

# Reconsiderations of own motion

## Reconsiderations

∨ Reconsiderations on request and reconsiderations of own motion

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## Introduction

A reconsideration of own motion is an action undertaken by Comcare to review and change a decision it has made, usually without the request being made by the employee or employer. It can be undertaken if the original determination is incorrect or flawed.

Once a reconsideration of own motion has been undertaken, if the employee or employer disagrees with the reviewable decision, the next avenue of appeal is the Administrative Appeals Tribunal.

## Roles and responsibilities

Reconsiderations of own motion are completed by the Claims Manager managing the claim. If the reconsideration has to do with incapacity, the Claims Administration and Income Support (CAIS) team will conduct the reconsideration of own motion, in consultation with the Claims Manager.

## Timeframes for reconsiderations of own motion

Reconsiderations, including reconsideration on own motions, should be finalised in under 30 days. Reasons need to be recorded in the appropriate reconsideration task and the employee/employer informed if there is any delay after 30 days.

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## When can a reconsideration of own motion be undertaken?

A reconsideration of own motion is undertaken where the original determination contains an error of **fact** or **law**. An error of law occurs when the legislation has not been interpreted and applied correctly. An error of fact occurs when relevant evidence has not been taken into account or evidence is received after the determination has been made which makes the determination unsustainable.

In deciding whether to undertake a reconsideration of own motion, you should have regard to how a reconsideration of own motion on a past decision (made in good faith and based on relevant information at the time) may adversely affect the rights, interests or legitimate expectations of an employee.

A reconsideration of own motion of any 'determination' can be undertaken by Comcare at any time. The word 'determination' includes any decision, determination or request provided by [subsection 60\(1\)](#) of the SRC Act.

While Comcare may conduct reconsideration of own motion at any time, it only has a legal obligation to do so upon becoming aware of a jurisdictional error (whether of fact or law or both) in a determination, including the following:

- In all injury cases:
  - whether the employee is an employee or not

- whether the employee actually suffered an injury or not
- whether the injury arose out of or in the course of employment, and
- whether the employee gave the required notice of the injury or is excused from failing to do so.
- In cases relating to medical treatment only:
  - whether the injury resulted in death or an impairment or incapacity for work.
- In claims for incapacity payments:
  - whether the incapacity is as a result of an injury.
- In claims for permanent impairment:
  - whether the injury resulted in an impairment that is likely to continue.

## Examples

Below are examples of when a reconsideration of own motion can be undertaken: . When considering whether to undertake a reconsideration of own motion, you should discuss the claim with your Assistant Director.

Claim actions	Section (SRC Act)	Reason for Reconsideration of Own Motion
Change injury/label descriptor (diagnosis)	<a href="#">14</a>	Changes the injury treatment and liability profile of an injury, as well as the potential duration of compensation paid or payable. See <a href="#">Changed diagnosis</a> for more information.
Change date of injury	14	Compensation is payable from an earlier or later date than first determined.  Note: A decision regarding the date of injury is not a determination in itself but forms part of an initial (section 14) determination and can only be reviewed as part of a reconsideration of that determination. It is important to be aware that if review of the decision progresses to the Tribunal, all aspects of the initial determination are open to review (not just the date of injury).
Change to a previously determined normal weekly earnings (NWE) or incapacity payments	<a href="#">8</a> , <a href="#">19</a> , <a href="#">20</a> , <a href="#">21</a> , <a href="#">21A</a>	Changes the quantum or period of incapacity compensation paid or payable.

		Change to a previously determined NWE due to miscalculation or new evidence.
Revocation of a primary determination	14	Liability for injury should not have been accepted (or compensation paid) in respect of the injury.
Apportionment of death compensation	<a href="#">17</a>	Changes the amount of compensation payable between dependants.
Tribunal application in relation to NWE figure and periods of incapacity paid	8,19	A reconsideration of own motion can be used to review the NWE determination if there was a miscalculation or new evidence is provided.  Note: If a Tribunal proceeding is set aside, costs incurred by the employee are payable by Comcare.
When a determination has been made requiring an employee to attend a medical examination under section 57 of the SRC Act.	<a href="#">57</a>	A reconsideration on own motion can be undertaken if the Claims Manager determines that the employee is no longer required to attend a section 57 medical examination.

