



March 2019

Application

Appeal Against Decision of Arbitrator

This is the approved form to appeal against the decision of an Arbitrator.

With the exception of weekly payments of compensation, which remain payable despite an appeal, this application stays the operation of the decision appealed against.

A sealed copy of this application, and supporting documentation, must be served on each other party and a Certificate of Service must be lodged with the Commission.

Appellant:

Respondent:

Filed by:

- | | | |
|---|--|--|
| <input type="checkbox"/> Worker | <input type="checkbox"/> Employer | <input type="checkbox"/> Self-insurer |
| <input type="checkbox"/> Worker representative | <input type="checkbox"/> Employer representative | <input type="checkbox"/> Insurer/scheme agent representative |
| <input type="checkbox"/> Dependant | <input type="checkbox"/> Scheme agent* | <input type="checkbox"/> icare |
| <input type="checkbox"/> Dependant representative | <input type="checkbox"/> Specialised insurer | <input type="checkbox"/> TMF Agent |

**Note scheme agent means scheme agent for the nominal insurer*

Date of Certificate of Determination incorporating the decision sought to be appealed or date of decision if no Certificate of Determination issued: / /

Arbitrator name:

(Office use only)

Date of Direction: / /

The Registrar

1. DIRECTS that:

- (1.1) **By** ___/___/___, the appellant is to serve on the respondent/s a sealed copy of this application containing the direction.
- (1.2) **Within** seven days of service of this application, the appellant is to lodge with the Commission a Certificate of Service (Form 4) certifying service of the application and standard direction on the respondent/s.
- (1.3) **By** ___/___/___, the respondent/s is/are to lodge with the Commission a Notice of Opposition (Form 9A) and supporting documentation.
- (1.4) **By** ___/___/___, the respondent/s is/are to serve on all parties to the appeal a sealed copy of the Notice of Opposition (Form 9A) and supporting documentation.
- (1.5) **Within** seven days of service of the Notice of Opposition, the respondent/s is/are to lodge with the Commission a Certificate of Service (Form 4) certifying service of the Notice of Opposition on all other parties to the appeal.
- (1.6) **By** ___/___/___, the appellant may lodge with the Commission and serve on the respondent/s submissions in reply if required, and the appellant is to lodge a Certificate of Service (Form 4) certifying service of the submissions in reply on the respondent/s.

Issued by delegate of the Registrar, pursuant to the Workers Compensation Commission Rules 2011.

Signed: _____

NOTICE TO RESPONDENT

1. If the respondent/s does/do not lodge and serve a Notice of Opposition to the application, the Commission may determine the application in the absence of your response.
2. The forms referred to above are available from the Commission's website at www.wcc.nsw.gov.au or from the Commission on 1300 368 040.

PART 1 – Parties' Details

1.1 Appellant details

Appellant name:

ABN:

Postal or DX address:

Postcode:

Contact person:

Email address:

Phone number:

1.2 Appellant representative details

Complete this section only if the appellant has a representative

Firm or organisation:

Postal or DX address:

Postcode:

Name of representative:

Email address:

Phone number:

Cross this box if correspondence and documents are to be sent to or served at address of representative

1.3 Respondent details

Respondent name:

ABN:

Postal or DX address:

Postcode:

Email address:

Phone number:

Cross this box if this application relates to more than one respondent (additional respondent/insurer/scheme agent schedule must be attached)

1.4 Insurer/scheme agent details

for appellant Or respondent

Claim number:

Name of insurer/scheme agent:

Postal or DX address:

Postcode:

Contact person:

Email address:

Phone number:

Period of risk (if more than one insurer/scheme agent): From: / / To: / /

Cross this box if this application relates to more than one insurer/scheme agent (additional respondent/insurer/scheme agent schedule must be completed and attached)

1.5 Details for representative of the respondent to the appeal (if known) OR the representative who appeared in the arbitration proceedings*

**Service of the Application must be made directly on the Respondent and its Insurer/scheme agent*

Firm or organisation:

Postal or DX address:

Postcode:

Name of representative:

Email address:

Phone number:

PART 2 – Supporting Documentation

The following should be carefully considered prior to completing this application:

- Section 352 of the *Workplace Injury Management and Workers Compensation Act 1998*
- Part 16 r 16.2 of the *Workers Compensation Commission Rules 2011*
- Practice Directions Nos 1 and 6

Formatting of written submissions (Practice Direction No 6)

Written submissions must be attached to and filed with the appeal. They are to be set out in two parts: Part A: Procedural Matters and Part B: Grounds of Appeal and Submissions in Support. They must be typed or written clearly, paginated and set out as illustrated below with **sequentially numbered paragraphs** and appropriate sub headings where necessary. The person who prepares the written submissions must sign them at the foot of the document and provide his/her contact details.

Part A: Procedural Matters

2.1 Time (s 352(4) of the 1998 Act and Pt 16 rr 16.2(1), (2), (12) and (13) of the 2011 Rules)

Was the application lodged within 28 days of the Certificate of Determination incorporating the decision appealed against? Yes No

If no, attach reasons why the application was lodged out of time, full details of the arguments in favour of granting an extension of time and the demonstrable and substantial injustice that losing the right to seek leave to appeal would allegedly cause.

Failure to attach submissions may result in the application being rejected.

