



GUIDE

Work Capacity Decisions

What is a Work Capacity Decision?

Work Capacity Decisions are made by an insurer. These decisions deal with the following issues:

- a worker's current work capacity
- what the insurer considers to be suitable employment for a worker
- the amount an injured worker is able to earn in suitable employment
- the amount of pre injury average weekly earnings or current weekly earnings
- whether a worker is, as a result of injury, unable to engage in work of a certain kind because of the nature of that work and the risk of further injury
- any other decision that affects a worker's entitlement to weekly payments of compensation, including a decision to pause, stop or reduce weekly payments of compensation.

When can a Work Capacity Decision be made by an insurer?

An insurer can make a work capacity decision **at any point in time** of a workers compensation claim.

I have received a Work Capacity Decision, what are my options?

Workers have a number of rights if they wish to challenge a decision an insurer has made. These are explained below.

HOW TO REQUEST AN INTERNAL REVIEW BY YOUR INSURER

- You have the right to ask the insurer to review a decision that it has made about your work capacity.
- You should make this request by completing the *Application for a review by insurer*.
- Provide your application your insurer of receiving your Work Capacity decision.

HOW TO REQUEST A MERIT REVIEW

- You are entitled to ask SIRA for a review of the merits of the insurers decision.
- Complete the *Application for merit review by the authority*.
- The application must be received by SIRA within 30 days of receipt of the Internal Review Decision.

HOW TO REQUEST A PROCEDURAL REVIEW BY WIRO

- WIRO can review the insurer's procedures in making the original work capacity decision. The WIRO recommendation is binding.
- Complete the *WIRO Application for procedural review of work capacity decision* **within 30 days** after receiving SIRA's merit review decision.
- WIRO may only review the decision **after** SIRA has conducted a Merit Review.

On what basis can I request a review?

There are numerous reasons why you might seek a review. Here are some examples:

- If the insurer has not given you enough notice of the decision. They are required to give you three (3) months in addition to the time to deliver the notice to you.
- Your application for a review has not been dealt with by the Insurer or Merit Review Service and the delay is unreasonable.
- The information that the insurer relied upon was incorrect, incomplete or out of date.

What information should I include in my application for review?

You can include anything that you think may support your reason for seeking a review. This may include:

- reports from your treating doctor, treating specialist or other allied health professionals
- injury management consultant reports
- a statement from you describing your own abilities
- an injury management plan
- workplace rehabilitation provider reports such as workplace assessment reports, return to work plans, functional capacity evaluation reports, vocational assessment reports, work trial documents, job seeking logs and activities of daily living assessments
- information from the employer such as documents relating to return to work planning
- any other information that explains your circumstances.

Who can help me complete my form?

You should be able to complete the form by yourself. If you are having difficulty contact WIRO on 13 9476.

Lawyers are not allowed to charge you for any assistance they give you to complete the forms for a review.

Disclaimer

This publication may contain workers compensation information relevant to you. It may include details of some of your rights or obligations under the various workers compensation legislation. To ensure you comply with your legal obligations, you must refer to the appropriate legislation. If you are unsure about any aspect of the legislation please seek independent legal advice.

Information on the latest legislation can be checked by visiting the [NSW legislation website](#). For more information, call us on 13 9476.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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