## Reconsiderations during an AAT proceeding

If an Administrative Appeals Tribunal (AAT) proceeding is underway, and as a result of the reconsideration of own motion that proceeding is rendered redundant, Comcare is liable to reimburse the employee for any costs reasonably incurred in connection with the AAT proceeding. The Reconsiderations and Appeals team must be advised if a reconsideration of own motion is undertaken on a matter connected with an AAT proceeding.

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## When should a reconsideration of own motion not be undertaken?

A reconsideration of own motion should not be undertaken if it is likely that you will affirm the original determination. If an employee supplies new evidence which you consider will not change the original determination, it should be treated as a

[request for reconsideration](#).

## New injuries

A reconsideration on own motion is not appropriate for new injuries (including secondary injuries). A new injury that results from a separate workplace incident, event or state of affairs should be considered a new claim, requiring separate determination under [section 14](#) of the SRC Act. For further guidance, refer to the [New or changed conditions](#) page.

## Administrative corrections

Minor administrative corrections to claim details do not warrant a reconsideration of own motion. Administrative corrections can include changes to a claim due to clerical and typographical errors. These corrections do not need to be undertaken as a reconsideration of own motion where they do not change the outcome of the determination, or the amount or duration of entitlements paid or payable. In such cases, you should write to the employee and advise/confirm the error, apologise for the oversight and provide an appropriately marked copy of the original determination.

Where, however, a clerical or typographical change will have implications in relation to past or future entitlements under the SRC Act, the change should be undertaken as a reconsideration of own motion.

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## Reconsiderations of own motion where incapacity is involved

A reconsideration of own motion can impact incapacity paid in relation to a claim. Given the impact of such a decision, it is important that we consider the financial impact on a person. You need to involve the Claims Administration and Income Support team early in the decision-making process.

If you are making a change to periods of incapacity paid to an employee, you can rely on the automated reconsideration letter to inform the employee and employer, as long as they have been informed by phone of the changes. Any reconsideration for an ex-employee should be communicated manually.

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## Procedure to undertake reconsideration of own motion

The following procedure outlines the steps to follow when you intend to undertake a reconsideration of own motion.

**Incapacity-related reconsiderations of own motion:** Reconsiderations of own motion in relation to incapacity entitlements should be undertaken by Claims Administration and Income Support (CAIS) in consultation with the Claims Manager.

**Possibly revoking liability:** You must discuss any proposed decision to revoke Section 14 liability on a claim with your Assistant Director before proceeding with any such decision.

### Step 1: Agree with your Assistant Director whether to undertake a reconsideration of own motion

In your discussion you should set out:

- the reasons for undertaking a reconsideration of own motion
- the expected impact of the reconsideration of own motion on the employee – e.g. overpayment or debt
- whether the proposed reconsideration of own motion should be listed for consideration at a Triage meeting – for further guidance, refer to the [triage meeting](#) page
- whether advice to the employee that a reconsideration of own motion is being proposed should be prepared (see **Step 2**).

If the Assistant Director agrees or the outcome of triage is to proceed with the reconsideration of own motion, proceed to next step.

If not, end the procedure.

## Step 2: Draft letter to the employee

For the purposes of [natural justice](#), we provide an employee the opportunity to respond to and provide further information about our intention to make a decision.

Use a blank standard letter in Pracsys to draft a letter to the employee advising them of the following information:

- date of primary determination
- outline of the primary determination including section(s) of the Act and reasons for determination
- a statement of reasons outlining the evidence that you have considered and why you have decided to undertake a reconsideration on own motion
- details of the evidence used in making your reconsideration of own motion
- a date of up to 14 days hence that further information is to be provided by, but this is dependent upon circumstances.

