



## STATUTORY TIMEFRAMES FOR DECISION-MAKING UNDER THE SRC ACT

### PURPOSE

To provide scheme guidance about the statutory timeframes for decision-making under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

### BACKGROUND

The *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023* (the Regulations) introduce statutory timeframes for decision-making under the SRC Act in relation to:

- > initial claims for workers' compensation under section 14 of the SRC Act; and
- > requests for reconsiderations of determinations<sup>1</sup> made by a claimant.<sup>2</sup>

The Regulations prescribe the following periods for decision-making:

- > 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; and
- > 30 calendar days to decide a request by a claimant to reconsider a determination.

The prescribed timeframes apply to Comcare and self-insured licensees.

The statutory timeframes for decision-making commenced on 1 April 2024.

The changes amend Part 2 of the *Safety, Rehabilitation and Compensation Regulations 2019* and insert a new section 11A, which provides a statutory period for decision-making on claims for compensation under section 14 of the SRC Act, and for requests for reconsiderations of determinations made by a claimant.

Subsection 61(1A) of the SRC Act provides that a determining authority<sup>3</sup> must consider and determine a claim under section 14 of the SRC Act within the period prescribed by the regulations. Subsection 62(6) provides that a determining authority or person must also decide a request made by the claimant to reconsider a determination within the period prescribed by the regulations.

Subsections 61(1A) and 62(6) were inserted into the SRC Act in 2011<sup>4</sup> in response to the '2008 Review of Self-Insurance Arrangement under the Comcare Scheme', however, no regulatory timeframes have previously been prescribed. Prescribing timeframes in accordance with subsections 61(1A) and 62(6) will realise the intention of the 2011 amendments, with the introduction of prescribed timeframes supporting timely decision-making and access to workers' compensation for injured employees.<sup>5</sup>

1 A *determination* is any decision made under one of the sections listed in section 60 of the SRC Act.

2 *Claimant* means a person in respect of whom a determination is made as defined in section 60 of the SRC Act.

3 *Determining authority*, in relation to a determination, means the person who made the determination as defined in section 60 of the SRC Act.

4 Item 6 in Schedule 2 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011*, which commenced on 7 December 2011.

5 *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023 – Explanatory Statement*.

# GUIDANCE

## Initial claims for workers' compensation made under section 14 of the SRC Act

The statutory timeframes for decision-making apply to determinations in respect of initial claims for workers' compensation made under section 14 of the SRC Act. An 'initial claim' is a workers' compensation claim for an 'injury'<sup>6</sup> that is claimed to have arisen out of, or in the course of employment; or a 'disease'<sup>7</sup> that is claimed to have been significantly contributed to by employment.

The statutory timeframes do not apply to determinations made under any other section of the SRC Act.<sup>1</sup>

## Requests for reconsiderations of determinations under section 38 or 62 of the SRC Act

The statutory timeframes for decision-making apply to all requests for the reconsideration of a determination made by a claimant. These timeframes do not apply to requests for reconsiderations made by employers, or reconsiderations the determining authority may make on its own motion.

## Calendar day count commencement and end dates

Section 11A of the Regulations provides that the statutory timeframe count of calendar days commences on the date the determining authority receives either:

- > an initial claim for workers' compensation made in accordance with section 54 of the SRC Act, or
- > a request for a reconsideration of a determination made by a claimant under section 38 or 62 of the SRC Act.

The SRC Act requires that a person make a claim before workers' compensation entitlements may be provided. Section 54 of the SRC Act outlines the requirements for making a claim for compensation. Under subsection 54(2) and (3) a claim is made by giving the relevant authority:

- > a written claim on a Comcare approved claim form;<sup>8</sup> and
- > a certificate by a legally qualified medical practitioner.<sup>9</sup>

The calendar day that an initial claim or reconsideration request is received is day one of the calendar count regardless of whether that happens to be a business day, a Saturday, a Sunday, or a public holiday. This would mean the day following receipt of the initial claim or reconsideration request would be day two of the calendar day count.

