

**FACT SHEET****Information for Employers – Worker appeals in the Queensland Industrial Relations Commission**

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This fact sheet provides information to employers about the Workers' Compensation Regulator's role and how employers can be involved in appeals proceedings when a worker appeals a review decision to the Queensland Industrial Relations Commission (QIRC).

**Can I, as an employer, be a party to or apply to be heard in the appeal?**

The legislation does not provide an employer with the right to appear as a party to your worker's appeal.

The recent Industrial Court decision of *Brisbane City Council v Gillow and Simon Blackwood (Workers' Compensation Regulator)* [2016] ICQ 007 has clarified that the QIRC does not have the power to grant leave to an employer to appear and be heard in a workers' appeal. The QIRC Registry has advised that it will follow this decision in addressing any applications to be heard.

Therefore as an employer, you have no avenue to become a party to a worker's appeal or appear directly before the QIRC to present evidence and submissions to support your position in relation to the claim.

**What is the Workers' Compensation Regulator's role?**

The Workers' Compensation Regulator within the Office of Industrial Relations is deemed by sections 327(2) and 549(1) of the *Workers' Compensation and Rehabilitation Act 2003* to be the respondent to an appeal by a worker and is responsible for managing appeals and defending the review decision. The Workers' Compensation Regulator, as a model litigant, is responsible for upholding the objects of the Act and acting in the best interests of Queensland's workers' compensation scheme.

While the effect of a decision to decline a worker's claim at review is a decision in the employer's favour, this does not mean that the Workers' Compensation Regulator represents the employer's interests in the appeal. However your assistance in providing information and access to relevant staff is essential to the defence of the review decision.

**How will the Workers' Compensation Regulator manage the appeal?**

An Appeals Officer from the Office of Industrial Relations will call you to discuss our position regarding the appeal. The Appeals Officer may request necessary evidence, statements and documents that are relevant to the appeal and if you are in possession of any additional information which you believe may assist in the appeal, you should provide that information to us. You should advise the Appeals Officer of an appropriate contact person with whom they can discuss these issues.

In order to defend the review decision, the Workers' Compensation Regulator will engage a barrister to appear at the hearing of the appeal. The barrister advocates for the Workers' Compensation Regulator at the hearing and is instructed by an Appeals Officer.

In most cases the barrister will advise the Workers' Compensation Regulator on prospects of success and protect our interests.

### **How can I assist/participate in the appeal?**

An Appeals Officer will contact you to discuss the case and you can provide full access, where possible, to relevant documents and evidence that may support the appeal.

The Appeals Officer and Barrister may need to confer with your staff as potential witnesses in the appeal and employer staff or representatives may be called to give evidence in the hearing. You can assist by providing contact details for relevant staff and access to them for this purpose.

Management and staff from your place of business may be required to attend the hearing as witnesses. If so, Attendance Notices will be issued telling each witness of the time and place that they will need to attend the hearing.

If the Appeals Officer receives new information in the course of the appeal, they will consider providing you with the details of or copies of that information for your response.

You can also stay in contact with the Appeals Officer during the appeal to be aware of any developments in the matter and raise any concerns that you may have.

### **What happens if the Workers' Compensation Regulator's position changes?**

The appeals process involves a *de novo* hearing, that is, the parties will be required to present all the evidence relevant to the claim to the QIRC for its determination.

The Appeals Officer will conduct further investigations as necessary to gather sufficient evidence to confirm the Workers' Compensation Regulator's position and the Appellant may introduce new evidence during the appeal process.

The Workers' Compensation Regulator will carefully consider any additional information to determine its ongoing prospects of success in defending the appeal.

On the basis of investigations and evidence considered in the course of managing the appeal process, the Workers' Compensation Regulator may form a view about its prospects of success in defending the appeal, and may decide that the appeal should be conceded or compromised rather than proceed to hearing.

If this is the case, the Appeals Officer will contact you as the employer to explain the reasons for the Workers' Compensation Regulator's position, your rights as an employer, the proposed orders the QIRC will issue, and what will happen next for the worker's claim. This information will also be given to you in writing.

### **When will the appeal go before the QIRC?**

The appeal will go before the QIRC in two circumstances – for the conduct of an initial conference designed to assist the parties with clarifying their case and obligations on appeal (if this is required), and when it is heard by the allocated Commissioner.

Sometimes appeals are resolved without the need for a hearing. If a hearing is needed, it can be several months before the case is heard in the QIRC.

### **Do I have to attend the QIRC at any stage?**

You should give strong consideration to having a representative from the employer available to attend the hearing, so that any enquiries that the QIRC or the Workers' Compensation Regulator have can be promptly answered. Parties to an appeal are sometimes presented with settlement options shortly before or during an appeal hearing. If your representative is not present, it may be difficult for the Workers' Compensation Regulator to effectively obtain the employer's input to such suggestions.

