

No present liability

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What is no present liability?

A claims manager may determine that there is no present liability for compensation under the SRC Act where:

- the employee no longer suffers from the effects of their compensable injury, for which liability was accepted under section 14
- a specific claim for compensation (incapacity, medical treatment, or another form of compensation) is no longer payable because the employee is no longer suffering from the effects of their compensable injury
- in the case of disease claims, the employment has ceased to be a 'significant' contributor to the employee's current condition.

It is important to note:

- if the date of injury is on or after 1 December 1988 but prior to 13 April 2007, the claims manager should consider whether the employment has ceased to contribute to a 'material' degree to the employee's current condition
- if the date of injury is prior to 1 December 1988, under the *Compensation (Commonwealth Government Employees) Act 1971*, employment merely has to be 'a contributing factor' without any need to meet a material or significant degree test.

You should not determine that there is no present liability for a compensation claim under the SRC Act if an employee is not currently claiming compensation for a cost or benefit.

You need to identify a claim (based on the submission of a claim form, medical certificate, invoice, receipt etc.) before proceeding with a determination of no present liability.

If such a claim has been made, then you should only consider the current claim(s) for compensation benefits before them. They cannot extend the determination to capture forms of compensation that have not been claimed for by the employee.

A determination of no present liability does not prevent the employee from making future claims under the SRC Act. Where the employee makes a new claim for a benefit, or for a new injury, you must assess any new claim(s) in accordance with normal processes and issue a new determination.

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When can you determine no present liability?

You can determine that an employee is not presently entitled to any compensation under the SRC Act when:

- there is sufficient medical information to indicate that the employee no longer suffers from their compensable injury or condition, or
- when the relevant legislative tests indicate that the employee no longer has an ongoing entitlement to compensation.

This does not necessarily mean that the employee no longer suffers from any condition. It may be that the current condition is not the same injury or condition, or is not due to the same cause, as the injury or condition for which liability was originally accepted.

In the case of disease claims, a no present liability determination may also be made when the employment factors have ceased to significantly contribute to the employee's current condition. When considering if an employee's employment still significantly contributes to the current condition, you should consider whether:

- the original employment factors are still contributing to the injury to a significant degree
- any non-employment factors or new issues are contributing to the condition more than the original employment factors
- different employment issues are now contributing to the employee's condition.

You will need to establish the facts, consider the information, and decide whether it is the original employment factor or some other factor(s) that are now significantly contributing to the condition.

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Examples of determining no present liability

No longer suffering from the compensable condition

Current medical information indicates that the employee is no longer suffering from the effects of their compensable back condition. The pain the employee suffers from is attributed to a degenerative condition. The claims manager determines that the employee's claim for incapacity under section 19 of the SRC Act was not as a result of the compensable condition but related to the degenerative condition.

No longer has an ongoing entitlement due to the relevant legislative test

The employee has been receiving massage treatment for their compensable injury for many years. Current medical information and consideration of the Clinical Framework indicates this treatment is no longer reasonable for the employee to obtain. While the condition itself has not resolved, the claims manager determines under section 16 of the SRC Act that there is no present liability for massage treatment.

Employment has ceased to be a significant contributor to the condition (disease claims only)

An employee has a claim for a psychological condition as a result of bullying and harassment in their workplace. A substantial period of time has passed since the date of injury. Current medical information indicates that factors arising post-injury, such as, the employee's marriage breakdown, a car accident that they were involved in and financial troubles, are now significantly contributing to their condition.

The claims manager determines that the employee's employment no longer significantly contributes to their condition, it is not necessary to demonstrate a break in causation. It is necessary to demonstrate that the employment factors are no longer

contributing to the condition to a significant degree.

It is important to note, that in cases where the condition itself remains compensable, you can determine that an employee is not presently entitled to compensation under specific sections of the SRC Act if there is sufficient medical evidence to support such a determination, having regard to the specific provisions of those relevant sections.