If the calendar day count for determining liability on an initial claim or deciding a request for reconsideration made by a claimant ends on a Saturday, Sunday or a holiday in the place that the decision is being made, the decision can be made the next day that is not a Saturday, Sunday or holiday.<sup>10</sup> Holiday is taken to mean a day that is a public holiday in the place where the decision is being made and also a day on which the place or particular office that the decision is being made is closed for the whole day.<sup>11</sup> For example, if a decision is to be made at a particular office which is closed for the whole day during an organisation's end of year shutdown period up to and including Wednesday, 1 January 2025, the decision may be made on Thursday, 2 January 2025.

Importantly, the Regulations do not prescribe a deemed determination or reviewable decision if a determining authority fails to meet the statutory timeframes. Determining authorities should have regard to other legislation that may enable a claimant to seek review of a determination not made within the prescribed timeframes.

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6 As defined in section 5A of the SRC Act.

7 As defined in section 5B of the SRC Act.

8 See Scheme Guidance [Relevant Authority Claim Form Approvals](#)

9 Exception to the requirement for a medical certificate from a legally qualified medical practitioner is where the claim is for medical treatment only under section 16 of the SRC Act or a claim in respect of the death of an employee under section 17 of the SRC Act.

10 Subsection 36(2) of the [Acts Interpretations Act 1901](#) (AIA).

11 Subsection 36(3) of the AIA.

### **Example 1 – Commencement of calendar day count for initial claims and requests for reconsideration from a claimant**

An initial claim for workers' compensation under section 14 of the SRC Act, signed by the claimant on 1 July 2024 and accompanied by a medical certificate from a legally qualified medical practitioner<sup>12</sup> is received by a determining authority on 30 July 2024. The calendar day count commences on 30 July 2024 as this is the date the determining authority received the claim.

Likewise, if a reconsideration request from a claimant was received by a determining authority on 30 July 2024, then this is the date the calendar day count commences.

For both scenarios, 30 July 2024 is day one of the calendar day count.

### **Example 2 – Commencement of calendar day count upon receipt of an initial claim made in accordance with section 54 of the SRC Act**

An initial claim for workers' compensation under section 14 of the SRC Act, signed by the claimant on 1 July 2024 is received by a determining authority on 30 July 2024, however, it is not accompanied by a certificate from an LQMP.

The claims delegate advises the claimant that a medical certificate from an LQMP is required for the claim to be considered compliant with the requirements of section 54 of the SRC Act. On 7 August 2024, the claims delegate receives a medical certificate from an LQMP.

The calendar day count commences on 7 August 2024 as this is the date the determining authority received a claim made in accordance with section 54 of the SRC Act. 7 August 2024 is day one of the calendar day count.

### **Example 3 – Calendar day count end day for initial claims and requests for reconsideration**

Following on from example 1, where an initial claim for workers' compensation under section 14 of the SRC Act was received on 30 July 2024, the calendar day count will end at the end of the day on:

- > 18 August 2024 for claims made in respect of an injury (other than a disease) or an aggravation of an injury (other than a disease) – within 20 calendar days of receipt of the initial claim for workers' compensation; and
- > 27 September 2024 for claims made in respect of a disease – within 60 calendar days of receipt of the initial claim for workers' compensation.

For a reconsideration request by a claimant received on 31 July 2024, the calendar day count ends at the end of the day on:

- > 29 August 2024 – within 30 calendar days of the receipt of the request for a reconsideration from the claimant.

<sup>12</sup> A *legally qualified medical practitioner* (LQMP) is a general practitioner or specialist registered to practice under the Australian Health Practitioner Regulation Agency (AHPRA), see Scheme Guidance [Engaging a legally qualified medical practitioner to undertake an independent medical examination under the SRC Act](#).

