



Australian Government
**Seafarers Safety, Rehabilitation
and Compensation Authority**

Best Practice Guide

Claims Management



DISCLAIMER: This publication is intended to provide only a summary and general guide on management of Seacare claims. It is not intended to be comprehensive and is not a substitute for reference to the Seafarers Act and independent professional advice. Please contact an appropriately qualified professional before relying on the contents of this publication. The Seacare Authority, Comcare and the Commonwealth and their officers, servants and agents expressly disclaim liability and responsibility with respect to, and accept no responsibility for, the consequences of anything done or omitted to be done in reliance, whether wholly or partly, upon this publication: including but not limited to the results of any action taken on the basis of information in this publication or the accuracy, reliability, currency, or completeness of any material contained in this publication.

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1. Glossary

For ease of reference we have included some key definitions below. Many of these terms are defined in the *Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act) and have been adopted, explained or summarised in this glossary. In cases of inconsistency, you should rely on the definition in the Seafarers Act.

Approved (rehabilitation) program provider

A person or organisation approved by Comcare, and recognised by the Seacare Authority, who provides rehabilitation programs (services and advice) to injured employees.

Authorised insurer

The company with which the employer has taken out a workers' compensation insurance policy for its employees. The insurer must be a:

- general insurer or Lloyds underwriter under the *Insurance Act 1973* (Cth)
- state insurer.

Authority

The Seafarers Safety, Rehabilitation and Compensation Authority. Also referred to as the Seacare Authority.

Rehabilitation case manager

Workplace based manager of an injured employee's return to work plan. The rehabilitation case manager is responsible for initiating, co-ordinating and monitoring the rehabilitation process.

Claims manager

Person delegated responsibility for determination of any claim.

Claims management policy

A policy outlining an employer's commitments to managing its employees' claims.

Dependent

In relation to a deceased employee, a dependent is a person:

- who is the spouse of the employee
- who is the parent, step-parent, father-in-law, mother-in-law, grandparent, child, stepchild, grandchild, sibling or half-sibling of the employee
- in relation to whom the employee stood in the position of a parent or who stood in the position of a parent to the employee.

A dependent is a person who was wholly or partly dependent on the employee at the date of the employee's death.

Employee

Is defined in section 4 of the Seafarers Act as a seafarer (defined below) or a trainee.

Incapacity for work

Incapacity for work is considered to be an incapacity suffered by an employee as a result of an injury. This includes an incapacity to engage in:

- any work (total incapacity)
- work at the same level as that immediately prior to the injury happening (partial incapacity).

Incapacity payments

Periodic compensation for employees who have sustained a loss of earnings as a result of a compensable condition.

Injury

The term injury means:

- a disease
- an injury (other than a disease) suffered by an employee, that is a physical or mental injury arising out of, or in the course of, the employee's employment
- an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), being an aggravation that arose out of, or in the course of, that employment.

The definition does not include anything suffered by an employee as a result of reasonable disciplinary action taken against the employee, or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment.

Legally qualified medical practitioner

A person registered as a medical practitioner in the state, territory or foreign country in which the person examines or treats the employee, including a general practitioner, surgeon, or other medical specialist.

Medical aids

Medical aids are considered to be a medical/surgical supply, curative apparatus, or artificial limb or other similar aid or appliance that directly assists employees with their physical or bodily functioning. Medical aids include:

- hearing aids
- surgical footwear
- crutches
- prosthetic devices
- consultations and fittings.

Medical treatment

Medical treatment means:

- medical or surgical treatment by, or under the supervision of, a legally qualified medical practitioner
- therapeutic treatment obtained at the direction of a legally qualified medical practitioner
- dental treatment by, or under the supervision of, a legally qualified dentist
- therapeutic treatment by, or under the supervision of, a physiotherapist, osteopath, masseur or chiropractor registered as such under the law of a state or territory
- an examination, test or analysis carried out on, or in relation to, an employee at the request or direction of a legally qualified medical practitioner or dentist and the provision of a report in respect of it
- the supply, replacement or repair of an artificial limb or other artificial substitute, or of a medical, surgical or other similar aid or appliance
- treatment and maintenance as a patient at a hospital
- nursing care, and the provision of medicines, medical and surgical supplies and curative apparatus, whether in a hospital or not.

Permanent impairment

Impairment is the loss, the loss of use, or the damage or malfunction of any:

- part of the body
- bodily system or function
- part of a bodily system or function.

An impairment will be regarded as permanent when the recovery process has been completed. This includes the full and final effect of recovery, the natural healing process and active (as opposed to palliative) medical treatment has been achieved. Permanent means likely to continue indefinitely.

When deciding whether an impairment is permanent, the employer must consider:

- the duration of the impairment
- the likelihood of improvement in the employee's condition
- whether the employee has undertaken all reasonable rehabilitative treatment for the impairment
- any other relevant matters.

A Guide to the Assessment of the Degree of Permanent Impairment is available on the Seacare website.

Rehabilitation program

A rehabilitation program is the provision of rehabilitation services and advice by an approved rehabilitation program provider. It is designed to assist employees to safely return to work as soon as possible. A rehabilitation program may include:

- vocational assessment
- guidance
- training/retraining
- counselling
- placement assistance
- medical, dental, psychiatric and hospital services (whether on an in-patient or out-patient basis)
- physical training and exercise
- physiotherapy
- occupational therapy
- vocational training.

The process is implemented by employers to encourage an injured employee's full physical and mental recovery, including support and assistance so they may return or remain at work safely and effectively. An injured employee must be consulted about the development of a rehabilitation program by the employer and provided with a copy of the proposed program for comment before it is finalised.

Return to work plan

A documented plan developed by the rehabilitation case manager, with input from the approved rehabilitation program provider in consultation with the injured employee and their medical practitioner, which matches the injured employee's capabilities and limitations to assist them to return to work. A return to work plan should be approved by the treating medical practitioner.

Seafarer

A person employed in any capacity on a prescribed ship on the business of a ship, excluding:

- pilots
- people temporarily employed on the ship in port
- people carried on the ship for a special purpose
- people performing special work on board the ship.

Stakeholders

This refers to everyone involved in or affected by the claims management process and any subsequent rehabilitation. Stakeholders include the:

- employee
- employee's dependants
- employer
- unions
- insurer
- treating medical practitioner
- approved rehabilitation program provider
- claims manager
- rehabilitation case manager.

Suitable employment

Any employment (including self-employment) for which an employee is suitable considering:

- the employee's age
- the employee's experience
- the employee's training
- the employee's language
- the employee's other skills
- the employee's suitability for rehabilitation or vocational retraining
- the likelihood that employment would reasonably require the employee to change their place of residence
- any other relevant matters.

2. Introduction

a. How to use this guide

This best practice guide has been prepared to assist employees, employers, insurers and other parties involved in the claims management process. It aims to assist all parties by:

- providing an outline of the statutory requirements for claims under the Seafarers Act
- guiding the parties on approaches to claims management that provide best return to work outcomes.

Throughout this guide there is a focus on three key elements that are considered best practice approaches to claims management. They are:

- early intervention—assessing employee needs quickly and directing them to necessary and appropriate support
- stakeholder focus—managing and receiving timely information from various persons involved in the employee's recovery
- professionalism and goal setting—keeping employees informed of their rights and responsibilities and setting clearly defined milestones in preparation for return to work.

This guide is available on the Seacare Authority website at www.seacare.gov.au

b. What is Seacare?

Seacare is the term used to describe the national maritime industry scheme of occupational health and safety (OHS), workers' compensation and rehabilitation arrangements which applies to defined seafaring employees and—in relation to OHS—defined third parties.

The scheme is overseen by the Seafarers Safety, Rehabilitation and Compensation Authority—otherwise known as the Seacare Authority—which comprises an independent Chairperson, a Deputy Chairperson, the Chief Executive Officer of the Australian Maritime Safety Authority, two employer representatives and two employee representatives.

The Seacare Authority does not have its own staff. Comcare makes staff available to support the Seacare Authority functions, operating from a unit known as the Seacare Management Section (SMS). The SMS, in performing its functions for the Authority, has access to Comcare legal services, financial management services, communication services and related corporate support services. The SMS is responsible for supporting the Seacare Authority and performing the day-to-day regulatory functions of the Seacare Authority.

c. What is the Seafarers Act?

The Seafarers Act establishes a workers' compensation and rehabilitation scheme for seafarers employed on certain ships engaged in trade or commerce within a territory, interstate or overseas, and on other vessels declared by the Australian Maritime Safety Authority.

The intent of the Seafarers Act is to combine earnings-related benefits with comprehensive rehabilitation requirements and other measures aimed at getting injured employees restored to health and back to work as quickly as possible.

