



When making entitlement decisions you must ensure your decision has been made in accordance with the Workplace Injury Rehabilitation and Compensation Act 2013 (The Act). This means:

- The decision is a “reasonable” decision?
- It is a “just” outcome for the worker?
- The decision complies with the requirements of the Claims Manual?
- There has been no fundamental error’s in the decision making process?
- There is documented evidence?

To ensure this happens, all decisions need to be quality ethical decisions that are sustainable and in line with WorkSafe’s and the communities expectations.

This guide is designed to provide you with a clear understanding of what a sustainable decision is within the scheme by providing you with a range of elements you need to consider when making a decision.

This guide will provide you with the following key considerations for:

- [All Decisions](#)
- [Specific Decision Types;](#)
 - [Reasonable Management Action Decisions \(s40\(1\)\)](#)
 - [Return to work Non-compliance Decisions](#)
 - [Second Entitlement Period Decisions \(130 week\)](#)

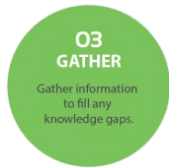
Click on the sections above to jump to the section.

This is all underpinned by the Quality Ethical Decision Making Framework.





Key Considerations for all decisions ...



Was the medical and factual information I gathered, quality evidence?

Was the evidence I gathered from IMEs/treating practitioner's quality information?

- Is the IME specialty relied upon the correct specialty?
Example: Am I relying upon a rheumatologist's comments in an IME report to terminate the worker's entitlement to psychiatric services?
- If information has been sought from IMEs/treating practitioners have the doctor(s) been properly instructed?
 - Has the IME/treating practitioner been provided with the right information which might include such things as:
 - Details of about if and when that IME/treating practitioner previously examined the worker
 - Any previous reports from different IMEs that are not outdated;
 - Any treating doctor(s) reports, x-rays, scans, copies of radiology reports, surgical reports and assessor reports;
 - Relevant information such as the worker's previous claim history, the claim form and injury report, investigation reports, medical certificate (first and last issued), employer information, including RTW plans, occupational rehabilitation reports, pre-injury and current position description;
 - Is it clear that the IME has had sufficient time to consider all of the material provided by you prior to the examination?
 - Are the instruction letters to IMEs and treating practitioners sound/fair? Do the letters contain histories which objectively present the claim?
 - Are the questions posed in the instruction letters to IMEs and treating doctors:
 - Leading;
 - Misleading in any material way;
 - The right questions having regard to the claims decision being disputed?

Was the evidence I gathered from investigations quality evidence?

- Has the investigator been provided with the right information which might include such things as:
 - Details of the relevant background information to the claim (including relevant documents);
 - instructed to and asked the right questions;
 - compiled an unbiased and objective report of the investigation?





Was the evidence relating to surveillance quality evidence?

- Was there adequate justification for the undertaking of surveillance?
- Are the reasons surveillance was conducted recorded. Were the reasons provided consistent with the criteria specified in the ***Claims Manual Surveillance Guidelines?***
- Have you corroborated the surveillance with other information to ensure accuracy:
 - Identity check;
 - Timing of surveillance;
 - Consistency of material with the nature of the claim;
 - Is there any other reasonable explanation for the particular information e.g. box lifted was empty, activity did not involve use of injured body part?
- If surveillance footage has been obtained, has it been used fairly, appropriately and objectively in the decision making process?
- Have you given due to consideration as to such things as:
 - The age of the surveillance;
 - How many hours of surveillance was undertaken having regard to the quantity of actual footage obtained;
 - Contradictory footage – good days/bad days;
 - Plausible alternate explanations for the activities observed (as per above)?
- Does the surveillance alone necessarily mean that the worker is not entitled to the compensation sought? Has the surveillance been assessed in the context of the other available information? Has the appropriate “weight” been given to the surveillance material?
- Was the surveillance provided to an appropriate IME and/or treating practitioners for comment prior to the decision being made?
- If surveillance was provided to medical practitioners for comment was it accurately described in your letter(s) of instruction?
 - *Example: “There was 22 hours of surveillance conducted. 2 minutes of film was obtained which is enclosed for your viewing”.*
- Is it clear for the medical practitioner’s report that he/she viewed the film?





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ANALYSE

Critically analyse and evaluate all relevant information.

