

# Internal Review Procedure

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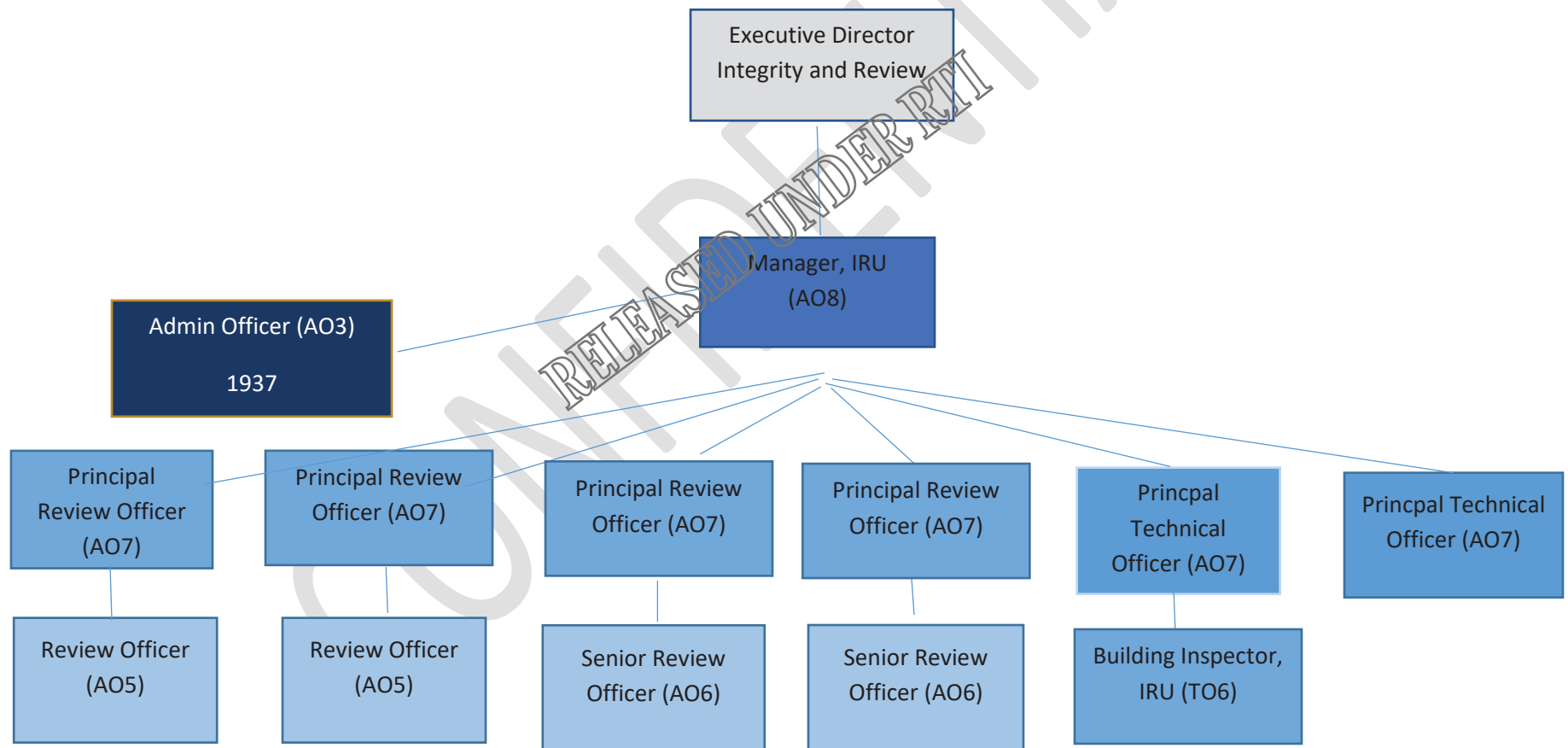
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# 1. Purpose

The Internal Review Unit (IRU) was established in 2014 to conduct internal reviews of reviewable decisions of the Queensland Building and Construction Commission (QBCC) in accordance with subdivision 1, division 3, part 7 of the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

# 2. Structure



## 6. Scope

An internal review will be undertaken by a person in the IRU who was not involved in making the original decision. The decision-maker will be of the same level or more senior to the person who made the original decision.