3. Key principles for better practice decision making in claims management

Decisions regarding claims have a significant impact on employees and employers. In making any determinations under the Seafarers Act, decision makers such as claims managers should have regard for the following principles:

- Ensure that all decisions made are lawful—this includes making sure that decisions are made by correctly authorised and qualified people, that correct legal procedures are followed, that reasoning conforms with minimum legal standards, and that a decision maker is accountable for a decision and has notified the person of their right to a review.
- Decisions conform to the principles of natural justice—this includes ensuring the employee affected by the decision has been given the opportunity to express their views and have them considered (hearing rule), the decision is based on logical and probative evidence (evidence rule) and that the decision maker is impartial and has no personal stake in the matter (bias rule).
- Decisions are based on evidence with findings of facts—this includes determining all material questions of fact that are necessary for making a decision, not basing a decision on a fact without evidence and ensuring that every finding of fact is based on evidence that is relevant and logical to support the finding. It also includes not basing decisions on findings that are unreasonable, observing natural justice and complying with any statutory duty to give a written statement of reasons for the decision and providing reasons for the factual findings made and conclusion arrived at.
- Provide reasons for all decisions—this includes providing a statement of reasons and explanation for all decisions, informing the person of their rights to review and appeal, and ensuring notes and files are kept for every decision made.
- Decisions are timely—this includes ensuring decisions are made within the required timeframes, and requests for extensions of time and further information are made promptly.

4. Claims management within the Seacare jurisdiction—A best practice guide

a. Claims management policy

A claims management policy outlines an employer's commitments in managing their employee's claims.

Adopting a claims management policy demonstrates the employer's commitment to following best practice principles. Support for a claims management policy needs to come from senior management. This should be in the form of a statement that outlines the employer's commitment to early intervention, consultation with stakeholders, clear goal setting and a fair and equitable determination of claims. Clear procedures and resources also need to be developed to support the policy, for instance access to claims forms and information, and having people equipped with the ability to manage claims. The information available to employees should include contact details for claim managers (whether the claims manager is employed by the employer, an insurer or contracted claims manager) and of rehabilitation case managers.

Best practice claims management policies follow these principles:

- employer commitment across all levels of the organisation, in particular senior management
- clear and easily accessible policy and guidelines
- systems and procedures that are regularly reviewed and audited
- injury management intervention, particularly for difficult claims
- return to work assistance
- compliance with all applicable legislation, in particular the Seafarers Act.

Effective claims management policies may lead to improved injury outcomes, a reduction in compensation claim payments and a potential reduction in insurance premiums.

Best practice policies to deal with claims

Some best practice policies that could be adopted within an employer's claims management policy include:

- consultation with stakeholders, such as employees and unions, about the content of claims a management policy
- an injured employee's requirement to contact management as soon as possible after any injury (preferably within 24 hours)—in the case of a seafarer injured on a ship, notice should be given to the Master of the ship
- the provision of material and information outlining process when injury occurs
- responsibilities for stakeholders (as described further in this guide)
- an employer commitment to:
 - act in accordance with Seafarers Act
 - consult with and develop relationships with key stakeholders
 - ensure that all injured employees are treated fairly and equitably
 - ensure that all claims are investigated promptly in accordance with the Seafarers Act
 - provide competent people to manage claims
 - early development of a rehabilitation program to assist employees to safely return to work as soon as possible
 - monitor claims management performance, including areas such as:
 - > time taken to make determination on claim
 - > number of undetermined claims
 - > correct and timely delivery of claims payments and services.

b. Insurance arrangements

Requirements

Under section 93(1) of the Seafarers Act, it is mandatory for employers operating under the Act to:

- have a policy of insurance or indemnity from an authorised insurer
- be a member of a protection and indemnity association that:
 - is approved in writing by the Authority
 - is a member of the International Group of Protection and Indemnity Associations
- be a member of an employer's mutual indemnity association that is approved in writing by the Authority—so they are insured or indemnified for the full amount of the employer's liability under the Seafarer's Act to all employees working for them.

Employers may take out policies that make them liable in respect for an amount below the agreed excess (s93(2) Seafarers Act).

A list of authorised insurers providing Seafarers Act indemnity is available on the Seacare website (www.seacare.gov.au) and Australian Prudential Regulation Authority website (www.apra.gov.au).

Reporting

Section 94(1) of the Seafarers Act requires that an employer give the Authority the name and address of the authorised insurer, the protection and indemnity association or the employers' mutual indemnity association within 14 days of:

- being issued with, or renewing, a policy of insurance or indemnity by or with an authorised insurer
- becoming a member of, or renewing membership of, a protection and indemnity association or an employers' mutual indemnity association.

Further claim management principles

The following are important claim management principles that should be applied throughout the claim management process to help achieve better injury and compensation outcomes.

Best practice approaches: Communicating with stakeholders

Effective communication between all stakeholders is a critical factor in the success of the injury management process. This is particularly important immediately after an injury has occurred. Communication throughout the injury management process can help alleviate any adverse perceptions that may occur.

Best practice approaches: Recordkeeping

Employers, their insurers and contracted service providers should implement file management and recordkeeping procedures to assist in management of the claim and to provide evidence of why a determination was made. Where an employer makes a decision regarding a claim, they must document the reasons for the decision including:

- any evidence or information considered
- why they preferred certain evidence or information
- the basis on which any conclusion was reached having regard to any information and evidence—in particular the final determination.

5. Establishing a claim

When an employee within the Seacare jurisdiction sustains an injury (including a disease) arising out of, or in the course of, the employee's employment, they are entitled to submit a claim for compensation. This is done by submitting a *Claim for Workers' Compensation* form (Seacare form 3) to their employer.

This form can be obtained from the Master of the ship or the employer where the injury occurred. It can also be obtained from the Seacare website (www.seacare.gov.au). If an employee has difficulty completing their claim form they should contact their employer for assistance.

An employee cannot claim for workers' compensation, or submit claims for entitlements such as incapacity, permanent impairment and medical expenses entitlements until the *Claim for Workers' Compensation* form has been submitted and accepted by the employer.

a. Without prejudice and without acceptance of liability payments

The Seafarers Act provides that a claim must be either accepted or rejected. The Act does not allow compensation to be paid on a 'without prejudice' or 'without acceptance of liability' basis. An employer must first determine whether or not to accept liability for a claim (s26 Seafarers Act).

In the event that liability is accepted for a claim, an employer may then determine that compensation is payable under one or more of the following provisions of the Seafarers Act: sections 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 43, 49(6A), 50(2A), 50(3) or 51.

b. Who makes determinations within the Seacare jurisdiction?

The employer is the determining authority within the Seacare scheme. This means they are the body responsible for making decisions regarding claims. The employer may delegate this power to employees, such as claims managers. Any action made on a claim by a delegated individual is considered to be that of the employer.

Insurance policies sometimes contain provisions giving the insurer the right to decide whether to accept or reject the employee's injury claim. Employers should consult their insurance policies to see if this is the case before making any determination.

c. When an incident occurs

When an employee suffers an injury (including a disease) arising out of, or in the course of, employment, he or she should seek medical attention from a medical practitioner as soon as possible. The injured employee has the right to select their own medical practitioner.

If an employee or their dependents decide to make a claim, they should notify the employer and submit their *Claim for Workers' Compensation* form (Seacare form 3). This form must be submitted to the employer as soon as practicable after the employee becomes aware of the injury (s62 Seafarers Act).

This is important, as early notification leads to better injury and return to work outcomes.

d. Obtaining a medical certificate

When submitting a claim, an employee should obtain a medical certificate from their medical provider giving a precise diagnosis of their injury. The medical provider must be a legally qualified medical practitioner (s63 Seafarers Act). While a medical certificate is required to lodge a claim, the decision as to whether or not an injury or illness is compensable rests with the employer or claim manager and not the medical practitioner.

Best practice: What information should be recorded on the medical certificate?

Information that should be contained on the medical certificate includes:

- the patient's details
- the name of their employer
- the stated cause of the injury and whether or not the medical practitioner considers the injury to be consistent with the stated cause
- the nature of any injury (i.e. a precise diagnosis of the injury, disease or aggravation)
- the patient's capacity for work, including any restrictions
- any knowledge of the patient's workplace which may affect their return to work
- whether the medical practitioner and employer have discussed tasks that might be suitable for the patient
- any recommended referrals
- recommended treatment
- the date for the next assessment.

e. Managing a claim

It is the employer's responsibility to determine whether they should accept the claim. This task is often undertaken by a claims manager. Legislation requires an employer to make a determination within:

- twelve days of receiving the claim, where a claim is made for compensation for incapacity for work, the loss or damage of property, or the cost of medical treatment received (s73 Seafarers Act)
- thirty days of receiving the claim, where a claim is made for compensation for permanent impairment (s73A Seafarers Act)
- sixty days of receiving the claim, where a claim is made for compensation in relation to the death of an employee (s72 Seafarers Act).

Best practice: Determining claims

The legislative timeframes are the minimum standard. It is best practice to consider the claim and make a determination as soon as possible. This allows the employee to seek any necessary treatment and support quickly, as well as assisting in putting together any rehabilitation and return to work program if they are still absent from work.