Is The Decision And Ground/s Relied Upon Supported By Reasonable And Appropriate Evidence?

- Is the information to be relied upon valid, authentic and reliable?
- Is the information being relied upon supported by relevant, factual and unbiased evidence?
- Have you relied upon evidence which is unclear or inconclusive? Does the evidence (e.g. medical report) relied upon “make sense” in its totality?
 - Has clarification been sought and obtained if something is unclear or appears to be contradictory?
 - Has further information been provided if the doctor has identified it is required to reach a proper opinion (e.g. x-rays, further treating practitioner reports, operation notes etc.)?

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DETERMINE

Apply decision making frameworks to determine the correct outcome.

Is My Evidence Reasonable And Appropriate?

What evidence am I relying on?

- Did you have **sufficient evidence** to make the decision?
 - *Was the decision based on old evidence?*
 - *Was the decision based on a report predicting that recovery “might” occur in a specified period of time without any attempt to enquire as to whether that recovery had in fact occurred?*
- Did you **have the best available evidence** (the right evidence) when the decision was made?

Depending on the issue type, the evidence could include:

 - Appropriate treating practitioner/hospital reports/notes;
 - IME reports from the right specialty/ies selected in a ‘fair and equitable manner’ having regard to **all** of the worker’s injuries;
Example: Am I relying upon/only obtained information addressing the worker’s capacity to work from a limited perspective (e.g. physical with
 - Information from the occupational rehabilitation provider;
 - Financial documents (eligibility/weekly payments);
 - Investigation circumstance reports/statements from the employer;
 - Surveillance;
 - Up to date information about the worker’s personal circumstances;
- If not, what is missing? How critical is this information to making a sustainable decision? Could the you have given ‘proper, genuine and realistic consideration’ to the merits of the decision without it?





Was the evidence used to determine the outcome quality evidence?

- Is the information being relied upon supported by relevant, factual and unbiased evidence?
- Am I relying upon evidence which is unclear or inconclusive? Does the evidence (e.g. medical report) being relied upon “make sense” in its totality?
 - Should clarification be sought and obtained if something is unclear or appears to be contradictory?
 - Should further information be provided if the doctor has identified it is required to reach a proper opinion (e.g. x-rays, further treating practitioner reports, operation notes etc.)?
- If information has been sought from IMEs/treating practitioners have the doctor(s) been properly instructed?
 - Has the IME/treating practitioner been provided with the right information which might include such things as:
 - Details of about if and when that IME/treating practitioner previously examined the worker
 - Any previous reports from different IMEs that are not outdated;
 - Any treating doctor(s) reports, x-rays, scans, copies of radiology reports, surgical reports and assessor reports;
 - Relevant information such as the worker’s previous claim history, the claim form and injury report, investigation reports, medical certificate (first and last issued), employer information, including RTW plans, occupational rehabilitation reports, pre-injury and current position description;
 - Is it clear that the IME has had sufficient time to consider all of the material provided prior to the examination?
 - Are the instruction letters to IMEs and treating practitioners sound/fair? Do the letters contain histories which objectively present the claim?
 - Are the questions posed in the instruction letters to IMEs and treating doctors:
 - Leading;
 - Misleading in any material way;
 - The right questions?





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FORMALISE

Formalise the outcome,
include rationale and
document it.

Does The Decision Letter Weigh Up The Evidence Clearly And Ensure All Information Has Been Considered And Mentioned?

- Is the decision letter clear and your “path of reasoning” easy to understand? Does the decision letter clearly communicate:
 - What the decision is;
 - Who made the decision;
 - What reasonable and appropriate information was relied upon;
 - The reasons for the decision;
 - The information not relied upon and why;
 - Which piece of legislation applies; and
 - What appeal rights are available?
- Have you considered all of the best available evidence in a manner which is both reasonable and fair to the affected worker? Have you taken into account:
 - All documentary evidence – medical reports/notes, financial documents, investigation reports, statements, etc;
 - The worker’s personal circumstances – age, residential, mental health, family, any language difficulties, treatment needs, etc.