Internal review officers should be consistent in their approach. They follow best practice in administrative decision making to ensure their decision accurately reflects the law and the facts are established based on evidence. All decisions must provide for procedural fairness to all affected parties and deal with any real or perceived conflicts of interest or bias.

Internal review officers must act independently and exercise their own judgment while having regard to the legislation, the QBCC's policies and procedures and, where relevant, accepted technical standards. They must provide written reasons for their decisions within applicable timeframes and service delivery standards, wherever possible.

### 6.1.1 Reviewable decisions

In considering whether a decision can be reviewed, the delegated decision maker must identify whether a decision has been made by QBCC and if so, if the decision is one of the types of decisions listed in s.86 of the QBCC Act, as shown in the tables below.

In reviewing the decision and making a new decision, the delegated decision maker must take into account the powers for making the original decision.

Reviewable decisions are categorised on the Salesforce system as follows:

- Licensing – includes permits (subcategories include: refuse application, refuse renewal, conditions, permits, does not meet minimum financial requirements) – relate only to builder licensing.
- Compliance (subcategories include: exclusions, banned or disqualified individuals and companies)
- Disputes resolution (subcategories include: issuing or not issuing a direction, unsatisfactory or satisfactory rectification under a direction)
- Non-performing building products (subcategories include: not to accept a building product, decision to direct a person in the chain of responsibility, seize a place etc)
- Disciplinary action under s.74F
- Insurance (subcategories include, contract termination, scope of works)
- Certification (subcategories include unsatisfactory or professional misconduct, licensing)

- Pool Safety Inspector (subcategories include, disciplinary action, demerit points, licensing)
- Plumbing and Drainage (subcategories relate to licensing) – nb disciplinary action is reviewed by the Service Trades Council

### 6.1.2 Decisions not reviewed by IRU

Not all decisions made by the QBCC can be reviewed through the internal review process.

Below is a table which sets out the kinds of decisions which cannot be reviewed through the internal review process and how the review applicant can have their concerns addressed. Please note, this is not a exhaustive list – there may be other situations not outlined below:

**Table 1 – decisions not reviewed by IRU**

Type of decision or inquiry	Example or description	How the review applicant can have their concerns addressed
Premature matter	Where the original decision has not yet been made.	Refer to the relevant operational unit or Service Centre (see Appendix 3 regarding internal referrals).
Decision made by the IRU (including a decision not to review a matter)	Where the review applicant does not agree with a decision made by IRU.	Refer customer to QCAT or the Queensland Ombudsman.
A QBCC decision where an application to QCAT has already been made about the QBCC decision, or a QCAT decision that has been made about the QBCC decision.	<p>A person cannot apply for an internal review of a decision if they have already applied to QCAT for a review of that same decision.</p> <p>Moreover, a person cannot apply for an internal review of a QCAT decision.</p> <p>However, this does not apply to a person who is simply an affected party but not a party to the QCAT review.</p>	<p>QCAT has processes for application, re-application and appeal available – review applicant to be referred to information available on the QCAT website <a href="http://www.qcat.qld.gov.au">www.qcat.qld.gov.au</a> or to phone QCAT registry on 1300 753 228.</p>
A decision to issue an infringement notice	<p>A person who receives an infringement notice and requests the matter be reviewed and the infringement notice be withdrawn.</p> <p>This is to be distinguished from a request to effectively review the reviewable decision leading to</p>	This type of inquiry should be referred to the team leader or manager of the person who issued the infringement notice for their review and action.