The employer can request an extension of the time limit from the Seacare Authority if they require additional time to make a decision (s72(1)(b), s73(2)(c) and s73A(1)(b) Seafarers Act). This request must be made before the expiry of the original deadline. If this request is denied by the Seacare Authority, the employer may seek a review of the decision by the Administrative Appeals Tribunal (AAT) (s74 Seafarers Act).

The employer can take further time to make a decision when the employee is provided with written notice from the employer that further information or a document is required to make a determination (s72(2), s73(2)(b) and s73A(2) Seafarers Act). Examples of further information include medical certificates and witness statements. This request must be made before the end of the original timeframe.

Employers should notify their insurer and forward them a copy of the claim as soon as a claim has been received. This ensures the insurer's expertise in determining claims is used, and they are kept informed of potential liabilities.

If an employer does not make a determination within the timeframes specified, they are taken to have made a decision disallowing the claim (subsections 73(6), 73A(6) and 72(5) Seafarers Act). See the section titled *Must an employer make a determination? What happens if they don't?*

f. Investigating a claim

An employer has the right to appropriately investigate an employee's claim. The employer (or claim manager) should make enquiries with the Master of the Vessel and any other witnesses to assist in making the determination.

An employer may also request the employee:

- undergo an examination by a qualified medical practitioner at the expense of the employer (s66 Seafarers Act)
- provide information relevant to the claim (s67 Seafarers Act).

If the employer believes they require additional information they should notify the employee and assist in arranging any appointments as soon as possible. If the employee fails to comply with these requests without reasonable excuse, their right to receive compensation is suspended until they comply. The claims manager has responsibility for deciding if further information is required.

Section 66—power to require medical examination

(1) If:

- (a) a notice has been given under section 62 in relation to an injury to an employee; or
- (b) an employee has made a claim for compensation under section 63;

the employer to whom the notice of claim is given may require the employee to undergo an examination by a legally qualified medical practitioner nominated by the employer.

- (2) If an employee, without reasonable excuse, does not undergo an examination, or in any way obstructs an examination, the employee's rights to compensation under this Act, and to institute or continue any proceedings under this Act in relation to compensation, are suspended until the examination takes place.

Section 67—power to request the provision of information relevant to claim

- (1) Subject to section 69, if an employer who has been given a claim is satisfied that the claimant:
 - (a) has information or a document that is relevant to the claim; or
 - (b) may obtain such information, or such document or a copy of such a document, without unreasonable expense or inconvenience;the employer may, by written notice given to the claimant, ask the claimant to give to the employer:
 - (c) the information or the document or a copy of the document; or
 - (d) if paragraph (b) applies—a written authority to obtain the information or the document or a copy of the document.
- (2) A claimant who has received a notice under subsection (1) is taken to have complied with the notice if the claimant gives the employer the information, the document or a copy of the document, or authority, referred to in the notice.
- (3) If a claimant, without reasonable excuse, does not comply with a notice under subsection (1), the employer may refuse to deal with the claim until the claimant gives the employer the information or the document or a copy of the document, or the authority, referred to in the notice.

When a request for further information has been made, the time period in which the claim must be determined is paused. It recommences once the information requested has been received.

An employee also has the right to request any document held by the employer that relates to their claim (s68 Seafarers Act).

Section 68—Certain documents to be supplied on request

- (1) Subject to section 69, an employer must not fail to comply with a written request by a claimant for the employer to give the claimant any documents held by the employer that relate to the claimant's claim.

(Penalty: 50 Units—this is an offence of strict liability)

(Section 69 provides that subject to s70, neither s67 and s68 affects legal professional privilege. Section 70 provides that legal professional privilege does not apply to medical reports.)

Best practice: Assessing a claim

When assessing a claim, the employer may want to consider the following factors:

- the duration of employment (where relevant to the type of injury claimed for)
- the type of work performed
- the circumstances of the injury (e.g. any incidents or circumstances that led up to or contributed to injury)
- probability of the injury occurring if employment had not taken place
- any pre-existing or hereditary conditions
- the employee's lifestyle and outside activities.

g. When is an employer liable?

What is an employer initially liable for?

On receiving a claim, an employer can be liable for any injury (including a disease), death and loss or damage to property suffered by an employee that arises out of, or in the course of their employment. They may also be liable for any continuing medical expenses, and household and attendant care services reasonably required out of the injury or illness.

A claim for permanent impairment cannot be determined until the initial claim has been accepted and the employee submits Seacare form 4 (See *Entitlements under the Seafarers Act*).

Injuries and diseases

An employer is liable for all injuries arising out of, or in the course of, employment. Injury is defined in s3 of the Seafarers Act:

Section 3—Injury

Injury means:

- (a) a disease; or
- (b) an injury (other than a disease) suffered by an employee, being a physical or mental injury arising out of, or in the course of, the employee's employment; or
- (c) an aggravation of a physical or mental injury (other than a disease) suffered by an employee (whether or not that injury arose out of, or in the course of, the employee's employment), being an aggravation that arose out of, or in the course of, that employment;

but does not include anything suffered by an employee as a result of reasonable disciplinary action taken against the employee, or failure by the employee to obtain a promotion, transfer or benefit in connection with his or her employment.

Section 9 of the Seafarers Act deems certain injuries to arise out of, or in the course of, employment, including when an employee:

- suffers an injury as a result of an act of violence that occurred as a result of their employment, or during the performance of duties or functions at work
- was on board the prescribed ship on which he or she was employed or engaged
- was temporarily absent from the ship during an ordinary recess
- was undertaking a required course of training
- was travelling to and from work, or for the purpose of work (except where the route substantially increased the risk of injury compared with a more direct route, or where the travel was interrupted in a way that substantially increased the risk of sustaining an injury).

Any injury suffered in the above circumstances is not compensable under the Act if it was a result of the employee voluntarily and unreasonably submitting themselves to an abnormal risk of injury.

An employer may also be liable for any injury or ailment suffered by an employee as a result of medical treatment of a compensable injury, provided it was reasonable for the employee to obtain that treatment (s7 Seafarers Act).

The definition of 'Injury' in the Seafarers Act includes 'a disease'. Disease is in turn defined in Section 3 of the Seafarers Act as follows:

Section 3—Disease

Disease means:

- (a) any ailment suffered by an employee; or
- (b) the aggravation of any ailment;

being an ailment or an aggravation that was contributed to in a material degree by the employee's employment.

Section 10 of the Seafarers Act deems certain diseases to have been contributed to by employment:

Section 10—Provisions relating to diseases

(1) If:

- (a) an employee has suffered, or is suffering, from a disease, or the death of an employee results from a disease; and
- (b) the disease is of a kind specified by the Minister, by written notice, as a disease related to employment of a kind specified in the notice; and
- (c) the employee was, at any time before symptoms of the disease first became apparent, engaged in employment of that kind in the maritime industry;

the employment in which the employee was so engaged is taken for the purposes of this Act, to have contributed in a material degree to the contraction of the disease, unless the contrary is established.

A declaration of diseases related to employment is available on the Seacare website.

In other cases it will be necessary for the employer (or delegate) to ascertain whether there was any contribution to the disease by the employment.

Making determinations accurately and quickly

The employer should determine liability as soon as possible to help achieve better outcomes for the injured employee. The employer should seek their insurer's advice as to whether to accept or reject the claim even if it is expected that the claims cost will fall below the existing claims excess. In some cases the employer may be required to inform the insurance company under their policy conditions.

Medical treatment and travel expenses

If medical treatment is reasonably obtained in relation to a workplace injury, compensation is payable for the appropriate cost (s28 Seafarers Act). An employee may also be entitled to reimbursement for:

- travel by private vehicle if the return journey exceeds 50 km and no closer appropriate treatment is available
- any reasonable use of public transport or ambulances
- any reasonable expenses such as accommodation or parking related to obtaining compensable medical treatment, attending a rehabilitation assessment, or participating in a rehabilitation program.

Property loss or damage

An employee may be able to claim compensation where they are involved in an accident that does not cause injury to them, but results in the loss or damage to specified property (s27 Seafarers Act). The Act defines property that can be compensated for as:

'an artificial limb or other artificial substitute, or a medical, surgical or other similar aid or appliance used by the employee'.

Examples of these would include prescription glasses, prosthetic limbs, crutches, walking sticks and wheelchairs.

Section 31 – Incapacity payments

An employee is entitled to compensation for loss of income due to their incapacity for work. Compensation (consisting of normal weekly earnings minus any earnings the employee has/could have made in suitable employment) is payable for the first 45 weeks of incapacity after the date on which the employee is left on shore at, or returned to, his or her proper port. After this time period, incapacity is capped between 75 per cent and 100 per cent of normal weekly earnings depending on how many hours a week the employee works.

