may be considered on a case-by-case basis where an employee’s non-work related injury or health condition does impact their ability to perform inherent role requirements, and they are able to remain at, or return to, work with adjustments to either duties or environment.</li> <li>• Options for adjustments could include flexible work arrangements or equipment that assists the employee.</li> </ul>
<b>Permanently unable</b> to carry the inherent job requirements of the role.	<ul style="list-style-type: none"> <li>• The opportunity to set the employee <i>alternative or modified duties for a defined period of time</i> within the Opera House or wider NSW public sector may be investigated.</li> </ul>
Permanently unfit for any duties.	<ul style="list-style-type: none"> <li>• <i>Medical retirement may</i> be appropriate where an employee has long-term health issues that affect their ability to continue safely in the role or fulfil the inherent job requirements of their role, or the unfitness or incapacity appears likely to be permanent. The CEO may elect this option on</li> </ul>

	receipt of the medical advice and following the expiry of any relevant review period.
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## Reviews

- 7.10. Requests for review of adverse health assessment findings must be lodged with the Opera House's nominated medical assessor, or directly with Human Resources, by the employee **within 21 days** of the date on the health assessment report.
- 7.11. Reviews are completed by an Independent Review Panel. This is convened and administered by the Opera House's nominated medical assessor. The Panel will include a senior occupational physician who did not undertake the employee's primary medical assessment.
- 7.12. Successful review applications must demonstrate that either:
  - Relevant information about the medical condition was available and offered but not considered, or not properly taken into account, at the time of assessment; or
  - The reasons for the medical assessor's recommendation were inconsistent with the available information.
- 7.13. Reviews are limited to examining the appropriateness of the selected health assessment, the process of the assessment by the medical assessor, and the associated recommendations. Reviews will not consider the decision-making and actions taken or not taken by the Opera House either before or after the assessment.

## 8. LEGISLATED HEALTH SCREENING AND REGULAR MANDATORY TESTING

- 8.1. Employees will be required to undertake regular screening or testing where they undertake tasks and duties, or work in environments, where regular screening is mandated by WHS legislation, such as audiometric testing.
- 8.2. In some limited cases, the inherent physical requirements of a role will include tasks and duties which, if performed when an employee is not fit for duty, would substantially increase the risk to themselves, other SOH employees or the general public. This includes tasks and duties such as accessing the Opera House sails. In these limited cases, regular health assessments will be required.

## 9. RESPONSIBILITIES

- 9.1. **Everyone** is responsible for
  - Coming to work fit for duty and performing job responsibilities in a safe, secure, productive and effective manner at all times;
  - Discussing with managers or supervisors any non-work-related injuries and health conditions as they arise;
  - Notifying managers or supervisors when they are not fit for duty; and
  - Submitting medical certificates in accordance with the relevant Opera House leave policy, industrial award or agreement.
- 9.2. **Managers and supervisors** are responsible for
  - Encouraging employees to discuss non-work-related injuries and health conditions as they arise;
  - Ensuring that all relevant applicants successfully complete a health assessment prior to the offer of employment and commencement of duty; and
  - Consulting with Human Resources regarding appropriate steps when there is reason to believe that an employee's non-work-related injury and/or health condition may prevent them from safely or satisfactorily performing the inherent job requirements of the role, or create a danger to other employees or persons;
  - Ensuring that role descriptions under their areas of responsibility are relevant, up-to-date and identify the inherent requirements of a role, including any high risk activities.
- 9.3. **Human Resources** is responsible for
  - Providing advice and support to managers and supervisors regarding the implementation of this policy;
  - Seeking the approval of the Executive with responsibility for HR and/or the CEO, following consultation with the employee's manager or supervisor, regarding decisions to refer to an employee to a medical practitioner or a nominated medical assessor for an assessment;
  - Ensuring that the privacy and confidentiality of information is maintained throughout fitness for duty processes; and
  - Advising employees on the appeals process when appropriate.
- 9.4. **The Safety team** is responsible for
  - Developing and maintaining descriptions of the physical and psychological requirements for identified Opera House roles;
  - Developing and managing pre-employment health assessment criteria and processes (internal and external) in consultation with Human Resources;
  - Participating in the review of health assessments where appropriate;
  - Providing basic workstation assessments and adjustments; and
  - Providing return to work assistance and injury management advice.

- 9.5. The **Executive with responsibility for Human Resources** is responsible for:
- Directing employees to undertake health assessments in line with this policy; and
  - Ensuring that everyone who undergoes a health assessment within the terms of this policy is notified of their right to seek review of that assessment.
- 9.6. The **CEO** is responsible for:
- Directing employees to undertake health assessments in line with this policy; and
  - Electing medical retirement where appropriate.

## **10. RELEVANT LEGISLATION AND SUPPORTING DOCUMENTS**

*Disability Discrimination Act 1992 (Cth)*  
Government Sector Employment Act 2013 (NSW)  
Government Sector Employment Regulation 2014 (NSW)  
Government Sector Employment (General) Rules 2014  
SOH *Authority to Release Medical Information* form  
SOH Staff Delegations of Authority Manual  
SOH Work Health and Safety (WHS) Policy

### **APPROVED**



Chief Executive Officer

**Date:** 18 February 2019

**APPENDIX A  
FORMS OF HEALTH ASSESSMENT**

<b>Assessment</b>	<b>Description</b>
<b>a) Health Declarations</b>	The applicant states whether they have any illness, disability and/or condition of which they are aware that might impact the safe performance of the inherent job requirements of the role. Health declarations are an opportunity for the applicant to note any adjustments that might be needed to enable the safe performance of the inherent job requirements.
<b>b) Internal health assessment</b>	A preliminary health assessment undertaken by the Opera House Health Centre with the purpose of identifying whether further assessment/s may be required.
<b>c) Functional assessments</b>	<p>Functional assessments are designed to assess an applicant's capacity to fulfil the inherent job requirements and demands of the role for which they are recommended for employment or to which they are being assigned. The Opera House takes a risk-based approach to assessing the requirement for and form of functional assessment, with reference to the:</p> <ul style="list-style-type: none"> <li>• Role's critical demands and activities;</li> <li>• Level of risk associated with these activities; and</li> <li>• Historical incidents and patterns of injury</li> </ul>
<b>d) External medical assessments</b>	These assessments are undertaken by a qualified medical practitioner where it is necessary to obtain more specialised medical assessment than the Opera House Health Centre is able to provide.