## Periods in which calendar days are not counted toward the timeframes for decision-making on initial claims for workers' compensation

The new provisions also clarify that the periods prescribed for decision-making in relation to section 14 determinations do not include certain specified periods. These 'stop-clock' measures only apply to initial claims under section 14 and **do not** apply to reconsideration requests made by a claimant.

The periods in which calendar days are **not** counted include where:

- > a determining authority requires a claimant to undergo an examination by a nominated LQMP under section 57 of the SRC Act;
- > a determining authority has requested the claimant provide information or documentation under section 58 of the SRC Act;
- > a determining authority requires an employer to provide information or documentation under section 71 of the SRC Act;<sup>13</sup>
- > a claimant has advised that they will be providing further evidence; or
- > a determining authority considers it reasonable and necessary to obtain further medical evidence by requiring a report<sup>14</sup> from the claimant's LQMP or an LQMP nominated by the determining authority.

See **Attachment A** – Extract of the *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023*, Schedule 1, Part 2, section 11A(3) for further detail on the periods in which calendar days are not counted. **Figure 1** also provides an overview of how the 'stop-clock' measures apply to initial claims for compensation under section 14.

These 'stop-clock' measures essentially freeze the calendar day count while waiting for the additional evidence or information requested by the determining authority, or information the claimant has advised they will be providing in support of their section 14 claim.

The calendar day count stops **on the day**:

- > information is requested by the determining authority;
- > written notice is given to the claimant to undergo an examination by a LQMP; or
- > the claimant advises they will be providing further information.

The calendar day count recommences on **the day after** (regardless if this day is a Saturday, Sunday or public holiday):

- > the requested information is received;
- > the claimant and/or the employer advises that the information cannot be provided; or
- > the date the determining authority reasonably believes either
  - the claimant will not provide any further evidence or the principal officer of an employer has failed to comply with a section 71 notice.

The 'stop-clock' measures in relation to requesting information from a claimant under section 58 of the SRC Act are intended to operate in conjunction with the 'refuse to deal with' provision prescribed by subsection 58(3). That is, where a claimant refuses, or fails, without reasonable excuse, to comply with a notice issued under subsection 58(1), the relevant authority may refuse to deal with the claim until the claimant gives the relevant authority the information sought. Where a 'refuse to deal with' under subsection 58(3) is in effect, the calendar day count in relation to making a determination under section 14 will remain paused.

Importantly, the calendar day count does not freeze when information is requested from the employee unless the request is made via a notice issued under section 58 of the SRC Act. Requests for information by the determining authority of the employee via other forms of communication do not result in the calendar day count freezing.

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<sup>13</sup> The Regulations specify 'determining authority', however, section 71 only applies to Comcare, (see subsection 4(10) and 4(10A) of the SRC Act).

<sup>14</sup> The term "report" is not defined in the SRC Act or SRC Regulations, however, is defined in the Macquarie Dictionary to mean "...a statement submitted in reply to inquiry as the result of investigation, or by a person authorised to examine and bring or send information....".

There are no limits on the number of times the calendar count is frozen while further evidence is sought to assist with determining liability for an initial claim for workers' compensation under section 14. Importantly, the 'stop clock measures' are not to be used as a tool to delay decision-making and are only to be used where the determining authority requires further information in order to make a determination under section 14.