Further, if a representative from the employer is not present during the hearing, it can be difficult for you to understand the complexity or importance of new developments that occur during the course of the evidence. The representative does not necessarily need to appear before the QIRC, rather the representative is entitled to sit in the public gallery to observe the proceedings.

### **Will this appeal affect my premium?**

The QIRC's decision may have an effect upon future premium calculations issued by an insurer. If you are concerned about the effect on your WorkCover premium of an adverse finding, please contact your WorkCover customer advisor.

### **Do I need my own solicitor?**

As an employer you may seek your own legal advice, however, this is at your own expense. The Office of Industrial Relations is unable to guide or advise you about whether to seek legal advice. This is a decision you should make on your own.

For **free** information, please contact the following organisations:

The Chamber of Commerce & Industry Queensland  
**Toll free: 1300 364 165**

Alternatively, please contact your own solicitor or the Queensland Law Society  
**Telephone: 07 3842 5842**

## Applying for a review

A worker, claimant or employer can apply to the Workers' Compensation Regulator (the Regulator) for a review of some decisions of Insurers.

### The Regulator review - in brief

- The Regulator is not a part of WorkCover or a self-insurer.
- A worker, claimant or employer can apply to the Regulator for a review of some decisions of insurers.
- Our review service is free.
- A review must be lodged within three months of receiving the Insurer's written decision.
- If the written reasons for the insurer's decision have not been included with the decision then it is essential for you to request those reasons within 20 business days of receipt of the insurer's written decision.
- A review decision by the Regulator will be made within 25 business days, unless an extension has been agreed or information is being exchanged through procedural fairness processes.
- If you lodge a review you have the opportunity for a 'right of appearance'. This means you can meet with a Regulator representative in person, or make representations over the phone or by another method.
- You do not need a legal representative in the review process. Any legal advice or representation you may obtain is at your expense.
- Workers can obtain advice from Queensland Council of Unions (Workers' Compensation Information Service): 1800 102 166 (you don't need to be a union member). If you are a member of a union, your union may also offer assistance.
- Employers can obtain advice from the Chamber of Commerce and Industry Queensland (Workers' Compensation Advice Line): 1300 364 165 or a specific association of which you are a member.

### To lodge an application for review

- Complete the Application for claim review Form 542.3
- Provide your grounds for review—why you believe the insurer decision is wrong in your own words
- Attach all your supporting documents to your application
- Sign the form
- Submit your review application to the Regulator within three months of receiving the written reasons for decision from the Insurer

You can submit your review application to the Regulator by any of the below methods:

**Online:** [qcomp.com.au](http://qcomp.com.au)

**Post:** Workers' Compensation Regulator  
Review Unit  
PO BOX 10119  
Adelaide Street  
Brisbane QLD 4000

**Fax:** (07) 3020 6375

**E-mail:** [reviewunit@qcomp.com.au](mailto:reviewunit@qcomp.com.au)

### Frequently Asked Questions

#### What does 'grounds for review' mean?

Your grounds for review are the reasons why you believe the Insurer decision is wrong. Your grounds for review must be relevant to the injury and the claim eg. The Insurer did not consider the relevant medical information—you can then attach appropriate material such as a new medical report.

WH5012284

Great state. Great opportunity.



The Regulator cannot review Insurers' procedures or the way they manage a claim. It is important your grounds for review relate to the injury itself. By providing detailed grounds for review, it will help the Regulator better understand the issue.

If there are not sufficient grounds for review or the grounds are not adequately described, your application may not be accepted.

### **What supporting information do I need?**

The Regulator conducts what is called an 'administrative review'. This means there will be no further investigations.

The Regulator will not contact doctors, witnesses or specialists. Any information that supports the injury should be provided with your application for review. If you have any additional medical reports, witness statements, payslips etc that support the issue you are reviewing, it is crucial you submit them with the application.

The Regulator will make the review decision based on the information the Insurer had at the time of the claim decision, and any additional information provided with the review.

### **Does my review application and information get sent to the other party?**

The Regulator is making an administrative decision and is obliged to provide procedural fairness. This means that it is likely that new information you provide may be disclosed to the other parties impacted by the information.

### **How long does a review take?**

The decision is made within 25 business days unless we have agreed to an extension. You and the other party will receive the Regulator's written decision within 10 days after the decision is made.

The review decision will either:

- I. Confirm the original decision
- II. Vary the original decision
- III. Set aside the original decision and substitute another decision or
- IV. Set aside the original decision and return it to the Insurer with directions

The 25 business day decision period can be extended only if you:

- I. Agree to allow the Regulator to obtain more information for your application
- II. Apply for an extension to supply more information for your application and the Regulator allows that extension.