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Aggravations

Where an employee has an accepted claim for an aggravation, they do not need to be symptom free in order for no present liability to be determined.

You should compare the employee's current level of impairment/symptomology with the levels that existed prior to their work-related aggravation.

Once the employee returns to their former level of impairment/symptomology, the employee may no longer be entitled to any further compensation and you should undertake a review of the medical information to determine whether or not there is any present liability for the claim submitted by the employee.

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Liability cannot be 'ceased'

Once an initial claim for compensation has been accepted, subsequent determinations cannot purport to cease all liability under section 14 of the SRC Act. If liability under section 14 should not have been accepted in the first place, the determination to accept the claim should be reviewed in accordance with the reconsideration provisions of the SRC Act. For further guidance refer to the [Reconsiderations on own motion](#) page.

The claims manager must discuss any proposed decision to revoke section 14 liability with their Director before they proceed with any such decision.

Where a no present liability determination has been made because the employee is no longer suffering from their compensable condition, or where an employee's employment no longer significantly contributes to their condition, the initial section 14 determination is not revoked. The determination of no present liability essentially means there is no current liability for the condition and/or the specific benefit being claimed.

[A determination of no present liability](#) does not prevent the employee from making future claims under the SRC Act. Where the employee makes a further claim(s) for compensation that has already been subject to of a no present liability determination, you may have regard to the evidence relied on earlier, as well as, considering any new evidence in making a determination to accept or reject that claim.

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Inactive claim

When a claim is inactive or has been 'closed' in Pracsys as an administrative action, it does not necessarily mean there is no present liability. You should not determine that there is no present liability on an inactive or closed claim when the employee has not claimed compensation for a cost or benefit under the SRC Act.

An inactive or closed claim does not prevent an employee from claiming compensation in relation to their compensable condition in the future.

If an employee lodges a claim for a compensation cost or payment against an inactive or closed claim, you [can re-open the claim](#), undertake the usual assessments and issue a determination based on the available evidence.

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What should the determination state?

A determination of no present liability must speak only in the present tense and specify the section(s) of the SRC Act for which no present liability is being found. The determination cannot purport to prevent the employee from making further claims.

Appropriate wording for determinations includes:

- **(where the employee no longer suffers from the condition)** – *‘Based on the available information, I find that as at (date) you are not presently suffering from your compensable condition (state the condition). Therefore, I determine that you are not presently entitled to (specify the benefit) under (specify the section) of the SRC Act and the claim for (specify the benefit) made to Comcare on (date) is denied’.*
- **(where a specific benefit is no longer payable)** – *‘Based on the available information, I have determined that as at (date) you are not presently entitled to (specify the benefit) under (specify the section) of the SRC Act and the claim for (specify the benefit) made to Comcare on (date) is denied’.*
- **(for disease claims where the employment is no longer a significant contributor)** – *Based on the available information, I have determined that as at (date) you are not eligible for (specify the benefit) under (specify the section) of the SRC Act for the condition (state the condition) as your employment no longer significantly contributes to that condition. Therefore, the claim for (specify the benefit) made to Comcare on (date) is denied’.*

Procedure for determining no present liability

The following procedure outlines the steps associated with determining no present liability.

Important: Before commencing with this procedure, you must ensure that the claim has been brought to a Triage meeting.

Step 1. Contact the employer

Advise the employer of your intended decision.

Phone the employee. Your conversation should include:

- reference to the benefit being claimed
- that you intend to determine no present liability
- reasons for the determination (including relevant section(s) of the SRC Act where relevant) that their treating practitioner will be invited to comment on the information (clarify who the treating practitioner is)
- provide an opportunity for natural justice by allowing 30 days (or longer in exceptional circumstances) for the employee to provide further medical information in support of their claim(s) should they choose to
- advise the employee that Comcare will not pre-pay for any new medical reports and that they may ask their treating practitioner to phone you to discuss any new medical.