Type of decision or inquiry	Example or description	How the review applicant can have their concerns addressed
	the infringement notice i.e. the decision that works are not satisfactorily rectified.	Alternatively, it may be challenged in the Magistrates Court as stated on the infringement notice.
A review request about the conduct or service provided by a QBCC staff member	Where the complaint is about the conduct of a staff member but does not request a review of a decision made by the person. For example – rudeness, bullying, aggression, ignoring/not responding etc.	<p>Refer to the QBCC Customer Feedback Management Policy.</p> <p>If dissatisfied, the Queensland Ombudsman may review complaints about conduct, including misconduct.</p> <p>If criminal conduct or corruption of a QBCC officer is alleged — Refer to the Crime and Corruption Commission and the process for public interest disclosures (in this table).</p>
Public Interest Disclosures	<p>A public interest disclosure (PID) is a disclosure about suspected wrongdoing or danger in the public sector.</p> <p>For an allegation to be considered a PID, and gain the protections of the <i>Public Interest Disclosure Act 2010</i>, the discloser must honestly believe on reasonable grounds there is wrongdoing or have information that tends to show wrongdoing and make a disclosure to a proper authority.</p> <p>Anybody, whether a public sector employee or not, can make a PID about:</p> <ul style="list-style-type: none"> <li>• a substantial and specific danger to the health or safety of a person with a disability</li> <li>• a substantial and specific danger to the environment</li> <li>• reprisal for an earlier PID.</li> </ul>	<p>A PID can be dealt with by a proper authority. A PID against QBCC or an officer of the QBCC can be dealt with through internal investigation (refer to HR – see relevant policy) or externally through proper authorities depending on the allegation - such as Crime and Corruption Commission, Queensland Ombudsman, Queensland Audit Office, etc.</p> <p>The Queensland Ombudsman is also the oversight agency for PIDs – further information can be found at <a href="http://www.ombudsman.qld.gov.au/">http://www.ombudsman.qld.gov.au/</a></p>

Type of decision or inquiry	Example or description	How the review applicant can have their concerns addressed
	Public officers may also make a PID on wider grounds.	
A review request about an offence or suitability matter raised using a Notification of Offence Form.	<p>These are:</p> <ul style="list-style-type: none"> <li>• Unlawful building work</li> <li>• No or non-compliant contract</li> <li>• Improper use of a licence</li> <li>• Non-payment of Qld Home Warranty Scheme insurance</li> <li>• Advertising offences</li> </ul>	<p>If the complaint has not been considered by QBCC, refer matter to the Compliance triage team using a GE (general enquiry case on Salesforce).</p> <p>If the complaint is about a decision made by a QBCC officer, refer the matter to the relevant manager, director or executive director of the operational unit using a GE.</p>
Decisions about debt recovery proceedings	Enquires or complaints about debt recovery proceedings relevant to the Statutory Insurance Scheme.	The applicant should be referred to Debt Recovery.
Council decisions or State Government or Minister's decisions	<ul style="list-style-type: none"> <li>• A certifier relied on council's interpretation of its regional/city plan requirements in certifying a structure. The review applicant disagrees with this interpretation of the plan.</li> <li>• A builder relies on Building Codes Queensland advice in relation to a code. The review applicant does not agree with this advice.</li> <li>• A review applicant does not agree with a legislative provision or regulatory requirement.</li> </ul>	<p>Refer the review applicant to the agency's complaints management policy – to raise their complaint with that agency and/or seek an internal review with that agency.</p> <p>If the review applicant has done so, refer them to the Queensland Ombudsman.</p>

### 6.1.3 Hybrid review applications

Hybrid review applications are review application made with a mixture of issues, with some that are reviewable decisions and others which are not. The delegated decision maker must, through an assessment of the application, identify matters that are outside the jurisdiction of the IRU and advise the applicant accordingly.

If there are other ways in which the QBCC can address these non-reviewable issues (e.g. making a complaint about procedure or staff conduct through a feedback mechanism) then the delegated decision maker should direct the applicant to those avenues.