Incapacity Payments after 45 weeks

The employee's entitlement after 45 weeks is determined according to the following formula:

- Adjustment percentage x Normal weekly earnings – Actual earnings

The adjustment percentage is a percentage equal to:

- (a) 75 per cent—if the employee is not employed during that week
- (b) 80 per cent—if the employee is employed for 25 per cent or less of his or her normal weekly hours during that week
- (c) 85 per cent—if the employee is employed for more than 25 per cent but not more than 50 per cent of his or her normal weekly hours during that week
- (d) 90 per cent—if the employee is employed for more than 50 per cent but not more than 75 per cent of his or her normal weekly hours during that week
- (e) 95 per cent—if the employee is employed for more than 75 per cent but less than 100 per cent of his or her normal weekly hours during that week
- (f) 100 per cent—if the employee is employed for 100 per cent of his or her normal weekly hours during that week.

Further entitlements

This is not an exhaustive list of benefits available under the Seafarers Act. Compensation is also available for:

- permanent impairment and non-economic loss and/or related aids
- dependants of deceased employees.

Further information on these benefits and the forms that need to be submitted is available in the *Entitlements under the Seafarers Act* and *Dependant claims following the death of an employee* sections of this guide.

h. Issuing a determination

Employers must provide a written determination for any claim they receive. This should be provided to the employee within the defined statutory time limits. Section 77 of the Seafarers Act sets out the provisions that must be followed when making determinations.

Section 77—Determinations to be notified in writing

- (1) As soon as practicable after an employer makes a determination, the employer must cause to be served on the claimant a notice in writing setting out:
 - (a) the terms of the determination; and
 - (b) the reasons for the determination; and
 - (c) a statement to the effect that the claimant may, if dissatisfied with the determination, request a reconsideration of the determination under subsection 78(2).
- (2) This section does not apply in relation to a determination under subsection 28(1) that compensation of an amount equal to the full amount of the cost of medical treatment obtained by an employee is payable if that amount of compensation is payable to a person other than the employee.

Best practice: Anticipating disputes

Employers should consider communicating with the injured employee if they anticipate that a dispute will arise over the determination. This could potentially help resolve any issues that may lead to costly and time-consuming litigation.

i. Notifying the Seacare Authority

Employers are to notify Seacare of their determination by completing the employer's *Determination of a claim for Workers' Compensation* (Seacare form 12). Employers should send a copy of that form attached with a copy of the employee's *Claim for Workers' Compensation* form (Seacare form 3) (s106 Seafarers Act).

j. Must an employer make a determination? What happens if they don't?

Best practice: Making a determination

The employer (or the person who they delegate) has a legal obligation to make a determination. It is best practice to provide the determination to the employee. Making a determination ensures the employee knows whether their claim has been processed and provides them with a list of reasons for that particular determination.

Where an employer (or delegate) decides more time is required to make a determination, it is best practice for them to inform the employee. This ensures the employee knows their claim is still being processed and allows them to consider further action.

Where no determination regarding a claim or a request for reconsideration is made within the legislated time limit the claim is considered to be rejected. The employee can either request a reconsideration of the determination or a review by the AAT as appropriate.

6. Rights of review

a. What happens if the employee or employer is unhappy with the determination?

If the injured employee is unhappy with a determination they have 30 days from when they receive written notification of the determination to lodge a written request for reconsideration. The employer may give the employee an extension on the 30 days. An employer may also reconsider their determination at any time, regardless of whether a reconsideration request is lodged by the employee.

Section 78—Reconsiderations of determinations

- (1) An employer may, on the employer's own initiative, reconsider a determination made by the employer, whether or not a proceeding has been instituted or completed under this Part in respect of a reviewable decision made in relation to that determination.
- (2) A claimant may, by notice in writing given to an employer, request the employer to reconsider a determination made by the employer.
- (3) A request for reconsideration of a determination must:
 - (a) set out the reasons for the request; and
 - (b) be given to the employer within 30 days after the day on which the determination first came to the notice of the claimant, or within such further period (if any) as the employer, either before or after the end of that 30 day period, allows.

Where an employer receives a request for reconsideration from an employee, they have 60 days to make a decision on the reconsideration request. An employer may request an extension of this deadline from the Seacare Authority.

It is best practice for the person who made the first determination not to be the person making a reconsideration on the claim. This ensures a fresh perspective and procedural fairness in reconsidering the claim.

The employer is required to arrange with Comcare for a Comcare officer to assist in reconsidering the determination.

The employer may request additional information regarding the employee's injury (s83(1) Seafarers Act). If the employee refuses to provide this information, without reasonable excuse, the employer may refuse to progress the reconsideration further (s83(3) Seafarers Act). The employee may also submit any additional information that may assist with the determination of the claim. Any additional information provided should be forwarded to the reviewing Comcare officer and the employer.

Once the review is complete, the Comcare officer provides a report of the recommendations to the employer and employee. The employer should ensure a copy of the report is provided to the insurer if applicable.

Once the reconsideration is complete, the employer is required to issue a written notice affirming, revoking or varying the initial determination (s78 Seafarers Act).



The reconsideration of the first determination is the ‘second tier’ of the decision making process available to employees who are not satisfied with a determination made by an employer. It is this second level of decision that is reviewable by the Administrative Appeals Tribunal (AAT). The determination made at the reconsideration stage is referred to as ‘the reviewable decision’ because it becomes reviewable by the AAT if an employee wishes to seek a review of it (s76 Seafarers Act).

The reviewable decision must set out the terms of the decision and the reasons for the decision. It must also include a brief statement outlining the employee’s right to lodge an appeal with the AAT (s87 Seafarers Act). Appeals must be lodged within 60 days of the employee receiving the decision (s89(3) Seafarers Act).

7. Entitlements under the Seafarers Act

A benefit cannot be claimed until a claim for workers' compensation has been accepted by the employer. Therefore an employee must submit the *Claim for Workers' Compensation* form (Seacare form 3) prior to making any claims for entitlements.

a. Making a claim for an entitlement

If an employee decides to make a claim for an entitlement, they should notify their employer as soon as possible. This is important as early notification leads to better injury and return to work outcomes. Employees need to submit the relevant claim form according to what they are claiming for.

The forms can be obtained from the Master of the ship or the employer where the injury occurred. They can also be obtained from the Seacare website (www.seacare.gov.au). If an employee has difficulty in completing their claim form, they should contact their employer for assistance.

The following forms can be downloaded from the Seacare website:

- *Claim for Workers' Compensation* (Seacare form 3)
- *Claim for Permanent Impairment and Non-Economic Loss and/or Related Aids* (Seacare form 4)
- *Claim for Compensation by Dependants of Deceased Employee* (Seacare form 5)

Any claim submitted needs to be in accordance with the relevant claim form and contain relevant information about the injury or disease, loss of, or damage to, property or medical expenses incurred. The claim form should also be accompanied by a medical certificate provided in the course of treatment of any injury or disease. If the employee is having difficulties completing the claim form, they should be encouraged to seek assistance. Employees should also retain copies of any forms and information submitted to the employer. Employers should provide acknowledgement of receipt of a claim form.

b. What entitlements can be claimed?

Section 39—Claiming for permanent impairment

If an employee's work-related injury or illness results in a permanent impairment, they may claim for a permanent impairment lump sum payment. Subject to certain exceptions, to be entitled to a lump sum payment, the employee's injury resulting in impairment must be permanent and the degree of permanent impairment must be assessed as 10 per cent or more in accordance with the *Seacare Guide to the Assessment of the Degree of Permanent Impairment*.

Permanent means that the injury resulting in impairment is likely to continue indefinitely. To determine whether an injury is permanent the employer must consider:

- the duration of the impairment
- the likelihood of improvement in the employee's condition
- whether the employee has undertaken all reasonable rehabilitative treatment for the impairment
- any other relevant matters.

The employer can arrange for the employee to be independently examined to verify the causes of injury and assess the degree of permanent impairment (s66 Seafarers Act).

The degree of permanent impairment lump sums must be assessed according to Seacare's *Guide to the Assessment of the Degree of Permanent Impairment*. This guide informs medical practitioners about how to make an assessment and what different impairments are available for the full range of bodily systems and functions. A copy of this guide is available on the Seacare website (www.seacare.gov.au).

As noted above, to claim for a permanent impairment lump sum an employee needs to complete the *Claim for Permanent Impairment and Non-Economic Loss and/or Related Aids* form (Seacare form 4). This form is available from the employer or the Seacare website. Original medical certificates must be attached showing the:

- diagnosis of employee's condition
- relationship between the injury/illness and their employment
- degree of permanent impairment as assessed under the *Guide to the Assessment of the Degree of Permanent Impairment*.

Once these forms have been completed, the employee should lodge the forms with the Master of the ship or the employer from whom they are claiming for determination.

Section 43—Claiming for attendant care, household services and alterations, modifications and aids/appliances

An employee may be entitled to attendant care services for essential and regular personal care as a result of the compensable injury. This may include bathing, dressing, grooming, feeding or personal needs.

An employee may also be entitled to any reasonable costs for household services of a domestic nature required for the proper running and maintenance of the employee's household.

Rehabilitation aids and appliances may also be compensated for by the employer. These may include things like altering household furniture, or converting a car from manual to automatic transmission.