Once contact has been established with the employee you must follow up with a confirmation email or letter to the employee outlining what was discussed.

Contact should be attempted at least twice with the employee to discuss the intended decision.

If unsuccessful, send an email asking the employee to call you as a matter of urgency to discuss their ongoing entitlements. If no response, then send the employee a letter of intention.

Important: If you are concerned that notifying the employee of your intent to determine no present liability will adversely affect their mental health, you should contact their treating practitioner regarding how best to inform the employee of your intent.

Phone the employee's treating practitioner. Your conversation should include:

- that you are intending to determine no present liability and invite them to comment on the information (e.g., the s57 medical examination report or other relevant evidence) on which this determination will be based
- that you are sending them a copy of the medical information and the employee's Medical Release Authority
- advise the treating practitioner that if they intend to provide a report, they should discuss with you any payment they will be seeking for the report. This will ensure that they are not providing medical information that has previously been provided
- provide a timeframe within which the practitioner can respond.

Contact the CAIS team where employee in receipt of incapacity benefits

If the employee had been entitled to incapacity benefits prior to determining no present liability, please contact the [CAIS Assessment team](#) immediately to cease incapacity entitlements.

Late notification of an NPL determination could cause an overpayment of incapacity benefits.

Step 2: Update Pracsys

Go to 'Manage Claim Comment' (MCOM), record all your conversations, and enter a comment to include:

- that you have advised of your intent to determine no present liability
- the date any further evidence is due
- reference the intent to determine no present email or letter that was provided.

Create an action plan in Pracsys.

Go to 'Manage Action Plan' (MAP) and create an action plan:

- the description field should detail that the employee has been notified of the intent to determine no present liability and the 'Required Date' field should be set for 30 days (or an agreed upon date) from when the employee was notified of the intent to determine not present liability to the time when any further evidence is due.

Step 3: Have you received a request for an extension of time from the employee?

- If yes and the request is reasonable, phone the employee and approve the extension.
- If yes and the request is unreasonable, phone the employee to notify them their request has not been approved and the reasons why.
- If no, continue.

Important:

If your decision affects incapacity payments, contact [CAIS Assessment team](#) to advise of the approved extension.

Enter a comment in Pracsys that you have approved/not approved an extension of time for the employee. Adjust the action plan accordingly.

The decision whether or not to grant an extension of time is not subject to a request for reconsideration.

Step 4: Receipt of further medical evidence.

After 30 days (or an agreed upon date), have you received medical information from the employee or the employee's treating practitioner which demonstrates they continue to suffer the effects of their condition, their employment is significantly contributing to their condition, or they continue to benefit from a particular treatment in relation to their compensable condition?

- If yes, action the information as appropriate
- If no, and the present liability is concerning ongoing incapacity benefits, continue.
- If no, and the no present liability is concerning other ongoing benefits, continue to step 6.

Step 5: Contact the employee

Your initial conversation should be conducted by telephone and include:

- that you have determined no present liability
- reasons for the determination (specifying the relevant section(s) of the SRC Act) including consideration given to any further information (if provided)
- if the date of no present liability determination will cause an overpayment of incapacity payments, this should be discussed with the employee.

Follow up your telephone conversation with a letter to the employee providing a clear and concise explanation of your determination. You should send a copy of this letter to the employer.

Step 6: Update Pracsys

Go to 'Manage Claim Comment' (MCOM) and enter a comment. Your comment should include:

- your conversations with the employee and employer
- reasons for determining no present liability
- that you have determined no present liability, and
- the relevant section(s) of the SRC Act.

Go to 'Manage Denial of Benefits' (MDOB):

- select the 'No Present Liability' tab
- select 'New'
- enter the start date (the date of the determination)
- select the section(s) of the SRC Act you have determined no present liability, and
- select 'OK'

Note: *An Assistant Director will need to verify the denial of benefit for it to be active on the claim.*

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