Is my letter structured well





Specific Decisions

Key Considerations for Reasonable Management Action Decisions

- Is your rejection of the worker's claim on reasonable management action grounds based on the best available evidence:
 - Has a circumstance investigation report/factual information been completely and properly obtained;
 - Have treating practitioner and/or IME reports been obtained;
 - Were any experts relied upon appropriately instructed with all of the relevant material?
- Have you, taken into account the whole picture:
 - Is there any evidence of something else going on more dominant than the reasonable management that could have led to the diagnosed mental injury?
 - Was any reasonable management activity undertaken in accordance with the employer's code of conduct and associated HR policies?

Key Considerations for Return to Work Non-compliance Decisions

- If benefits were suspended/terminated as a consequence of non-compliance, what practical attempts were undertaken to discover the reason for the worker's non-compliance? Have you had regard to the factors referred to in the Claims Manual?–
 - The worker's incapacity;
 - Seriousness of injury including psychological effects;
 - Non-work related injuries or illnesses;
 - Language and literacy skills;
 - Availability/access to treating medical practitioners;
 - Effect of medication or other treatments;
 - Access to transport or residential location;
 - Access to a phone;
 - Family or carer responsibilities;
 - Concurrent Court proceedings;
 - RTW planning documents and occupational rehabilitation services provided to the worker?
- Have you fairly assessed whether the worker has acted unreasonably?
- Is it clear that you have made genuine and proper enquiries/a real attempt to understand/find out the reasons for the worker's non-compliance prior to making the decision?
- Have you sought worker compliance contrary to medical evidence?

Example: Was the worker required to participate in occupational rehabilitation at an inappropriate stage of recovery – e.g. based on dated medical evidence, planned surgery, suicidal, psychologically unwell, contrary to the balance of medical evidence regarding capacity, condition deteriorating
- Was the request for compliance reasonable in the first place having regard to the best available evidence?

Example: Was the worker required to participate in occupational rehabilitation at inappropriate stages of their recovery, such as where there is medical evidence to suggest that while the worker may physically recovered he/she is psychologically unwell?





Key Considerations for Second Entitlement Period

- Did you have sufficient evidence to cease weekly payments at 130 weeks?
- If the worker's weekly payments were ceased because you considered that the worker's incapacity was not likely to continue indefinitely, is it clear that the termination was based on solid evidence?
 - Medical opinion confirming that the worker would have a capacity for suitable employment in the foreseeable future;
 - Clinical practice and/or previous experience of what the normal or expected course of recovery and capacity for suitable employment of a worker with those injuries would be (?);
 - A definable and proximate period of incapacity;
 - Clear reasons why the worker will gain a capacity e.g. surgery recovery, gaining a qualification etc. ;
 - Consistent information supporting the change in capacity?

Was the Occupational Rehabilitation report quality evidence?

- Are the job options identified by the provider 'disingenuous' 'fanciful' or 'offensive'? Are the job offers realistic?
- Was the vocational assessment undertaken by the occupational rehabilitation provider 'realistic' having regard to the worker's personal circumstances?
Examples: Has the vocational provider recommended unsuitable occupations for the worker such as a school crossing attendant when the worker has difficulty walking?
- Was the occupational provider properly instructed by you?
- Did the occupational provider have proper regard to the best available evidence, including material from the worker's treating practitioners?
- Has the IME properly understood and applied the 'suitable employment' test?
- Has the IME appropriately answered questions regarding the worker's capacity for suitable employment and provided easily understood reasons for the opinions provided?



How and when do I use the considerations in this guide?

Decision makers should reference this guide each time they make a formal decision to help analyse and determine the outcome of your

review to ensure it is in line with the QEDM Framework and is a sustainable decision.

Technical specialists responsible for reviewing and endorsing decisions must ensure the considerations in this guide have been taken into account and it is a quality, sustainable decision.

How does WorkSafe use the considerations in this guide?

The considerations in this guide form part of the Quality Decision Making (QDM) Sustainable Decision-making Framework which is used by WorkSafe auditor's when assessing the sustainability of an agent's claims decision.



Where can I get further information?

Further information can be found in the Claims Manual in sections:

- 1.4.1 Decision making
- 2.1.2. Exceptions to entitlement for mental injuries
- 2.7.2 Independent medical examiners (IMEs)
- 2.8.3 Surveillance guidelines for Agents
- 5.1 Worker RTW obligations