To claim for these benefits an employee must complete the *Claim for Permanent Impairment and Non-Economic Loss and/or Related Aids* form (Seacare form 4).

Section 44—Redemption of compensation

An employer must make a determination that any further liability for weekly incapacity compensation be paid as a lump sum where:

- an employer is making weekly payments to an employee for an injury resulting in incapacity
- the amount of these payments is indexed annually available from the Seacare website
- the employer is satisfied that the degree of the employee's incapacity is unlikely to change.

The prescribed formula for determining this redemption lump sum is provided in subsection 44(2) of the Seafarers Act.

Section 45—Recurrent payment after payment of lump sum

Where an employee has received lump sum redemption of their weekly incapacity compensation they are still entitled to recurrent payments where the:

- injury results in the employee being incapacitated for work to the extent that the employee is not able to engage in suitable employment
- incapacity is likely to continue indefinitely.

The amount payable to the employee is the same as they would usually receive for an injury, less the amount per week that was redeemed as a lump sum at the date of determination.

c. What happens if an employee is unhappy with their determination for entitlements?

Generally speaking, employee's have the same rights of review of determinations on entitlements as they do for their initial determination of liability. Refer to the *Rights of review* section of this handbook for guidance.

8. Dependant claims following the death of an employee

Dependants may be able to claim benefits following the death of an employee arising out of, or during the course of, employment. If this is the case, they should submit the *Claim for Compensation by Dependents of Deceased Employees* (Seacare form 5) as soon as practicable.

Where a claim is made in relation to the death of an employee, a determination must be made within 60 days of receiving the claim for compensation (s73 Seafarers Act).

a. What can a dependant claim for?

If an employee's injury results in their death, compensation is payable for the cost of the employee's funeral to the person who paid the cost of the funeral, or if that cost has not been paid, to the person who carried out the funeral (s29 and 30 Seafarers Act).

The amount of compensation for funeral expenses must not exceed:

- the statutory rate (available on the Seacare website)
- what the employer determines is reasonable considering the typical cost of funerals in the location it is carried out
- any amount paid for the cost of the funeral under any other law of the Commonwealth.

If an employee dies and leaves dependants that were, at the date of death, wholly or partially dependant, then further compensation may include a lump sum and weekly payments for each dependant child (s29 Seafarers Act). If an employee dies without leaving dependants, compensation is not payable for injuries apart from accrued medical expenses and funeral expenses.

9. Rehabilitation and return to work

The Seafarers Act requires an employer to assess the capability of an injured employee, who has been absent from work for 28 days or more (or who is expected to be absent for 28 days or more), to undertake a rehabilitation program (s49 Seafarers Act). The assessment must be made by a legally qualified medical practitioner, other suitably qualified person (such as an approved program provider) or panel of such persons. The report provided is the assessment. The employer must pay for the assessment.

If the employee is assessed as being capable of undertaking a rehabilitation program, the employer must arrange for an appropriate program with an approved rehabilitation provider.

This provision is a statutory minimum. It is accepted that best practice requires intervention earlier than 28 days, and that the earlier that intervention commences the greater the chances of a successful and durable return to work.

Adopting better rehabilitation practices increases productivity in the workplace, facilitates employees' return to optimum health and assists in the efficient management of scheme costs.

If an employee is injured at work or suffers from a work-related illness or disease that results in an absence from work, it is important that they return to their normal work as quickly as possible in a way that protects and promotes their health. It is well established that early intervention helps early recovery.

Early intervention:

- prevents long-term absence from the workplace
- demonstrates management commitment to the employee
- increases the probability of a durable return to work
- contains the costs of incapacity, and in the longer term the insurance premium or claim cost
- promotes staff confidence and morale.

For more information on assisting injured employees returning to work, consult *A Best Practice Guide: Seafarers Rehabilitation and Return to Work*.

10. Roles

a. The claims manager

While the employer has overall responsibility for determining a claim, this power is usually undertaken by a claims manager. Generally, the claims manager is given overall responsibility for investigating, assessing and determining the claim. They can be an employee for the employer or an employee of the employer's insurer. Their duties may include:

- making informed and timely decisions regarding compensation claims
- effectively managing the injured employee's claim, including making payments of entitlements under the Seafarers Act and liaising with the employee and their doctor, the employer and the rehabilitation case manager.

It is the claims manager's responsibility to request additional information if required, as described later in this guide.

b. The rehabilitation case manager

The employer may want to delegate a rehabilitation case manager to coordinate rehabilitation and assist in the claims management process by liaising with the claim manager and employee. They manage individual cases to help provide better injury and return to work outcomes. Their responsibilities include:

- letting employees know of their role and how they can be contacted
- initiating, coordinating and monitoring the rehabilitation process in consultation with all parties
- deciding if an assessment of an employee's capability of undertaking rehabilitation is required (an assessment is required when an employee is likely to be away from work for more than 28 days)
- organising a return to work program if necessary—they may need to contract an approved rehabilitation provider to develop the return to work plan
- actively managing the approved rehabilitation provider to ensure a quality and cost effective program
- actively managing the rehabilitation program to ensure a successful return to work
- working with the supervisor and approved rehabilitation provider to make sure the injured employee is given suitable employment.

The rehabilitation case manager has responsibility for guiding the direction of an employee's rehabilitation and assisting in identifying and resolving issues, as well as negotiating and liaising with other disciplines, including human resources, occupational health and safety and employee relations to assist in facilitating a return to work for the injured employee.

c. Role of the insurer

The Seacare compensation scheme is supported by the private sector insurance companies that write workers' compensation insurance policies for scheme employers.

Scheme insurances play an important role in the compensation, rehabilitation and return to work process. Workers' compensation insurance costs are a significant element of labour costs. Therefore it is important that employers ensure they fully appreciate and understand the obligations, benefits and services available under the insurance policy to maximise the value of the policy.

For compensation to be payable under the Seafarers Act, a compensation claim must be made by or on behalf of an injured employee. If an employee lodges a workers' compensation claim with their employer, the employer should immediately advise their insurer, even if it is expected that the claim cost will fall below the existing claim excess. This alerts the insurer that it could expect a claim if the cost ultimately exceeds the employer's excess and the employer makes a call on the policy. It also ensures that the insurer develops a full understanding of the claim history of the company and of the injured employee. This supports improved communication between the employer and the insurer on claim costs and cost control strategies. It also establishes a strong working relationship between the employer and insurer.

The insurer has claim and injury management expertise that the employer may call upon, irrespective of the time needed for rehabilitation or cost of the claim. An insurer's advice could lead to the adoption of rehabilitation and return to work strategies that had not previously been considered, the net result being an earlier and/or more durable return to work and ultimately, lower insurance premium costs.

Often the insurer may be able to suggest an appropriate rehabilitation provider that has successfully achieved positive return to work outcomes for other employers.

It is important that key parties work closely with the insurer to ensure that, from an employer's perspective, the services available under the policy are maximised in the interests of a speedy and safe return to work and that the injured or ill employee receives the optimum treatment and rehabilitation support to enable a return to work.

d. Role of the employer

The employer is the central player in the claims management process. The employer's approach to the injured employee's claim may have a significant impact on the duration and cost of the claim and the prospects of a successful and durable return to work.

In managing an employee's claim, employers should follow these best practice principles:

- assess the injured employee's needs at an early stage and direct them to any necessary and appropriate support (including medical and rehabilitation support)
- regularly review the needs of the injured employee and provide the appropriate support
- where an employee has time off work, provide support in assisting them to return to work quickly and safely—including where necessary making any reasonable changes to workplace arrangements to assist them in their return
- where necessary, nominate a rehabilitation case manager as soon as possible to provide assistance with the employee's rehabilitation and return to work
- provide the injured employee with all necessary information about workers' compensation, including contact information and where to access forms
- communicate with the employee in a timely manner about their claim
- maintain confidentiality of the employee's personal information—information should only be used for the purpose of assessing and managing the workers' compensation claim, rehabilitation and return to work.

e. Role of the employee

It is the role of the employee to:

- promptly inform their employer of any injury
- complete all required claims forms
- attend any required medical examinations
- comply with any rehabilitation and return to work program.

