

The Workers' Compensation Regulator

JOHN McDIARMID
DIRECTOR – REVIEW AND APPEALS

JOHN.MCDIARMID@QCOMP.COM.AU

(07) 3020 6369



Presentation Contents

- Recruitment Outcomes
- Industrial Court Appeals
- Online Services – eFile transfer



Manager, Review - Louise Martin

Manager, Appeals – Sacha O’Neill

Team Leader – Leisha Shield

Team Leader – Gavin Clark

Team Leader – Nicolle O’Connor

Team Leader – Melisa Alatupe

Team Leader – Naomi Brines

Team Leader – Ruth Maroney

Pearce

- Time taken by solicitor to lodge AFR
- Section 542

Toward

- Time to apply for compensation
- Section 131

Pearce – Claim Chronology

- Michelle Pearce v Simon Blackwood (Workers' Compensation Regulator), WC/2014/83
- WorkCover decision to reject the claim was made on 8 October 2012
- Solicitor has carriage from 25 March 2013 (2 Months OOT)
- Solicitor determines unlikely to succeed at review, seeks information from treating specialist
- Treating specialist reports received 5 August (7 Months OOT)
- Further medical review on 20 November 2013 (10 Months OOT)
- Medical reports received 20 January 2014
- AFR lodged 17 February 2014 (15 Months)
- Regulator rejects on grounds of AFR being lodged out of time
- Appeal lodged with the QIRC

Pearce – QIRC Outcome

Appeal upheld by QIRC on 19 May 2014 and the decision notes:

- The appellant's medical condition was a complex one
- Inconsistent explanations and opinions from treating specialist
- Initial review by solicitor determines claim would be unsuccessful at review
- Solicitor participation was timely, diligent and addresses the issues faced
- Solicitor was entitled to review the WorkCover file
- Solicitor was entitled to seek clarification from treating specialist
- Accepted up to August 2013 special circumstances existed and thereafter the solicitor took reasonable steps to bring to finality

Pearce – Industrial Court Appeal

- Regulator lodges an appeal with Industrial Court
- During opening submissions, President Martin observed the parties should not proceed on the basis that he is bound by the decision in Cloncurry Shire Council

Q-COMP v Baulch

The equivalent provision of s.542 in the WorkCover Queensland Act 1996 (repealed) was directory and not mandatory.

It was the responsibility of the Statutory Review Unit to determine whether there had been *compliance in substance*.

Emerson v Coles Myer by Dutney J

“I have great difficulty in accepting that a statutory provision authorising a review of a decision within a specified limited time, without a power to extend time being conferred, authorises an application outside the prescribe time”

Cloncurry Shire Council v Workers' Compensation Regulatory Authority and Anor, by Lyon J

Answered in the negative, her Honour was not satisfied that a decision taken by Q-COMP to review a decision of the self-insurer outside of the time period allowed for in the legislation was invalid.

Pearce – Industrial Court Appeal

- Regulator lodges an appeal with Industrial Court
- During opening submissions, President Martin observed the parties should not proceed on the basis that he is bound by the decision in Cloncurry Shire Council
- Raised the topic of whether the nature of s.542 is discretionary or mandatory
- The Regulator's submissions were that s.542 is mandatory, no discretion outside of the three months specified in the legislation
- Awaiting the appeal outcome
- Structure of determining out of time decisions

Toward – Claim Chronology

- Appellant describes an injury in August 2004, but continues to work
- February 2005 visited GP citing hip pain. Fracture is identified on x-ray
- Orthopaedic Surgeon in April 2005, early arthritis identified requiring anti-inflammatories
- Medical records show further visits in 2009 and 2010
- July 2013 pain is affecting ability to work and a hip replacement is recommended
- AFC lodged in July 2013 and subsequently rejected by insurer under s.32
- Insurer's decision under s.32, is confirmed at review

Toward – QIRC Appeal

- As a preliminary issue within the appeal, Section 131 was considered

Section 131 Time for applying

“(1) An application for compensation is valid and enforceable only if the application is lodged by the claimant within 6 months after the entitlement to compensation arises”


Section 141 Time from which compensation payable

“(1) The entitlement to compensation for an injury arises on the day the worker is assessed by –

(a) a doctor; or . . .”

“(2) However, any entitlement to weekly payment of compensation starts on –

(a) if a doctor, nurse practitioner or dentist assesses the injury as resulting in total or partial incapacity for work on the day the worker stops work because of the injury – the day after the worker stops work because of the injury; or . . . “

- 
- WorkCover Queensland v Downey [2001] QIC 76

“the expression ‘assessed by a doctor’ (or for that matter ‘assessed by a dentist’) must be taken to mean assessed by a doctor as resulting in total or partial incapacity for work”

- Using this principle, as the appellant has never been certified as having an incapacity for work, the time limit described by section 131 would not start until such time that certification had been provided.



Section 141 Time from which compensation payable

“(1) The entitlement to compensation for an injury arises on the day the worker is assessed by –
(a) a doctor; or . . .”

“(2) However, any entitlement to weekly payment of compensation starts on –
(a) if a doctor, nurse practitioner or dentist assesses the injury as resulting in total or partial incapacity for work on the day the worker stops work because of the injury – the day after the worker stops work because of the injury; or . . . “

Toward – Industrial Court Appeal

Armstrong v Local Government WorkCare [2014] ICQ 7

Relevantly, as observed by Martin P, the argument advanced in this matter was that the word diagnosed as found in s 36A(1)(a) should be read as going beyond the mere identification of a latent onset injury and include the connection that the injury has with the workers employment.

