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Decision making under the SRC Act

Comcare makes timely and accurate decisions that meet the requirements of the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) and afford natural justice to those impacted.

Introduction

Comcare makes important decisions that have an impact on the lives of people making a claim, their families, their employers and the community more broadly. Decisions about rehabilitation, whether compensation is payable, and how much are referred to as determinations. The full list of 'determinations' that can be made is in [Section 60 of the SRC Act](#).

A determination must be in writing and set out:

- the terms of the determination (i.e., what has been decided)
- the reasons for the determination, and
- the right to seek a reconsideration if dissatisfied with the determination.

Under section 69(a) of the SRC Act, Comcare is required to make determinations accurately and quickly in relation to claims and requests made to Comcare.

From 1 April 2024, in accordance with subsection 61(1A) of the SRC Act Comcare must determine a claim for compensation made under section 14 of the SRC Act within:

- 20 calendar days for claims made in respect of an injury (other than a disease) or an aggravation of an injury (other than a disease)
- 60 calendar days for claims made in respect of a disease

The prescribed timeframes apply to all claims received on or after 1 April 2024, including claims for secondary or newly reported conditions that meet the requirements set out under section 54 and are determined under section 14 of the SRC Act.

The exceptions to the prescribed timeframes are claims for compensation made under:

- section 16 (medical expenses)
- section 17 (compensation from injuries resulting in death)

Also, the prescribed timeframes do not apply to:

- secondary conditions against an existing claim
- continuation of the employee's compensable condition against an existing claim

The prescribed timeframes start on the day that Comcare receives an initial claim for compensation that meets the requirements under section 54 i.e. a written claim for compensation is lodged with a compliant medical certificate from a legally qualified medical practitioner attached.

As the prescribed timeframes for decision making are calendar days and not business days, the calendar day timeframe includes Saturdays, Sundays and public holidays.

The prescribed timeframes above do not apply to certain periods (stop clock provisions) in which Comcare seeks further information or material in relation to the claim or is advised by the employee that they will be providing further evidence to support their claim for compensation.

Periods in which calendar days are not counted

Item	Situation	Start day	End day
1	Comcare requires the employee to undergo an examination by a legally qualified medical practitioner under s57 of the SRC Act.	The day that Comcare gives the employee written notice of the requirement to attend a s57 examination	Comcare receives the results of the examination.
2	Under s58, Comcare requests information or a copy of a document from the employee.	The day Comcare provides the written request to the employee.	The earlier of the following days: a) the day Comcare receives the requested information or document. b) the day that the employee advises Comcare that they do not have the requested information or document.

Periods in which calendar days are not counted

3	Under s71, Comcare requests information or documents from the employer.	The day Comcare provides the written request to the employer.	<p>The earlier of the following days:</p> <p>a) the day Comcare receives the information or documents</p> <p>b) the day that the employer notifies Comcare that they do not have the information or documents within their possession, custody, or control</p> <p>c) the day on which Comcare reasonably believes that the employer has failed to comply with the request.</p>
4	The employee advises Comcare that they will provide further evidence in relation to their claim.	The day that Comcare is advised by the employee.	<p>The earlier of the following days:</p> <p>a) the day Comcare receives the further evidence</p> <p>b) the day the employee advises Comcare that no further evidence will be provided</p> <p>c) the day that Comcare reasonably believes that the employee will not provide any further evidence</p>
5	<p>Comcare considers that it is reasonable and necessary to obtain further medical evidence e.g. medical report from:</p> <p>a) the employee's legally qualified medical practitioner</p> <p>or</p> <p>(b) a legally qualified medical practitioner nominated by Comcare.</p>	The day that Comcare requests the further medical evidence e.g. the medical report.	The day that Comcare receives the report.

For further information refer to:

- Pracsys User Guide: - [How to update MILA or MILT](#)
- [Prescribed Timeframes - FAQs](#)
- Scheme Guidance - [Statutory timeframes for decision making under the SRC Act](#)
- [Safety, Rehabilitation and Compensation Amendment \(Period for Decision-making\) Regulations 2023](#)

Section 72 states that when making a determination on a claim, Comcare:

- shall be guided by equity, good conscience, and the substantial merits of the case, without regard to technicalities
- is not required to conduct a hearing
- is not bound by the rules of evidence

In other words, your decisions need to be based on clear and cogent information and demonstrate sound judgement i.e. balance of probabilities (more likely than not).

While making decisions under the SRC Act, you should ensure natural justice is applied and your decision is communicated in an empathetic manner. For further guidance refer to [Natural justice](#).

More information on decision-making is available in the [Decision making under the SRC Act](#) online legislative training module.