### 6.1.4 Roles and Responsibilities

#### Administration Officer

The Administration Officer/s checks that the information on the internal review case is accurate including site address, applicant and affected party details and decision under review (including date the decision was made). Wherever possible, the Administration Officer should flag any issues with the application – for example, if the applicant does not appear to be an affected party or if a health and safety issue was raised in the application. The Administration Officer also assists with closure of file, sending of correspondence and responding to general enquiries.

#### Review Officer

The Review Officer is responsible for a case load of generally straightforward reviewable matters. They are delegated to make any new reviewable decision if the original decision maker was of an equal or lower level to them. Alternatively, the Review Officer may assist with investigations which are decided by a higher level internal review delegate. The Review Officer may also make recommendations for operational improvements.

The Review Officer will consult with, and provide a draft of the proposed decision notice to, a more senior officer or the Manager before making a decision.

#### Senior Review Officer

Senior Review Officers are responsible for a case load of reviewable matters. They are delegated to make any new reviewable decision if the original decision maker was of an equal or lower level to them. Alternatively, the officers may assist with investigations which are decided by a higher level internal review delegate. Review officers may also make recommendations for operational improvements.

If a review applicant or affected party dealing with the Review Officer is seeking to speak to someone of a higher level, a Senior Review Officer may assist.

## **Building Inspector IRU**

The Building Inspector IRU provides technical advice and conducts site inspections or desktop reports to inform the decisions of the other delegated decisions makers in the team.

If a review applicant or affected party dealing with a lower level review officer is seeking to speak to someone with a technical qualification, the Building Inspector IRU may assist.

## **Principal Review Officer**

Principal Review Officers review more complex matters (e.g. with multiple issues) or reviewable decisions that the lower level review officers are not delegated to deal with (e.g. the original decision was made by an AO7 level officer). Alternatively, the Principal Review Officers may assist with investigations which are decided by a higher level internal review delegate.

If a review applicant or affected party dealing with lower level review officers is seeking to speak to someone of a higher level, a Principal Review Officer may assist.

## **Principal Technical Officer**

The Principal Technical Officer provides technical advice and conducts site inspections or desktop reports to inform the decisions of the other delegated decisions makers in the team.

Principal Technical Officers are also a delegated decision makers in their own right and may, capacity allowing, review and decide more complex matters (e.g. of a very technical nature) or may be the decision-maker for decisions that the lower level review officers are not able to decide (e.g. the original decision was made by an AO7 level officer).

If a review applicant or affected party dealing with a lower level review officer is seeking to speak to someone of a higher level or with a technical qualification, a Principal Technical Officer may assist.

## **Manager Internal Review**

The Manager Internal Review provides advice to all review officers with regards to scope of review, steps to take in reviewing a decision, and may also provide feedback on letters and reports. Certain steps in the investigation process may need Manager approval. The Manager may also conduct reviews, usually of original decisions that less senior officers are not delegated to deal with (e.g. the original decision was made by an AO8).



## Definitions

Affected party	A person or company who is not the review applicant but may be adversely affected if the decision is changed by the IRU.
Building Inspector IRU	TO6 level technical officer.
Delegated decision maker	Any IRU officer delegated to make an internal review decision.
Operational unit	A unit within QBCC head office (Brisbane) with a particular operational function.
Original decision-maker	QBCC delegated decision maker who made the decision for which the internal review is sought.
Out of time	An application which is made more than 28 calendar days after the review applicant is given notice of, or otherwise becomes aware of, the original decision (see s.86B(a)(i) QBCC Act)
Principal Review Officer	AO7 level internal review officer.
Principal Technical Officer	AO7 level internal review officer with technical qualifications.
Premature	A decision that is not reviewable on the basis that an original decision has not yet been made.
Review applicant	An applicant for an internal review. A review applicant must be 'affected' by an original decision in order to apply for a review.
Review application	A request for an internal review, made in writing. An application can be made directly to the IRU or with an operational unit, Service Centre or the Customer Contact Centre, and referred to the IRU.
Reviewable decision	A decision listed in section 86 of the QBCC Act.
Senior Review Officer	AO6 level internal review officer.
Service Centres	An office which is outside of Brisbane, headed by a Service Centre Manager. Service Centres conduct most operational functions. The current Service Centres are Cairns, Townsville, Rockhampton, Sunshine Coast, Maryborough, Toowoomba, Gold Coast and Mackay.