2.2 Threshold issues (s 352(3) of the 1998 Act, Pt 16 r 16.2(4)(b) of the 2011 Rules and Practice Direction No 6)

Are submissions on threshold issues relating to the granting of leave to appeal, including the amount of compensation and the percentage of the amount awarded alleged to be at issue in the appeal, attached to this application? Yes No

2.3 On the papers (s 354(6) of the 1998 Act, Pt 16 r 16.2(4)(d) of the 2011 Rules and Practice Direction No 1)

Can the appeal be decided solely on the basis of the written application and any written notice of opposition lodged? Yes No

If no, attach reasons why the appeal should not be determined on the papers and why a hearing is necessary.

Failure to attach submissions may result in the application being rejected.

2.4 Chronology of events (Pt 16 r 16.2(4)(e) of the 2011 Rules)

Have you attached a chronology of events? Yes No

If yes, the chronology must include a list of all key events leading up to the commencement of proceedings. It should not be a chronology only of those matters of assistance to the party preparing it. Each event listed must:

- be numbered consecutively and dated and,*
- contain a short description of the event.*

Failure to attach a chronology of events may result in the application being rejected.

2.5 New evidence (s 352(6) of the 1998 Act, Pt 16 r 16.2(4)(c) of the 2011 Rules and Practice Direction No 6)

Do you seek leave to rely on fresh evidence or evidence in addition to or in substitution for the evidence received in relation to the decision appealed against ("new evidence")? Yes No

If yes, you must attach:

- a schedule of the new evidence;*
- a copy of the new evidence;*
- a brief outline of the new evidence and the reasons why it was not given in proceedings before the Arbitrator, and*
- submissions as to why the new evidence should be admitted and why failure to grant leave would cause substantial injustice in the case.*

Failure to attach the schedule, a copy of the new evidence and submissions may result in the application being rejected.

2.6 Interlocutory (s 352(3A) of the 1998 Act)

There is no appeal under this section against an interlocutory decision except with the leave of the Commission. If you are appealing against a decision of an interlocutory nature, have you included submissions addressing why the appeal is necessary or desirable for the proper and effective determination of the dispute? Yes No

Alternatively, if the decision you are appealing against is not of an interlocutory nature, have you included submissions to this effect? Yes No

Failure to attach submissions may result in the application being rejected.

Part B: Grounds of Appeal and Submissions in Support

2.7 Decision appealed against

Have you included in your submissions, a statement precisely identifying the decision or part of the decision of the arbitrator to be revoked? Yes No

If no, attach a statement explaining the reasons for the omissions and/or delay.

Is the decision from which leave to appeal is sought attached and is a sealed copy of the certificate of determination and reasons (if available) attached? Yes No

If no, attach a statement explaining the reasons for the omissions and/or delay.

2.8 Grounds of appeal (s 352(5) of the 1998 Act, Pt 16 r 16.2(4) of the 2011 Rules and Practice Direction No 6)

In the attached submissions, are the grounds of appeal enumerated and precisely stated, particularising the error of fact, law or discretion allegedly made by the Arbitrator? Yes No

If no, attach a statement explaining the reasons for the omissions and/or delay.

2.9 Submissions in support (Pt 16 r 16.2(4) of the 2011 Rules and Practice Direction No 6)

In the attached submissions, are the submissions in support of the grounds of appeal attached? Yes No

If no, attach a statement explaining the reasons for the omissions and/or delay.

2.10 Relief sought (s 352(7) of the 1998 Act and Practice Direction No 6)

Have you also precisely stated the decision sought to be substituted for the original decision or alternatively the relief sought? Yes No

2.11 Costs (Pt 16 r 16.2(4) of the 2011 Rules and Practice Direction No 6)

Are submissions attached dealing with costs orders sought? Yes No

2.12 Authorities

Has a list of the authorities (including full citation for published decisions and the date of the decision for unreported cases) referred to and specifically relied upon in submissions, been attached to this application? Yes No

Part A: Procedural Matters

2.1 Time

- 1.
- 2.

2.2 Threshold issues

- 1.
- 2.

2.3 On the papers

- 1.
- 2.

2.4 Chronology of events

- 1.
- 2.

2.5 New evidence

- 1.
- 2.

2.6 Interlocutory

- 1.
- 2.

Part B: Grounds of Appeal and Submissions in Support

2.7 Decision appealed against

2.8 Grounds of appeal

- 1.
- 2.

2.9 Submissions in support

Ground 1

- 1.
- 2.

Ground 2

- 1.
- 2.

2.10 Relief sought

- 1.
- 2.

2.11 Costs

- 1.
- 2.

Dated: / / Signature: _____ solicitor/counsel/appellant

Name of person preparing written submissions:

Phone number:

Fax:

PART 3 – Certification by Legal Practitioner

Certificate – section 352(7A) of the *Workplace Injury Management and Workers Compensation Act 1998* and and clause 2, Schedule 2 of the *Legal Profession Uniform Law Application Act 2014*.

I certify that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that this appeal has reasonable prospects of success.

Name of legal practitioner:

Signature: _____ Date: / /

Lodgment Details

Hand delivery	Level 20, 1 Oxford Street Darlinghurst NSW 2010
Postal address	PO Box 594 Darlinghurst NSW 1300
Document exchange	DX 11524 Sydney Downtown
Electronic lodgment	registry@wcc.nsw.gov.au
Facsimile	1300 368 018

Privacy of Personal Information

The privacy of personal information is important to the Workers Compensation Commission. The Commission collects personal information to register application forms and make decisions about disputes or claims. The NSW workers compensation laws permit the Commission to collect this information.

The Commission may give personal information to another person or agency (e.g. a doctor, a party, State Insurance Regulatory Authority) as required or authorised by law.

Presidential decisions are routinely published, including on the Internet, unless there are exceptional circumstances justifying the decision being withheld.

A person has a right to access their personal information and correct any inaccuracies.