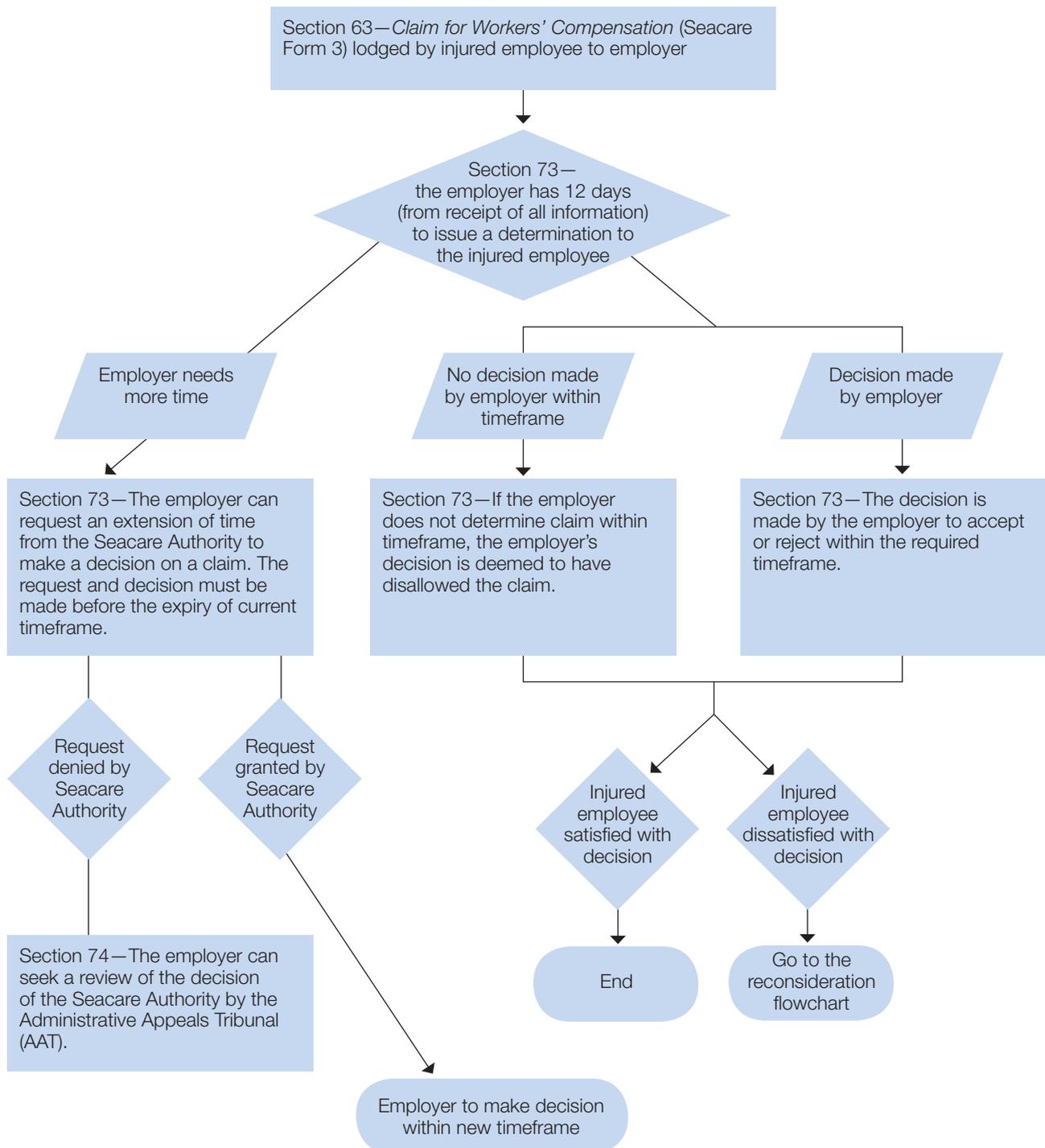
These steps will assist in providing a quick determination of their claim and improve their rehabilitation and return to work prospects.

In making a claim, the injured employee should:

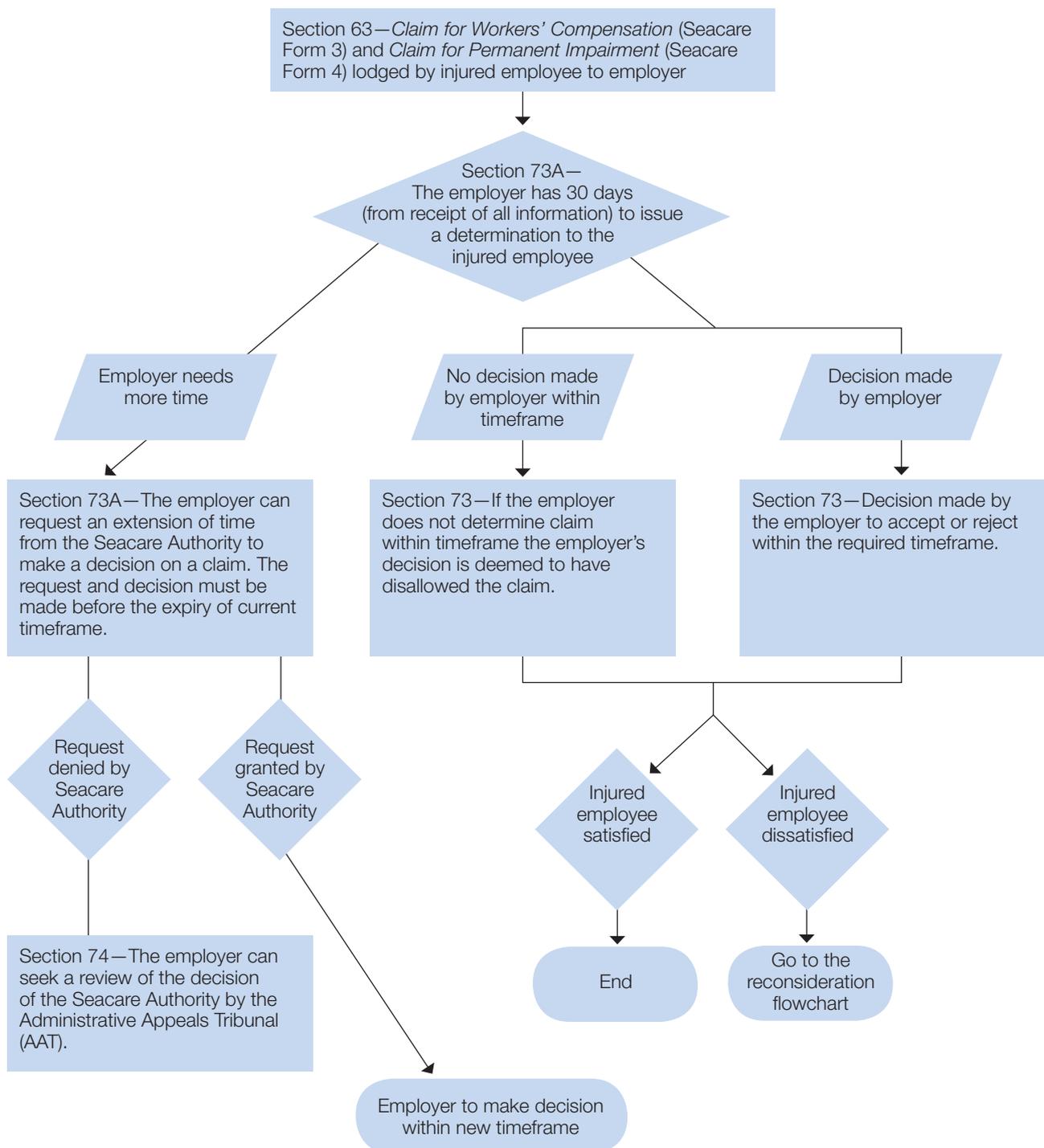
- report to the employer details of any accident, injury or disease that might be related to the workplace as soon as possible
- cooperate with the rehabilitation case manager and any approved rehabilitation provider to remain at work or to facilitate a safe and (if possible) an early return to work
- advise the employer, as soon as possible, of any changes in circumstances e.g. recovery from injury or illness, other work participated in while away from the workplace and any changes in address
- where required, participate in any rehabilitation program agreed to with the employer and approved rehabilitation provider
- where required, implement any professionally recommended and agreed changes to work practices, workplace environment and/or home environment in consultation with the employer to minimise the chance of further injuries or accidents.