## 7. Internal Review Process

### 7.1 LODGEMENT OF APPLICATION

Internal review applications must be “lodged at an office of the commission” (section 86B(b) of the QBCC Act).

In the Queensland Civil and Administrative Tribunal (QCAT) case GAR112-16: *Peter Whalley vs Queensland Building and Construction Commission* on 20 January 2017, it was determined that “lodged” means in writing and cannot include a verbal review request. In writing can include email, mail or (preferably) via webform.

#### 7.1.1 Extensions for lodgment

Review applicants have a right to internal review within 28 days from “being given notice of or otherwise becoming aware of” the original decision.

Under section 86A(a)(ii) an internal review application may be made after 28 days if allowed by the delegated decision maker, whether before or after the end of the 28 day period. These out of time applications or requests for extensions of time to make an application must be carefully assessed to determine if they can be accepted/made out of time (see [Out of Time Procedure](#)).

### 7.2 ALLOCATION OF CASES

In practical terms, allocation will be considered on the basis of workloads, capability and, wherever possible, the delegated decision maker’s experience and preference.

It is the aim of IRU to have cases allocated within 2 business days of receipt, however this is subject to workloads and capacity of staff. It may also be allocated with reference to priority. See the [Prioritisation Procedure](#).

#### 7.2.1 ‘Dealt with’

Section 86C(4) of the QBCC Act states that an application for review must not be ‘dealt with’ by:

- (a) a person who made the reviewable decision; or
- (b) a person in a less senior office than the person who made the reviewable decision.

“Dealt with” in this context means making the final decision about the internal review or elements of the review.

#### 7.2.2 Conflicts of interest

Delegated decision makers are required to declare to the Manager or the QBCC Integrity Unit any perceived, potential or actual conflicts of interest in dealing with a review request. Conflicts are declared and managed as per the QBCC Conflicts of Interest Policy.



Delegated decision makers will also be conflicted out of conducting a review if they were significantly involved in the original decision, even if they were not the original-decision maker. For example, if the Principal Technical Officer provided advice to the decision-maker in his previous role as a Building Inspector in Resolution Services or Certifier in the Certification Unit, even though he/she is not the decision-maker, he/she has been involved in or influenced the original decision making process and should not be involved in providing advice or making the review decision.

### 7.3 'STAYING OF DECISION'

Once notice of the review application is received, the original decision-maker and their supervisor/manager will ordinarily be advised that an application has been received by the IRU. This will allow the original decision-maker and their supervisor/manager to decide whether to 'stay' (that is, not further progress) any further or related actions on the matter and to advise the review applicant and affected parties. The original decision making area will make this decision in accordance with any relevant internal policies and procedures.

Any complaints relating to whether or not the original decision is stayed should be referred to the original decision making area.

### 7.4 JURISDICTIONAL ASSESSMENT

A delegated decision maker must assess the review application and will fill out an assessment document on each review.

A review application, or matters raised in the review application, **must not** be internally reviewed if the review request pertains to matters outside of the internal review powers including:

- not a reviewable decision under s.86 of the QBCC Act;
- will be or has been considered by QCAT for the review applicant (see s.86A(3)(b) of the QBCC Act);
- is premature for internal review (no reviewable decision yet made);
- has already been internally reviewed and no new original decision has been made.