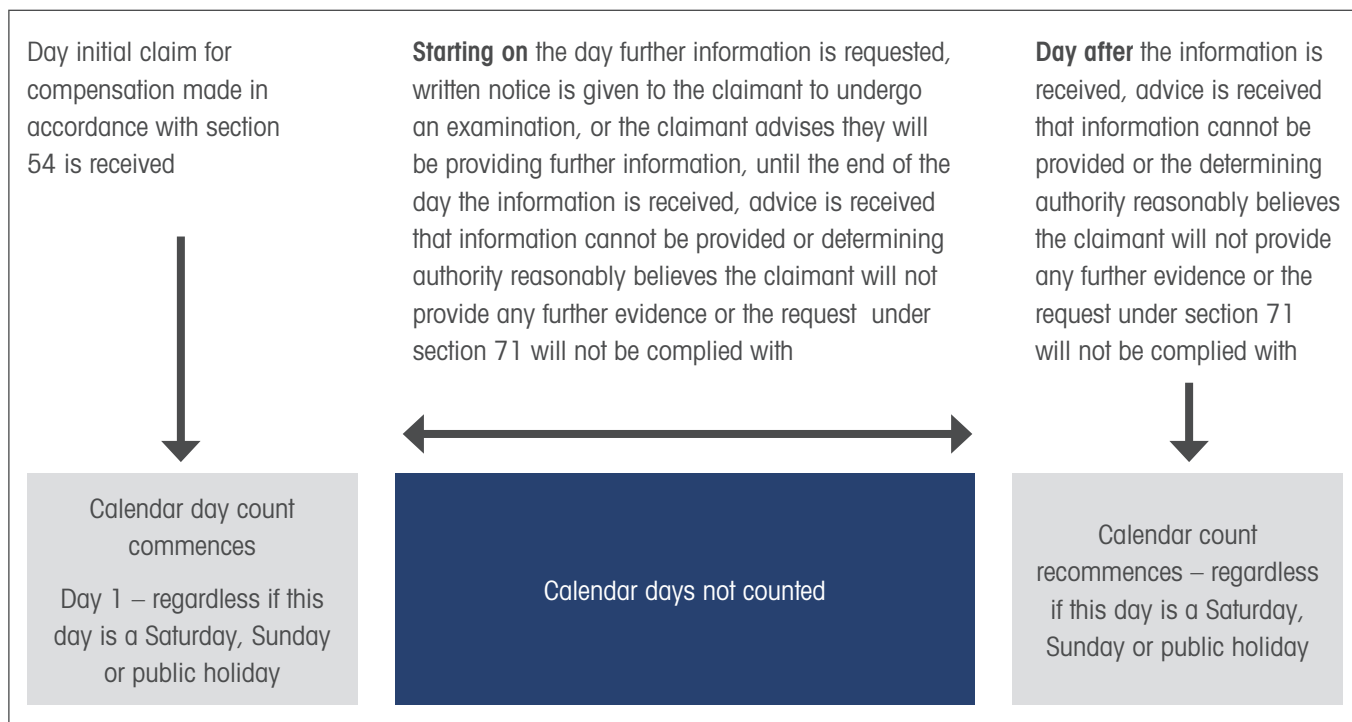


Figure 1: How the 'stop-clock' measures apply to initial claims for compensation under section 14.

**Example 4 – Calendar days not counted when the determining authority requests a report from the claimant's LQMP**

Following on from example 3, an initial claim for workers' compensation under section 14 of the SRC Act in respect of an injury (other than a disease) received by a determining authority on 30 July 2024 would normally require that a determination is made by 18 August 2024.

If the determining authority requests a report from the claimant's treating doctor on 2 August 2024, which is then received on 13 August 2024, the calendar day count is frozen during the period from 2 to 13 August 2024, (12 days). This pushes the end date for the calendar day count to 30 August 2024:

- > 30 July 2024 – calendar day count commences.
- > 2 August 2024 – calendar day count freezes as the determining authority requests a report. 2 August 2024 is not counted as a day.
- > 13 August 2024 – the report is received. The calendar day count recommences the day after the report is received (after a 12-day freeze). 13 August 2024 is not counted as a day.
- > 30 August 2024 – calendar day count ends.

### **Example 5 – Calendar days not counted when the determining authority requires that a claimant undergo an examination under section 57 of the SRC Act**

Varying from example 4, an initial claim for workers' compensation under section 14 of the SRC Act in respect of an injury (other than a disease) received by a determining authority on 30 July 2024 would normally require that a determination is made by 18 August 2024.

If the determining authority issues a notice under section 57 of the SRC Act on 2 August 2024 requiring the claimant undergo an examination on 22 August 2024, the calendar clock is frozen from 2 August 2024.