11. Appendix 1 – Seafarers Rehabilitation and Compensation Act 1992 claims management flowcharts

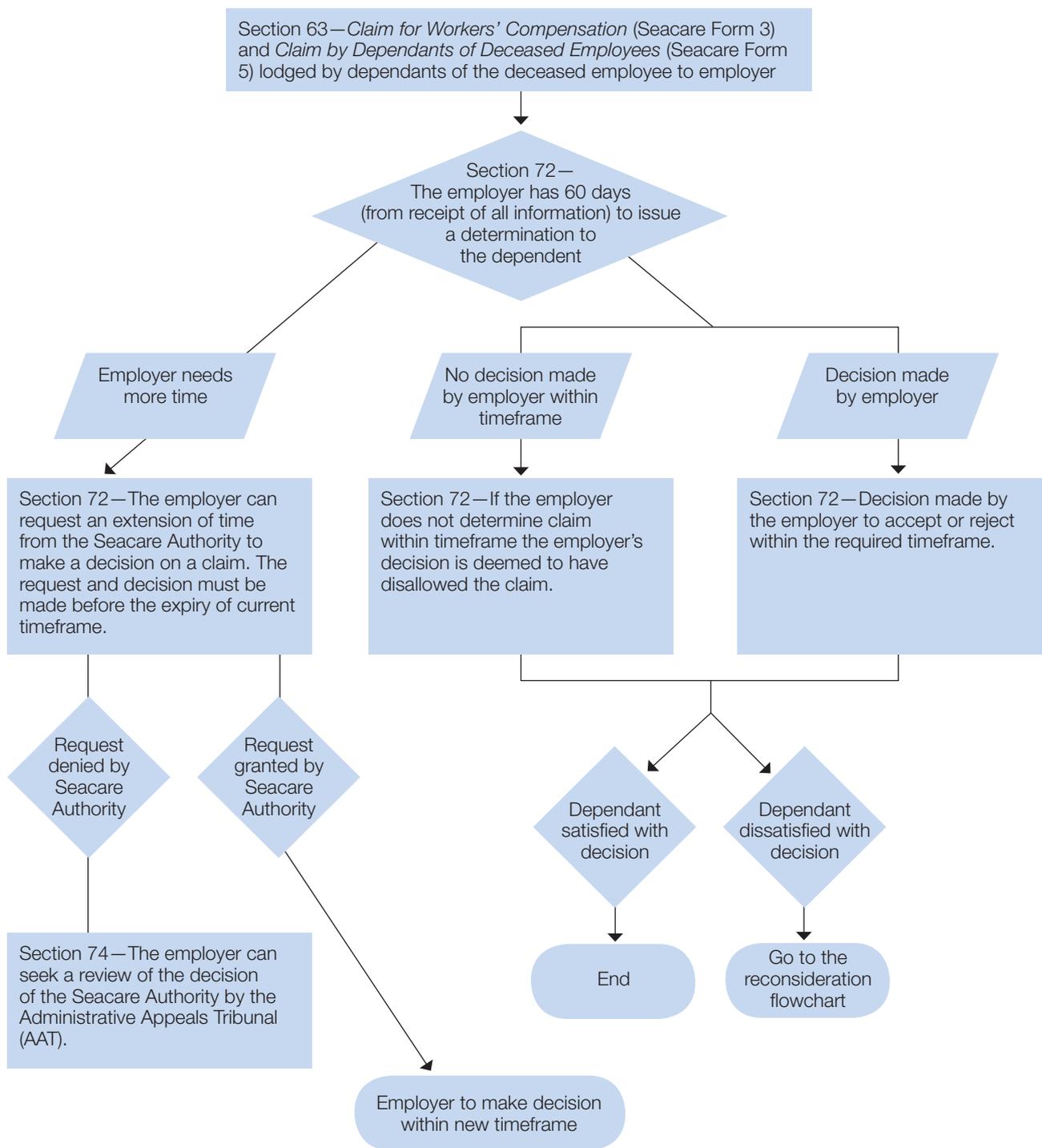
a. Initial decision of claim for compensation



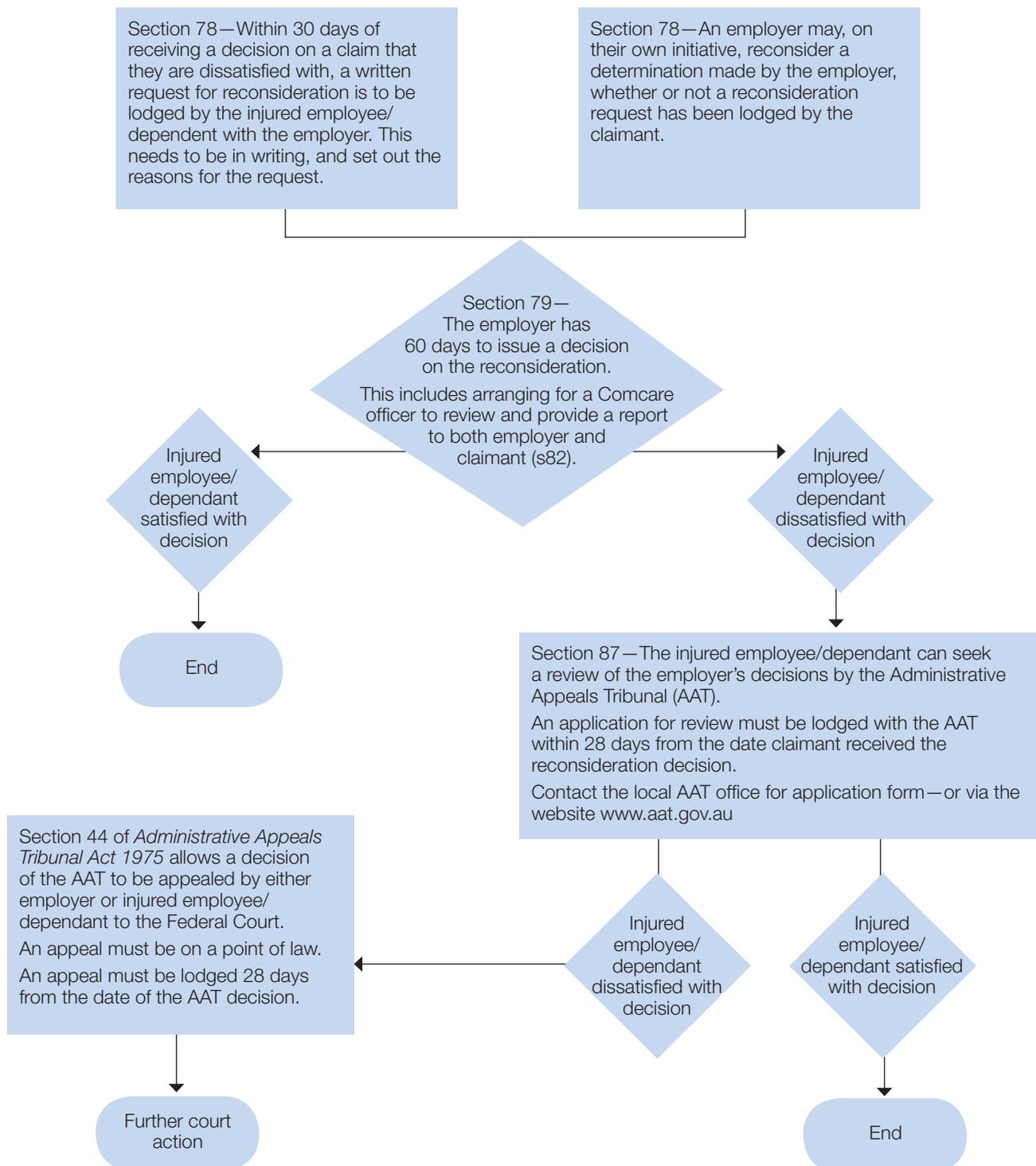
b. Initial decision of claim for permanent impairment



c. Initial decision of claim by dependants of deceased employee



d. Reconsideration



12. Appendix 2—Example letters sent to injured workers under the *Seafarers Rehabilitation and Compensation Act 1992*

a. Acceptance of compensation claim

Mr John Smith
1 Main St
SYDNEY NSW 2000

Dear Mr Smith

Claim determination—*Seafarers Rehabilitation and Compensation Act 1992* (*Seafarers Act*)

I am writing about your claim for compensation and rehabilitation for shoulder pain, which occurred on 25 December 2009.

I have decided to accept your claim for a sprain of your left shoulder under section 26 of the *Seafarers Act*.

In reaching my decision I considered evidence including your claim form, relevant statements and medical evidence. My statement of reasons and information relevant to this decision are attached.

We will accept medical treatment claims resulting from this injury up to and including 30 January 2010. We will also accept time off work claims resulting from this injury up to and including 15 January 2010.

If you need to claim for medical treatment or time off work after these dates you will need to provide further supporting medical evidence from your treating doctor or specialist. How to do this is outlined in the attached *Additional advice to claimants* and medical review certificate.

Further information about your rights to a reconsideration of a determination is attached in the information sheet.

If you have any questions about this claim please call me on (02) 1234 5678.

Yours sincerely

Ms Jane Jones
Claims Manager
Shipping Company

Statement of reasons

In making my decision I have considered the following issues as required under the Seafarers Act.

Compliance and threshold considerations

You are an employee as defined in section 4 of the Seafarers Act.

Your claim

You submitted a claim for compensation for a 'sprain of left shoulder due to repetitive lifting.'

- (a) You stated you sustained your condition while lifting boxes on board the vessel *Endeavour*.
- (b) You sustained your condition on 25 December 2009.
- (c) You first sought medical treatment on 26 December 2009.

Medical relationship

I have examined all the medical evidence available in your claim and make the following observations.

You provided medical certificates from Dr Cameron who diagnosed you as suffering from:

'left shoulder sprain'

Considering the medical evidence, I am satisfied that you have suffered an injury as defined in the Act.

Employment relationship

Due to the circumstances of your claim, your claim will be assessed under the injury provisions of section 3 of the Seafarers Act. Therefore, I must consider whether the condition you suffered from arose out of, or in the course of, your employment with the Shipping Company.

You claimed the cause of your condition was due to:

'repetitive lifting of heavy boxes on the ship deck'

Your doctor has confirmed in his medical report that he supports your claim.