In addition, a review application, or matters raised in the review application, **may** not be internally reviewed if it is out of time (where discretion is applied not to accept the application - see [Out of Time Procedure](#)).

Each of these categories is outlined in more detail below.

In such cases where a matter cannot be reviewed, the case will be closed and the applicant, and any affected parties who has been made aware of the review application, will be advised of the closure.

#### **Not a reviewable decision**

The QBCC only has jurisdiction to deal with certain matters under legislation. Where the review application falls outside of the QBCC's jurisdiction entirely, the application will be declined and the review applicant will be referred to the relevant agency, where appropriate.

Furthermore, there may be issues that the QBCC can deal with but which IRU specifically cannot deal with. IRU has particular jurisdiction under the QBCC Act. See Chapter 2 for the extent and limitations (i.e. the scope) of the IRU jurisdiction. Where the matter can be dealt with within the QBCC but not by IRU, the matter should either be referred as soon as possible to the appropriate area or the applicant advised of the relevant avenues available for the matter to be dealt with. (See Appendix 1 – Internal and External Referrals).

The file should be closed in Salesforce case management system as “decision not reviewable” with category “out of jurisdiction” and sub-category “not a reviewable decision under section 86”.

### ***Applications made to, or decided by, QCAT***

Under s.86A(3)(b) of the QBCC Act, a person who has applied for a QCAT review cannot seek for the same matter to be internally reviewed. That is, if an application to QCAT is made to review the same QBCC reviewable decision as that which is subject to an internal review and by the same applicant as that which requested the internal review, the internal review must not proceed or, if already begun, must be discontinued.

Difficulties may arise where an application to QCAT is made during an internal review and the delegated decision maker is unaware of the application.

To manage this, the delegated decision makers can make periodic checks of the QCAT allocation list. Also through discussions and information provided by the applicant, if it becomes apparent that QCAT may have been or is involved in the matter, the delegated decision maker should query whether the applicant:

- made an application or intends to make an application to QCAT *about the reviewable decision*; or
- received a QCAT decision *about the reviewable decision*.

In addition, if the Administration Officer (who also deals with QCAT applications) becomes aware of a matter in QCAT which appears to be the same as what is under internal review (or at least that the same party is involved), they should advise the relevant delegated decision maker or the Manager.

Once IRU becomes aware that the review applicant has already applied to QCAT for the same reviewable decision, the delegated decision maker should then confirm in writing to the applicant, and subsequently advise any affected party advised of the application, that the internal review application has been discontinued and the file has been closed.

The file should be closed in Salesforce case management system as “decision not reviewable” with category “out of jurisdiction” and sub-category “already reviewed or application made to QCAT”.

### ***Premature (no reviewable decision yet made)***

Where an original reviewable decision has not yet been made, the IRU does not have the power to make a review decision. The delegated decision maker should not proceed with the internal review, and should inform the applicant and any affected party in writing that the application is not yet reviewable and that the file has been closed.



The file should be closed in Salesforce case management system as “decision not reviewable” with category “premature”.

### ***Internal review of an internal review decision***

The Commission does not have the power to internally review an internal review decision under sections 86A to 86D of the QBCC Act. Internal review decisions can only be reviewed/changed in QCAT.

The file should be closed in Salesforce case management system as “decision not reviewable” with category “out of jurisdiction” and sub-category “other” with notes identifying that the review application is for an internal review of an internal review decision.

### ***Out of time***

Applicants have 28 days from “being given notice of or otherwise becoming aware of” the original reviewable decision have a right to internal review. Under section 86A(a)(ii) an internal review application may be made after 28 days if allowed by the internal reviewer, whether before or after the end of the 28 day period.

For guidance on how to calculate time (to determine when an application is or will be out of time) and how to exercise discretion regarding out of time applications, see the [Out of Time Procedure](#).

If not accepted out of time, the case is closed in Salesforce case management system as “decision not reviewable” with subcategory “out of time”.