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Process for recording stop clock actions in MILA or MILT

The following process details the steps involved to record the stop clock actions in the '*Manage Initial Liability Assessment*' (MILA) or '*Manage Initial Liability*' (MILT) dashboards:

Step 1: Find the correct claim

In Pracsys, open:

- the MILA or MILT dashboard
- all undetermined and non-compliant claims assigned to you will appear in the window:
- select the required claim
- select the '*Next*' button
- this will take you to the '*MILA or MILT (Provisional Claim Determination) Amend Step*' screen

Step 2: Create a new stop clock request

- navigate to the '*Determination Stop Clock Requests*' tab
- click on the '*New*' button
- the start date will auto-populate to the date that the new stop clock request is being created
- update the start date (if necessary)
- use the drop-down menu to select the '*Request Type*'
- the request status will default to '*active*' for any new requests
- depending on the type of the request, the due date will auto-populate
- update the due date, (if necessary)
- create a comment to provide the reason for the request by clicking on the '*New*' button
- type your comment into the pop-up window and click on '*OK*'
- click on '*OK*' again, and then '*Amend*' to save your request
- to create further '*Determination Stop Clock*' requests, click on the '*New*' button and follow the previous steps

IMPORTANT: When creating a stop clock request you must use the date that you sent the written request to the employee, employer, LQMP or IME or the date when you were advised by the employee that they will be providing additional information in relation to their claim as the start date.

Step 3: To update/amend or finalise a Determination Stop Clock Request

- navigate to the '*Determination Stop Clock Requests*' tab
- select the relevant line and click on the '*Amend*' button

- update the relevant status of the request by using the '*Status*' drop-down menu (e.g. Request fulfilled, Withdrawn - no longer required or Withdrawn - created in error)
 - enter the date actioned
- Note:** You **must** finalise the stop clock request using the date that Comcare:
- received the requested information
 - is advised that the employee or employer will not be providing the information/documents or further evidence or
 - reasonably believes that the employee or employer will not be providing further information or documentation
- click on the '*New*' button to create a new comment
 - click on '*OK*' and then on the '*Amend*' button in the main tab

The calendar day countdown will recommence the next day.

Please refer to: Pracsys User Guide: - [How to update MILA or MILT](#)

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Making a determination

To make a determination, you need to:

- Ensure relevant investigations have been undertaken;
- Have considered any legal advice received while forming your own assessment on the issues.
- identify the legislative test(s) that apply and the factual questions that need to be answered under that test.
- gather any information needed to answer those factual questions.
- assess that information and form a view about the facts.
- apply the facts to the legislative tests.

- draft a determination for quality assurance (QA) and decision-making by the delegate. Note: In many cases, this will be the Director, Claims Operations. It may also be you or the Assistant Director and if required the Senior / Legal Adviser.
- following QA and decision-making by the delegate, finalise the determination and communicate the decision to the employer and the Rehabilitation Case Manager.

The liability and decision-making section of [Claims Management in Comcare – The way we manage claims](#) sets out who the delegate is for various decisions under the SRC Act.

If you discover something that does not look right, feel right or when you discover concerning or previously undisclosed information either from the employee or another source (employer, rehabilitation provider etc) that is relevant and has the potential to impact the management of a claim, please refer to the "[Just Ask](#)" process.

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What is included in a notice of determination?

A notice of determination must include the following:

- information on which findings are based
- findings of fact
- reasons for decision, and
- the decision itself.

Providing the reasons for your decision is a fundamental part of drafting a determination as it affords a person affected by a decision the opportunity to have the decision explained. The person can then decide whether to exercise their rights of review

and appeal, and, if they decide to do so, they are then able to act in an informed manner.

When you prepare a notice of determination it must:

- be clear and set out in a logical manner
- include all information on which the findings were based
- contain all steps of reasoning, linking the facts to the decision so the person reading the determination can understand how the decision was reached, and
- identify and express the relevant statutory requirements and tests.

Information on which the findings were based

A notice of determination must refer to the information on which each finding of fact is based. It is not sufficient to list all of the documents that were considered in reaching the decision. When referring to information it is not always necessary to quote it, so long as the evidence can be readily identified. The evidence might be identified by stating its source, for example, 'the medical report from Dr X dated 20 June'.

Explaining the decision

The notice of determination should enable the person to understand the information that was relied upon to make the decision and how the decision was reached. If the information is conflicting or you do not agree with certain information, then you should explain why certain information is preferred.

The notice of determination must provide the reasons for those conclusions. This may necessitate mention of the legislation, relevant principles of case law or any other relevant guidelines or practices that were taken into account. The criteria and other factors considered in making the decision and why material facts were accepted should also be noted.

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Natural justice

Natural justice applies to all Comcare decisions and ensures decision-makers adhere to a fair decision-making procedure. For further guidance refer to the [natural justice](#) page.

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