The examination report is received on 6 September 2024, and the calendar day count recommences on 7 September 2024. The end date for the calendar day count would now be 23 September 2024.

The claims delegate notes that a key question required to assess liability has not been adequately answered by the LQMP, and a supplementary report is requested on 11 September 2024, freezing the calendar day count for a second time.

The supplementary report from the LQMP is received on 16 September 2024, and the calendar day count recommences on 17 September 2024, with an end date for the calendar day count now 29 September 2024:

- > 30 July 2024 – calendar day count commences.
- > 2 August 2024 – calendar day count freezes as the determining authority issues a notice under section 57 of the SRC Act requiring the claimant undergo an examination by an LQMP. 2 August 2024 is not counted as a day.
- > 6 September 2024 – the report is received from the LQMP, and the calendar day count recommences on 7 September 2024 (after a 36-day freeze). 6 September 2024 is not counted as a day.
- > 11 September 2024 – calendar day count freezes as the determining authority requests a supplementary report from the LQMP. 11 September 2024 is not counted as a day.
- > 16 September 2024 – supplementary report is received from LQMP, and the calendar day count recommences on 17 September 2024 (after a 6-day freeze). 16 September 2024 is not counted as a day.
- > 29 September 2024 – calendar day count ends.

In cases where the calendar day count is frozen due to Comcare issuing a notice under section 71 of the SRC Act to the principal officer of an employer of the claimant, the calendar count recommences on the earlier of the following days:

- > the day after the information or documents are received by the determining authority;
- > the day after the determining authority receives advice that the requested information or documents cannot be provided;
- > the day after the determining authority reasonably believes the principal officer has failed to comply with the notice.

It is important to note that the calendar day count does not freeze when information is requested from the employer unless the request is made via a notice issued under section 71 of the SRC Act. Requests for information by the determining authority of the employer via other methods do not result in the calendar day count freezing.

The Regulations also provide that the calendar day count which has been frozen due to the claimant advising they intend to provide further information in support of their claim will recommence on the day after the determining authority reasonably believes the requested documents or information will not be provided.

The Regulations do not contain any guidance as to the amount of time that a determining authority may consider is a reasonable amount of time for providing requested documents or information, and the time that a determining authority considers reasonable may vary for individual claims, depending on their specific circumstances. However, section 58 and 71 notices require the determining authority to provide a date on which the requested documents or information are due to be provided, which may be used as a guide.

If the statutory timeframe is paused due to a 'stop-clock' measure, the determining authority should keep the claimant informed of the status of the initial liability decision and the effect of further requests for information on decision-making.

As the statutory timeframes for decision-making including the 'stop-clock' measures are not determinations under section 60(1) of the SRC Act, the provisions are not subject to reconsideration under section 62 of the SRC Act or appeal at the Administrative Review Tribunal. If a claimant disagrees with a determining authority's conduct associated with applying the statutory timeframes for decision-making, they will need to make an application to the Federal Court of Australia.<sup>15</sup>

## Application of the Provisions

The statutory timeframes for decision-making commence on 1 April 2024 and apply to all initial claims for workers' compensation under section 14 of the SRC Act and all requests for the reconsideration of a determination made by a claimant under section 38 or 62 of the SRC Act received on and from 1 April 2024.

## FURTHER INFORMATION

For more information about the operation of the new statutory timeframes for decision-making, please contact Comcare's Scheme Policy team on 1300 366 979 or email: [schemepolicyanddesign@comcare.gov.au](mailto:schemepolicyanddesign@comcare.gov.au).

Other relevant scheme guidance:

- > [Definition of injury and disease](#)
- > [Establishing whether there has been an aggravation to a pre-existing or underlying medical condition](#)

**Attachment A** – Provides an extract of the new section 11A provisions

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<sup>15</sup> A request to review a decision under a non-reviewable section of the SRC Act can be made to the Federal Court of Australia under the Administrative Decisions (Judicial Review) Act 1977 or the *Judiciary Act 1903* (Judiciary Act).