Online Services Portal

- Assists with the move to become more e-friendly and reduce paper
- Enables an efficient and prompt way to send the claim file to the Regulator
- Removes the risk of paper claim files getting lost in the post
- The portal is another tool within the online services to help create a central system for Insurers to manage reviews
- Assists the Regulator in prompt decision making
- Insurers can confirm when the claim file has been sent with email notifications, the review tracking system and can send documents immediately if required
- Media files can be uploaded to the portal and will not be required on CD/USB



Queensland's safety and workers' compensation services

Home

Injury payment profile

Tools

Forms

Reports

My profile

MAT Referral

[Upload documents](#)

Message board

Welcome testtoll

***** New feature released *****

To enhance usability a 'forgot user id' link on the login screen is now available.

test



Queensland's safety and workers' compensation services

- Home
- Injury payment profile
- Tools**
- Forms
- Reports
- My profile

Document upload

Upload required documents.

New document upload

Awaiting submission

Document type

Reference

No records found.

File upload history

Submitted on ▾	Document type	Reference	Submitter ⚡	Notes	Status ⚡
31/10/2014 16:06	Licence document	SEI00000287	testtoll	Show...	Processed



Queensland's safety and workers' compensation services

- Home
- Injury payment profile
- Tools**
- Forms
- Reports
- My profile

Upload documents

Upload a claim file or licence document.

• denotes a mandatory field.

• Document type

<None> ▾
• **Claim file**
• Licence document

Claim number for review

Look up claim

List of review/s matching claim

Review	Review Due	Injured Worker	Applicant
No records found.			

Submit [Return to list](#)

Useful links

[Help](#)

Upload documents

Upload a claim file or licence document.

* denotes a mandatory field.

* Document type

Claim file

Comment

* Claim number for review

QLD130323

Look up claim

List of review/s matching claim QLD130323

Review	Review Due	Injured Worker	Applicant
39356	13/10/2014	[REDACTED]	Worker

* Select new document to upload ?

Select new document to upload

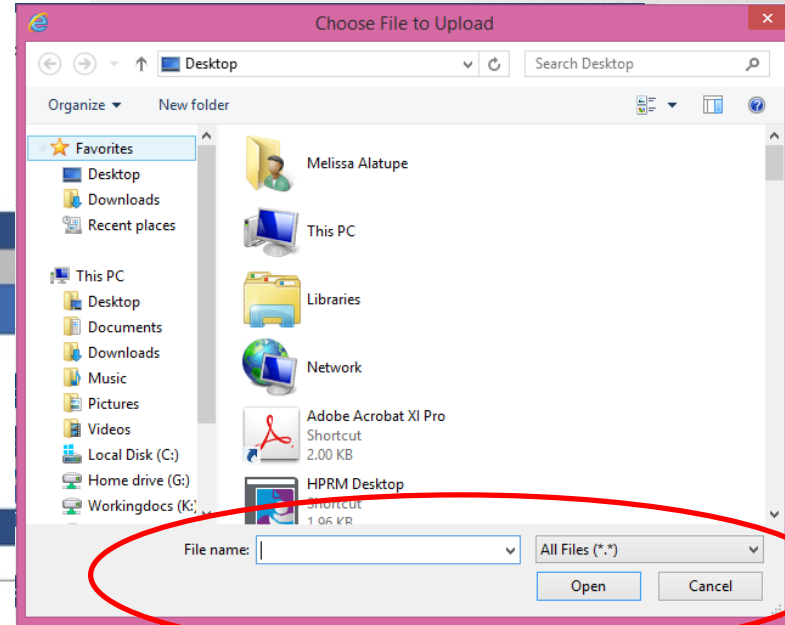
Selected documents for upload

No records found.

Submit

[Return to list](#)

> Help



Upload documents

Upload a claim file or licence document.

* denotes a mandatory field.

Document Type: Claim file

Review Number:

Claim Number:

Injured Worker:

Applicant: Worker

Comment

* Select new document to upload ?

Select new document to upload

Selected documents for upload

8-8-1-qld-government-corporate-purchasing-card.pdf

Delete

Submit

[Return to list](#)



Document upload

Upload required documents.

New document upload

Awaiting submission

Document type

Reference

No records found.

File upload history

Submitted on ▾	Document type	Reference	Submitter ⚡	Notes	Status ⚡
03/11/2014 15:49	Claim file	39356	testtoll		Submitted
31/10/2014 16:06	Licence document	SEI00000287	testtoll	Show...	Processed



Queensland's safety and workers' compensation services

Home

Injury payment profile

Tools

Forms

Reports

My profile

Review

Appeal

MAT

Message board

Welcome testtoll

***** New feature released *****

To enhance usability a 'forgot user id' link on the login screen is now available.

test

Review reports

* All data contained in reports below is up-to-date as of close of business for previous day.

Review	Received	Applicant	Status	Workers' Compensation Regulator contact
39796	16/10/2014		File Validation Complete	Review Unit Ph: 1300 739 021
39801	16/10/2014		File Validation Complete	Review Unit Ph: 1300 739 021

The Workers' Compensation Regulator

JOHN.MCDIARMID@QCOMP.COM.AU
(07) 3020 6369

LOUISE.MARTIN@QCOMP.COM.AU
(07) 3020 6429

SACHA.ONEILL@QCOMP.COM.AU
(07) 3020 6330

MELISSA.ALATUPE@QCOMP.COM.AU
(07) 3020 6340