Considering the evidence, I am satisfied your claimed condition arose out of, or in the course of, your employment. As you suffered an injury as defined in the Seafarers Act, your claim is accepted.

Right to reconsideration

If you are dissatisfied with this determination you may request to have the determination reconsidered or reviewed. You must do this within 30 days of receiving the determination. Your request for reconsideration must be in writing and set out the reasons for asking for the determination to be reconsidered.

If you wish to request a reconsideration of the original determination, please forward your request and your reasons to:

Claims Manager
Shipping Company
100 Main St
SYDNEY NSW 2000

You may request an extension of time, which will be considered by the person responsible for reconsiderations. A failure to provide a request for reconsideration or a request for an extension of time may result in you losing your right to request a reconsideration of the original determination.

If you decide to have a solicitor help you with this process, any legal costs will be your responsibility regardless of the outcome of the reconsideration.

The person responsible for the reconsideration must reconsider the decision within 60 days of receiving your request for reconsideration, or within a longer time frame set by the Seacare Authority. If a decision has not been made by the end of the period allowed, a decision is taken to have been made disallowing your claim.

You will be provided with a written response to your reconsideration request, containing a:

- notice setting out the terms of, and reasons for, the reviewable decision
- statement explaining that you may apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

An application to the AAT is dependent on you requesting a reconsideration of this decision.

b. Rejection of compensation claim

Mr John Smith
1 Main St
SYDNEY NSW 2000

Dear Mr Smith

Claim determination—*Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act)

I am writing about your claim for compensation and rehabilitation for shoulder pain, which occurred on 25 December 2009.

I have decided to disallow your claim for a sprain of your left shoulder under section 26 of the Seafarers Act.

In reaching my decision I considered evidence including your claim form, relevant statements and medical evidence. My statement of reasons and information relevant to this decision are attached.

Further information about your rights to a reconsideration of a determination is attached in the information sheet.

If you have any questions about this claim, please call me on (02) 1234 5678.

Yours sincerely

Ms Jane Jones
Claims Manager
Shipping Company

Statement of reasons

In making my decision I have considered the following issues as required under the Seafarers Act 1992.

Compliance and threshold considerations

You are an employee as defined in section 4 of the Seafarers Act.

Your claim

You have submitted a claim for compensation for a 'sprain of left shoulder due to repetitive lifting.'

- (d) You stated you sustained your condition while lifting boxes on board the vessel *Endeavour*.
- (e) You sustained your condition on 25 December 2009.
- (f) You first sought medical treatment on 26 December 2009.

Medical relationship

I have examined all the medical evidence available in your claim and make the following observations:

You provided medical certificates from Dr Cameron who diagnosed you with suffering from:

'left shoulder sprain'

Considering the medical evidence, I am satisfied that you have suffered an injury as defined in the Seafarers Act.

Employment relationship

Due to the circumstances of your claim, your claim will be assessed under the injury provisions of section 3 of the Seafarers Act. Therefore, I must consider whether the condition you suffered from arose out of, or in the course of, your employment with the Shipping Company.

You claimed the cause of your condition was due to:

'repetitive lifting of heavy boxes on ship deck'

Your doctor advised, on the basis of your available history, that the injury may have been caused by a previous sporting injury not related to your employment. Your doctor noted that you had injured your left shoulder during a touch football game five years ago, and that you had suffered pain since this time.

Considering the evidence, I am not satisfied the evidence has established that your claimed condition arose out of, or in the course of, your employment. Therefore, your claim for injury under section 26(1) of the Seafarers Act has been disallowed.

Right to reconsideration

If you are dissatisfied with this determination you may request to have the determination reconsidered or reviewed. You must do this within 30 days of receiving the determination. Your request for reconsideration must be in writing and set out the reasons for asking for the determination to be reconsidered.

If you wish to request a reconsideration of the original determination, please forward your request and your reasons to:

Claims Manager
Shipping Company
100 Main St
SYDNEY NSW 2000

You may request an extension of time, which will be considered by the person responsible for reconsiderations. A failure to provide a request for reconsideration or a request for an extension of time may result in you losing your right to request a reconsideration of the original determination.

If you decide to have a solicitor help you with this process, any legal costs will be your responsibility regardless of the outcome of the reconsideration.

The person responsible for the reconsideration must reconsider the decision within 60 days of receiving your request for reconsideration, or within a longer time frame set by the Seacare Authority. If a decision has not been made by the end of the period allowed, a decision is taken to have been made disallowing your claim.

You will be provided with a written response to your reconsideration request, containing a:

- notice setting out the terms of, and reasons for, the reviewable decision
- statement explaining that you may apply to the Administrative Appeals Tribunal (AAT) for a review of the decision.

An application to the AAT is dependent on you requesting a reconsideration of this decision.

c. Reconsideration of compensation claim

Mr John Smith
1 Main St
SYDNEY NSW 2000

Dear Mr Smith

Reconsideration of determination—*Seafarers Rehabilitation and Compensation Act 1992* (Seafarers Act)

I am writing to update you about your request for a reconsideration of the determination dated 30 January 2010. A determination was made on 20 January 2010 finding that there was no liability to pay any compensation to you in accordance with any section of the Seafarers Act for a sprain to the left shoulder.

I have reconsidered the determination dated 20 January 2010 under section 78 of the Seafarers Act. Your claim has been reconsidered in accordance with the Seafarers Act considering all medical and supporting evidence.

Due to all the information available, I have decided that the original decision will be upheld and your claim for compensation has been disallowed. I have attached my reasons and a copy of the documents on which this determination is based.

If you do not agree with this decision, you have the right to apply for the decision to be reviewed by the Administrative Appeals Tribunal (AAT). Further information is available in the information pack attached.

Yours sincerely

Ms Shaw
Reconsiderations Officer
Shipping Company

Claim reference number: 1000

Reconsideration number: 1000-1

Request for reconsideration of the determination dated 10 February 2010

Background

Mr Smith lodged a claim for compensation dated 26 December 2009 for an injury to his left shoulder he attributed to repetitive lifting on 25 December 2009. At the time Mr Smith was employed as a deck officer on the Endeavour by Shipping Company. A determination was made on 20 January 2010 determining that there was no liability to pay any compensation to Mr Smith in accordance with any section of the Seafarers Act for a sprained shoulder.

By letter dated 1 February 2010, Mr Smith has requested a reconsideration of the determination dated 20 January 2010. Mr Smith considers Dr Cameron's conclusions are wrong. Therefore, Mr Smith has requested a reconsideration. He has provided additional medical evidence in the form of a report by Dr Brown, an Orthopaedic Surgeon.

Statement of reasons

In reviewing the determination of 20 January 2010 I have considered all the evidence contained within your file, the reasons for requesting reconsideration and the relevant provisions of the Seafarers Act.

Compliance and threshold considerations

You are an employee as defined in section 4 of the Seafarers Act.

Your claim

You submitted a claim for compensation for a 'sprain of left shoulder due to repetitive lifting.'

- (g) You stated you sustained your condition while lifting boxes on board the vessel Endeavour.
- (h) You sustained your condition on 25 December 2009.
- (i) You first sought medical treatment on 26 December 2009.

Medical relationship

I have examined all the medical evidence available in your claim and make the following observations.

You provided medical certificates from Dr Cameron who diagnosed you with suffering from:

'left shoulder sprain'

Considering the medical evidence, I am satisfied that you have suffered an injury as defined in the Act.

Employment relationship

Due to the circumstances of your claim, your claim will be assessed under the injury provisions of section 3 of the Seafarers Act. Therefore, I must consider whether the condition you suffered from arose out of, or in the course of, your employment with the Shipping Company.

You claimed the cause of your condition was due to:

‘repetitive lifting of heavy boxes on ship deck’

Your doctor advised on the basis of your available history, the injury may have been caused by a previous sporting injury not related to your employment. Your doctor noted that you had injured your left shoulder during a touch football game five years ago, and that you had suffered pain since this time.

Additional evidence was provided by Dr Brown, an Orthopaedic Surgeon. He stated in his report that while it was apparent that your left shoulder was sprained, he was uncertain as to what the cause of the injury was.

I am not satisfied the evidence has established that your claimed condition arose out of, or in the course of, your employment. Therefore, your claim for injury under section 26(1) of the Seafarers Act has been disallowed.

Determination

Based on the evidence, I uphold the determination dated 20 January 2010 which rejected your claim for sprain of your left shoulder.

Notice of rights

If you are dissatisfied with my determination, you may lodge an application with the Administrative Appeals Tribunal (AAT) to have it reviewed. Relevant forms are available from the AAT but you may instead, write to them including the following information in your letter:

- the date and details of the determination
- the name of the person who made the determination
- the reason(s) for your request for review
- the reference number of your decision.

The AAT is situated at: (enter address of AAT in nearest capital city)

The mailing address is: (enter mailing address)

You must lodge your application within 60 days from the day you receive the determination but, in some cases, an extension of time may be granted by the AAT. You must apply for this extension before the application is due.

Ms Shaw
Reconsiderations Officer
Shipping Company