The 25 business day timeframe can be extended due to procedural fairness if the Regulator determines this is required.

### **What do I do if I am unhappy with the review decision?**

If you would like to dispute the review decision, the next step is for you to consider the value of lodging an appeal of the review decision.

If you decide to appeal you must lodge an Appeal with the Queensland Industrial Relations Commission against the Regulator. The appeal must be filed at the Queensland Industrial Relations Commission within 20 business days of receiving the Regulator decision.

If we don't make a decision within the 25 business days, or the agreed extension timeframe, you can:

- I. Appeal to an Industrial Magistrate or the Queensland Industrial Relations Commission or
- II. Wait for the review decision to be made

### **What happens regarding expenses relating to the claim?**

Workers—If your claim has been terminated or rejected, all expenses incurred in relation to your review application will be at your cost.

Should the Regulator overturn the Insurer's decision, you may be able to have the costs of a medical examination and report reimbursed by the Insurer.

This will not always occur as it depends upon whether the Regulator considers the medical examination and report substantially contributed to the decision of the Regulator to set aside the Insurer decision.

Employers—You will need to arrange excess payments with the Insurer. Should we overturn the decision you will be reimbursed from the Insurer.

Policy or premium increases may be placed on hold while the review takes place. You must negotiate this with the Insurer.

The Regulator does not review payments. This means we will not make payments to claimants or reimburse medical treatment.

If you are experiencing financial hardship you may wish to contact Centrelink or your superannuation fund.

### **What if three months has passed and I haven't lodged my review?**

There is no provision in the *Workers' Compensation and Rehabilitation Act 2003* for an application for review to be lodged after the three months. However, in special circumstances, you can ask the Regulator to extend the time, provided you ask during the three month period.

### **What if I require more time to lodge my review?**

The Regulator has the discretion to grant extensions to applicants for a review.

A request for an extension of the three month timeframe must be requested within the three months and be supported by special circumstances. The request must specify how long the extension is required and the special circumstances/reasons as to why you require an extension.

As the timeframe to lodge a review is three months, it is expected that requests for the claim file, medical appointments and medical reports are attended to during this three month period, i.e. these do not constitute special circumstances.

Once the extension request has been received, the Regulator will make a decision as to whether or not the extension is granted within five business days.

Our official policies and procedures regarding extensions can be found on our website/link: <http://www.qcomp.com.au/services/review-appeals/information-for-legal-professionals/official-policy-and-procedure-regarding-the-review-process.aspx>

### **What is a Right of Appearance?**

A Right of Appearance is the opportunity for the applicant to highlight matters they consider support their application for review or expand upon their grounds for review. This is commonly referred to as making submissions.

Your submissions can be made in the manner most appropriate to you such as by telephone or in person by making an appointment to meet with the Review Officer.

The Right of Appearance is not an investigative process or an opportunity to provide oral evidence. The Review Officer will not take a statement from you or make judgments of credit. It is an opportunity to put forward your view on how you consider the evidence should be interpreted. If you have a particular issue or submission you wish to make clear it may be beneficial to also provide this in writing, for the Review Officer's later consideration. Likewise, should you have new evidence, such as a further statement from yourself or another witness, these should be provided in writing.

When making first contact with you, the Review Officer will ask whether you wish to exercise your right of appearance. At this time you should advise whether you wish to have a right of appearance and, if so, how you wish to appear – i.e. by telephone or in person.

If wishing to meet with the Review Officer a suitable time will be arranged for you to attend the Regulator's premises at 347 Ann Street, Brisbane.

The Regulator undertakes the Right of Appearance in a polite, professional and non adversarial manner and as such expects that attendees behave accordingly. Contrary behaviour, threats or abusive language may lead to early termination of the Right of Appearance.

Some common questions:

#### **1. How long does a right of appearance take?**

Depending upon the extent of the submissions being made and how they are being given, a right of appearance can vary between ten minutes and up to an hour.

#### **2. Can I attend anywhere else other than Brisbane?**

Unfortunately, no. The Regulator's premises are located in Brisbane, as are the Review Unit and Review Officers.

#### **3. Can I bring a support person?**

Yes, a support person attending with an applicant is a common occurrence and welcomed by the Regulator, though it is requested that you advise if anyone will be accompanying you in advance to ensure adequate facilities for the meeting are available.

#### **4. What should I bring?**

If you have new documentary evidence you wish to rely on, or specific written submissions, copies of these can be provided to the Review Officer during the appearance.

### **Want more help?**

Call the Workers' Compensation Regulator Review Unit on 1300 739 021