## **7.5 CASE ASSESSMENT**

The delegated decision maker will review the file or files that were relied on in making the original decision, including documents provided by the relevant parties, internal documents generated by the original decision maker, legal advice obtained, external reports relied on, and building inspection reports. The delegated decision maker can also discuss the matter with the original decision maker to ascertain further information about the facts, circumstances and basis for the original decision.

The IRU may also conduct its own site inspections, or obtain its own legal advice or external expert reports in reaching a decision. New information that is relevant to the reviewable decision which is provided by relevant parties during the review should also be considered, as well as relevant legislation, regulation, codes, procedures, practices and discretionary factors that are applicable in making the original decision (see part 7.6.2 below). Nb. Any new information which may adversely affect another party (relating to the review decision) should be provided to that party for response, for procedural fairness (see part 7.6.1 below).

The delegated decision maker will fill out an assessment document on each review. The assessment document should, at a minimum, record:

- Priority (if any);
- Issue identification, gaps in information and avenues of inquiry –
- Analysis/Investigation

- Other legislative requirements/elements that need to be assessed before a decision can be made, if relevant.
- Relevant versions of legislation, policies and/or procedures applied.

These are addressed in more detail under relevant headings below.

### **7.5.1 Prioritising internal review investigations**

Priority will generally be given to completing a review in accordance with the [Prioritisation Procedure](#).

If the review applicant or affected party wishes the case to be prioritised, they will be required to provide written reasons for why the matter requires prioritisation and supporting evidence of the need for prioritisation. This will be considered by the delegated decision maker and, if it requires prioritisation of advice from a technical or legal officer, approval from the Manager.

### **7.5.2 Assessment document**

The assessment document is a template used to record the above assessment. The document will record the officer's assessment of jurisdiction, priority, issues and evidence. The assessment also includes references, links or attachments to documents that the delegated decision maker has relied upon or considered in making the review decision. This is a useful record should the matter be reviewed in QCAT in order to produce a statement of reasons.

The assessment document in the Templates folder on the IRU team site (Sharepoint)

## **7.6 INVESTIGATION**

The purpose of internal review is to investigate on the basis of the information before it and any further information reasonably obtainable in the restricted timeframe of the usual 28 calendar days. The remainder of this Chapter should be read with this in mind.

Generally, the avenues of investigation taken by the delegated decision maker will be recorded on the assessment document. This may include speaking to the original decision maker about their initial decision, questioning the relevant parties or obtaining technical or legal advice. Where a complex investigation is undertaken, the investigation should be documented in detail.

Below outlines elements of an investigation common to the majority of internal reviews.

### **7.6.1 Procedural fairness - all affected parties**

Under section 86A, a person who is given, or is entitled to be given, notice of a reviewable decision (an affected party) may apply to have the decision reviewed. These parties are also entitled to procedural fairness and notice of the review decision, once made.

Affected parties may be an individual or individuals, a company, body corporate or other business structure.

In *Kioa v West* (1985) 159 CLR 550 at 583-5, Mason J described procedural fairness as a duty to act fairly and adopt fair procedures which are appropriate and adaptable to the circumstances of the particular case and in light of the legislative requirements.

In the limited time that the delegated decision maker ordinarily has to make a review decision (i.e. in light of the statutory requirements), it is important to find sufficient ways to exercise procedural fairness. The [Procedural Fairness Procedure](#) provides guidance on how this may be exercised.

For information about what may be released to affected parties, see Information Privacy Principle 11 of the *Information Privacy Act 2009* (see also 7.11.5, below)

### 7.6.2 Legislative elements

The IRU “make a new decision (the **internal review decision**) as if the reviewable decision the subject of the application had not been made” (s.86C(1)). Generally, this means that the applicable legislative provisions in place **at the time** of making the review decision is applicable (unless otherwise stated, for example in a transitional provision).

