

Review and Appeals Update

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Outline

- Review timeframes
- Employer involvement in worker appeals

Review timeframes – current status

- Backlog of reviews awaiting allocation since January 2016
- Timeframe to allocation of 4-6 weeks
- Peak number of open reviews occurred in March 2016 (623)
- Number of open reviews steadily reducing since that time
- Number of files in the backlog awaiting allocation is also reducing

Causes and current drivers

- Restricted ability to allocate new reviews to Review Officers
- Changing profile of reviews received over time
- Staff turnover in late 2015

Strategies

- Restructure of the Review Unit
- Recruitment from 1 August 2016
- Staff training – variety of decision types

Administration

- Communication with relevant parties
- Prioritisation of reviews for allocation

Workers' Compensation and Rehabilitation Act 2003

Section 549

- Claimant, worker or employer may appeal a review decision to the Queensland Industrial Relations Commission (QIRC)
- For employer appeals, the claimant or worker may be a party to the appeal
- The Act does not enable employers or insurers to be a party to worker appeals
- Established practice for employers to file an application for leave to appear and be heard in worker appeals – ss 320 and 329 *Industrial Relations Act 1999*
- Based on previous decisions of the Industrial Court – *Middleton, Squires*
- Members of the QIRC had expressed doubt – *Dinca, Ollier, Prior*

Brisbane City Council v Gillow & Simon Blackwood (Workers' Compensation Regulator) [2016] ICQ 007

- Review Unit confirmed self-insurer's decisions to reject worker's applications
- At appeal, employer/self-insurer applied for leave to appear and be heard – dismissed by Vice President
- Prior to hearing, appeals were settled and consent orders signed by parties
- Industrial Court (President Martin) – QIRC does not have power to give an employer leave to appear

QIRC Registry

- Has discontinued all outstanding applications for leave to appear and be heard
- Industrial Court's decision in *Gillow* will be followed for any future applications
- Effect of *Gillow* decision is to clarify there is no legislative avenue for an employer to become a party to a worker's appeal or to seek leave to appear and be heard

Worker's Compensation Regulator's role

- Workers' Compensation Regulator is the respondent to an appeal (ss327(2) and 549(1))
- Responsible for defending the review decision
- Model litigant
- Regulator functions delegated to Appeals Unit, Office of Industrial Relations

Managing the appeal process

Notice of appeal lodged

- Review grounds and new evidence
- Determine Regulator's position

Prospects

- Model litigant – will not pursue an appeal without just cause

Investigation

- De novo hearing
- Obtain relevant information
- Preliminary witness conferencing

QIRC

- Section 552A conference
- Hearings – engage counsel

How can the employer get involved?

- Appeals Officer will make contact
- Provide contact person – stay in contact about new developments
- Provide evidence, statements, documents relevant to appeal
- Provide access to staff – confer as potential witnesses
- Witnesses attendance at hearing
- Employer representative may attend hearing as observer – answer enquiries, consult about settlement proposals

What if the Workers' Compensation Regulator's position changes?

- Appeals Officer will carefully consider all new information to determine the Regulator's ongoing prospects of success in defending the appeal
- Appeals Officer will consider providing the employer with new information for their response
- If the Regulator decides to concede or compromise the appeal – Appeals Officer will contact the employer to advise:
 - the reasons for the Regulator's position
 - the proposed orders for the QIRC
 - the next steps in the worker's claim

Summary

- Workers' Compensation Regulator will defend the appeal where justified
- New evidence at appeal may lead to the Regulator changing its position
- Maintain contact and engagement with Appeals Unit to ensure all relevant information can be considered in the appeal
- Updated employer fact sheet

Questions?