You should submit this letter for review and clearance by your Assistant Director. For further guidance refer to the [quality assurance](#) page.

Do not send the letter yet.

## Step 3: Contact the employee and the Rehabilitation Case Manager

Your telephone conversation should include:

- your intention to undertake a reconsideration of own motion
- reasons for the reconsideration
- the effect the decision will have, e.g. change in entitlements, revoke of liability etc.
- the date by which any further information must be provided
- advise the points above will be confirmed in writing.

After completing these telephone calls, send the letter drafted in Step 2 to the employee.

## Step 4: Update Pracsys

Go to 'Manage Comments' (MCOM) and enter a comment reflecting the telephone conversations and including the above information. For further guidance, refer to the [record keeping](#) page.

Use the manage diary function in Pracsys to review the information received and complete the reconsideration of own motion. For further guidance, refer to the [managing diaries](#) page.

## Step 5: Review information received

Once the time allowed for submission of information has passed, review the information provided and discuss the next steps, including listing for discussion at triage, with your Assistant Director.

- If, following consultation with your Assistant Director and, where relevant, the triage meeting, you are going to continue with the reconsideration of own motion, proceed to **Step 9**.
- If you are **not** going to continue with the with the reconsideration of own motion, proceed to **Step 6**.

## Step 6: Draft letter to the employee

Use a blank standard letter in Pracsys to draft a letter to the employee advising them that Comcare will not proceed with a reconsideration of own motion.

You should submit this letter for review and clearance by your Assistant Director. For further guidance, refer to the [quality assurance](#) page.

Do not send the letter yet.

Continue to **Step 7**.

## Step 7: Contact the employee and the Rehabilitation Case Manager

Your telephone conversation should advise that you will not be proceeding with the reconsideration of own motion and the reason why.



After completing these telephone calls send the letter drafted in **Step 6** to the employee.

Continue to **Step 8**.

## **Step 8: Update Pracsys**

Go to 'Manage Comments' (MCOM) and enter a comment reflecting the telephone conversations and including the above information. For further guidance, refer to the [record keeping](#) page.

This ends the procedure as the reconsideration of own motion is not proceeding.

## **Step 9: Register the reconsideration on own motion**

Go to 'Manage Reconsideration' (MREC) and register the reconsideration of own motion. For further guidance, refer to the [Procedure to register a reconsideration](#).

Registering the reconsideration will generate a reconsideration number.

The reconsideration number must be included in the letter to the employee.

## **Step 10: Draft letter to the employee**

Use the 'reconsideration of own motion' template letter in Pracsys to draft a letter to the employee. Your advice should include:

- the reconsideration number
- the details of the reconsideration of own motion
- the reasons for the reconsideration, and
- the effect the decision will have, e.g. change in entitlements, revoke of liability etc.

You must submit this letter for review and clearance by your Assistant Director.

The delegate (i.e. signatory) for this letter is the relevant Director – Claims Operations. For further guidance, refer the [quality assurance](#) page.

Do not send the letter yet.

## **Step 11: Contact the employee and the Rehabilitation Case Manager**

Your telephone conversation should include:

- details of the reconsideration of own motion
- reasons for the reconsideration
- the effect the decision will have, e.g. change in entitlements, revoke of liability etc.
- advice that the points above will be confirmed in writing.

After completing these telephone calls, send the letter drafted in **Step 10** to the employee and the Rehabilitation Case Manager. In your letter, include copies of any evidence used in making the decision.

## **Step 12: Finalise the reconsideration in Pracsys**

Finalising the reconsideration of own motion includes:

- completing decision screens in MREC
- entering a comment in the comments of the decision tab in MREC detailing findings of the reviewable decision.

## **Step 13: Referral to CAIS team**

If the reconsideration of own motion impacts on previously paid incapacity benefits, refer the matter immediately to the [Claims Administration and Income Support team](#).

This ends the procedure.

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