

Reviews of work capacity decisions

(1987 Act: S.44)

YOUR RIGHTS	NEXT STEP
<p>You have the right to ask the insurer to review a decision that it has made about your work capacity.</p>	<p>You should make this request by completing the Application for a Review by Insurer form and provide it to your insurer within 30 days.</p>
<p>If you still believe that the insurer has not applied the correct approach:</p>	
<p>You have the right to ask WorkCover for a review of the merits of the decision.</p>	<p>Completing the WorkCover Application for a Review by the Authority form) and provide it to WorkCover within 30 days after receiving the insurer's decision. For more information about WorkCover's merit review, click here.</p>
<p>If your issue is not resolved following the WorkCover review:</p>	
<p>You have the right to ask WIRO to review the insurer's procedures in making the work capacity decision. The WIRO decision is binding.</p>	<p>You can seek assistance with the completion of your application from anyone, including:</p> <ul style="list-style-type: none"> • Your insurer • A support person • A union representative • An interpreter • Your employer • Your legal representative. <p>A lawyer is not entitled to be paid for helping you to complete your application.</p>

Workers who do not agree with a work capacity decision made by the insurer may challenge the decision. A worker may:

1. Refer the decision back to the insurer for an **internal review**
2. Refer the decision for a **merits review** by the WorkCover Authority and
3. for a **review of the insurer's procedures** to the WorkCover Independent Review Officer.(WIRO)

Application by a worker to an insurer for an internal review of a work

capacity decision: (1987 Act S.44(1)(a))

- The insurer must supply the injured worker with the review application form with the work capacity decision notice.
- Injured workers can be assisted in completing the application form by another person such as a support person, agent, union representative, employer, legal representative or interpreter.
- Legal practitioners are not entitled to be paid for costs incurred in connection with a review of a work capacity decision.
- Application must be lodged with the insurer within 30 days of receiving the work capacity decision from the insurer.
- The application must be in the approved form, specify the grounds on which the review is being sought and any additional information to be considered. For example, the worker is able to supply further medical information or the worker believes that the suitable employment identified places them at substantial risk of further injury.

Acknowledgement of application:

(WorkCover NSW Work Capacity Guidelines for Insurers, 6.7,6.8 ,6.9 ,7.1)

- The insurer must acknowledge the referral in writing to the worker within 7 days of receiving the application
- explain the review process
- advise that a review of a work capacity decision does not operate to stay the decision or otherwise prevent the taking of action based on the decision
- clarify with the worker any new information supplied or any other information that the worker is in the process of obtaining; and
- explain the review process;
- indicate when and how the decision will be conveyed to the worker.

An insurer may decline to review a decision at any stage of the internal review process if an application for review is, or becomes, frivolous or vexatious.

Advising internal review outcomes: (1987 Act:S.44(1)(a))

An internal review of a work capacity decision will result in a new decision being made. The new decision may be the same as the original decision or it may be different.

The insurer must write to a worker within 30 days of receiving the application advising of the outcome of the internal review.

If the insurer fails to do so the worker may then make an application for merit review by the Authority.

The notification must be in writing and must include the decision, its impacts and reasons. The notification must also advise the worker about the availability of further review options.

Merit review by the WorkCover Authority (1987 Act: S.44)

If the worker is not satisfied with the outcome of the insurer's internal review of a work capacity decision, or if an internal review by the insurer is not completed within 30 days, the worker may lodge an application for a further review by the WorkCover Authority.

Workers may be assisted in completing the application form by another person such as the insurer, a support person, agent, union representative, employer, legal representative or interpreter.

The application by the worker must be made within 30 days of either receiving the insurer's internal review decision or the date when the insurer's internal review decision was due.

Injured workers do not need to attach to their application all of the existing documents and information relating to the claim or the work capacity decision, as the insurer will be required to provide all relevant information to WorkCover as part of their reply to the application.

WorkCover will write to the worker and insurer within seven days of receiving the application from the worker to acknowledge receipt of the application.

Within seven days of receiving the worker's application, the insurer is to exchange and lodge a reply to the application in the approved form.

The insurer must send the reply to the worker before, or at the same time, as lodging the reply with WorkCover.

WorkCover will write to the worker and insurer within seven days of receiving the reply from the insurer.

Merit review decision by the WorkCover Authority (1987 Act S.44(3)(c,d,e,and g))

The WorkCover merit reviewer will consider all of the material substantively and on its merits as if the original work capacity decision had not been made, and is obliged to make the decision that they think is more likely than not to be correct.

The merit reviewer may also make recommendations to the insurer based on their findings, which are binding on the insurer and must be given effect to by the insurer.

WorkCover must write to the worker and insurer within 30 days of receiving the application advising of the outcome of the merit review and must include the decision, its impacts, any recommendations and reasons. The notification must also advise the worker about the availability of further review options.

Procedural review by WorkCover Independent Review Officer (WIRO)

If the WorkCover review does not resolve the issue, the worker may lodge an application for review with the WorkCover Independent Review Officer (WIRO) within 30 days of receiving the WorkCover review decision.

The WIRO review is a **review only of the insurer's procedures** in making the work capacity decision, not of any judgment or discretion exercised by the insurer in making the decision. Recommendations made by the WIRO are binding on the insurer and the Authority.

To find out more about the functions of the WIRO, visit wiro.nsw.gov.au or call 13 94 76.

If you require any further information please contact:

Workers Health Centre on 02 97497666 or admin@workershealth.com.au

Injured Workers Support Network on 02 97497566 or Injuredworkerssupport.org.au

Your Union organiser or Unions NSW on 1800688919

Your legal representative

Work Cover Claims Assistance Service 131050 or www.workcover.nsw.gov.au

Work Cover Independent Review Officer or wiro.nsw.gov.au or call 13 94 76