# ATTACHMENT A – EXTRACT OF THE SAFETY, REHABILITATION AND COMPENSATION AMENDMENT (PERIOD FOR DECISION-MAKING) REGULATIONS 2023, SCHEDULE 1, PART 2

## Safety, Rehabilitation and Compensation Regulations 2019

### 1 At the end of Part 2

Add:

#### 11A Period for determining claim for compensation or request for reconsideration of a determination

- (1) For the purposes of subsection 61(1A) of the Act, the determining authority must determine a claim for compensation under section 14 of the Act:
  - (a) if the claim is in respect of an injury (other than a disease) or an aggravation of an injury (other than a disease)—within the period of 20 calendar days, starting on the day the determining authority receives the claim made in accordance with section 54 of the Act and worked out disregarding any calendar day covered by subsection (3) of this section; or
  - (b) if the claim is in respect of a disease—within the period of 60 calendar days, starting on the day the determining authority receives the claim made in accordance with section 54 of the Act and worked out disregarding any calendar day covered by subsection (3) of this section.
- (2) For the purposes of subsection 62(6) of the Act, the determining authority must decide a request made by a claimant to reconsider a decision within the period of 30 calendar days, starting on the day the determining authority receives the request.
- (3) For the purposes of subsection (1), a calendar day is covered by this subsection if it is in a period:
  - (a) starting on the day referred to in column 2 of an item in the following table; and
  - (b) ending on the day referred to in column 3 of the item.

Periods in which calendar days are not counted			
Item	Column 1 Situation	Column 2 Start day	Column 3 End day
1	The determining authority has, under section 57 of the Act, required the claimant to undergo an examination by a legally qualified medical practitioner nominated by the determining authority	The day the determining authority gives the claimant written notice of the requirement	The day the determining authority receives the results of the examination
2	The determining authority has, under section 58 of the Act, requested the claimant to give information or a copy of a document	The day the determining authority gives the claimant written notice of the request	The earlier of the following days: <ol style="list-style-type: none"> <li>(a) the day the determining authority receives the information or copy of the document;</li> <li>(b) the day the claimant advises the determining authority that the claimant does not have the information or document</li> </ol>



**Periods in which calendar days are not counted**

<b>Item</b>	<b>Column 1 Situation</b>	<b>Column 2 Start day</b>	<b>Column 3 End day</b>
3	The determining authority has, under section 71 of the Act, required a principal officer of an employer of the claimant to give information or documents	The day the determining authority gives the principal officer written notice of the requirement	The earlier of the following days: (a) the day the determining authority receives the information or documents; (b) the day the principal officer advises the determining authority that the employer does not have the information or document in the employer's possession, custody or control; (c) the day on which the determining authority reasonably believes the principal officer has failed to comply with the notice
4	The claimant has advised the determining authority that the claimant will provide further evidence	The day the claimant so advises the determining authority	The earlier of the following days: (a) the day the determining authority receives the further evidence; (b) the day the claimant advises the determining authority that no further evidence will be provided; (c) the day on which the determining authority reasonably believes the claimant will not provide any further evidence
5	The determining authority considers that it is reasonable and necessary to obtain further medical evidence by requiring a report from: (a) the claimant's legally qualified medical practitioner; or (b) a legally qualified medical practitioner nominated by the determining authority	The day the determining authority requests the further evidence	The day the determining authority receives the report

**2 At the end of Part 5**

Add:

**Division 3—Provisions for the Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023**

**37 Application of period for determining claim for compensation or request for reconsideration of a determination**

Section 11A, as added by the *Safety, Rehabilitation and Compensation Amendment (Period for Decision-making) Regulations 2023*, applies in relation to:

- (a) a claim for compensation under section 14 of the Act made in accordance with section 54 of the Act on or after the commencement of that instrument; and
- (b) a request to reconsider a decision under section 38 or 62 of the Act made by a claimant on or after the commencement of that instrument.