There are some exceptions (e.g. exclusion decisions refer to the circumstances within a certain period of time) and delegated decision makers must be aware of what legislation is applicable to their review decision. In addition, the National Construction Code requirements and Australian Standards applicable (in deciding whether work is “defective”) should be the version available at the time the building work was being undertaken, not what is in place at the time of making the review decision.

For further information on transitional provisions of legislation, see Chapter 7.6.6, below.

### 7.6.3 Existing process and procedure

The delegated decision maker is required to put themselves in the place of the original decision-maker when making a new decision. Therefore, any existing, relevant QBCC policies, procedures, operational instructions, Commissioner Directives and guidance statements (procedural documents) related to that type of reviewable decision are to be considered as guidance when making the new decision. This will ensure consistency and fairness in decision-making.

As with all administrative decision-making, the delegated decision maker may depart from policies and procedures on a case-by-case basis but must clearly justify why a departure is required. Departures from policies or procedures should be discussed with the Manager first.

### 7.6.4 Specialised advice

The delegated decision maker must determine whether specialised advice is required to adequately review the case and if so, seek Manager or senior officer level approval. The process for requesting technical advice is outlined in the [Technical Request Procedure](#).

### **Technical advice**

The Principal Technical Officers or Building Inspector IRU (collectively “technical officers”) are available to provide the delegated decision maker with professional technical advice. This is to be managed between the delegated decision maker and the technical officer to ensure that advice can be obtained and the review completed within the review period, wherever reasonably possible.

Often, advice is provided to the delegated decision maker in the form of a desktop review report or a site inspection report. On occasion, where it is reasonable, the advice may be more informally provided by email or verbally (filenoted).

Technical officers will often be called upon in a QCAT hearing as a witness, where they have provided technical advice to the delegated decision maker which becomes relevant to the QCAT matter. In such cases, the technical officers may also be required to assist during compulsory conferences if the technical aspect of the decision is in dispute.

### **Desktop review report**

Where appropriate, the technical officer allocated an advice request will review any relevant technical reports (including the original building inspector's inspection report, and any other technical reports commissioned by QBCC or provided by affected parties) on the original file and/or obtained through the review process.

The technical officers may also commission technical reports/inspections by external consultants (see procedure for engaging external professional advice in this chapter, below) and consider the resultant report in forming their technical advice.

The technical officer will then produce a desktop internal review report outlining their advice for the IRU decision maker's consideration.

### **Site inspection and report**

Where the technical officer who is allocated an advice request considers that an inspection is required, the technical officer will provide the outcomes of the site inspection through an inspection report outlining their advice for the delegated decision maker's consideration.

Where the site is located in other regions, including in and around Cairns, Townsville, Rockhampton, and Mackay, the technical officer may need to travel to conduct site inspections. Alternatively, the technical officer or the delegated decision maker may work with a local QBCC building inspector (who is independent of the original decision) who may gather and provide information back to the technical officer for consideration, depending on which option is the most resource effective.

All affected person/s should be invited to attend the site inspection where possible and appropriate.

The delegated decision maker may attend the site inspection with the technical officer, subject to practical considerations including workload and travel cost.

### ***Internal professional advice or services***

The IRU may seek internal technical advice from other areas of QBCC, as long as that person is independent from the decision under review, such as utilising the expertise of the Senior Building Inspectors, internal engineer, plumbers, lawyers or forensic accountant.

The advice request should be clear, ask specific questions and include attached or linked document relevant to the request. Requests should be made in accordance with established procedures or as per the relevant team's requests. For example, legal advice requests must be approved by the Manager before submitting to the Legal Service team.

IRU team members are to be aware of the rules of legal professional privilege in utilising legal advice.

### ***External professional advice or services***

A need for external professional advice may be identified during the course of a review. In particular, where the advice or service required is specialised or unavailable within the QBCC e.g. concrete testing, specialised engineering advice.

If external professional advice is required, this is to be discussed with the Manager before engaging the professional consultant. Consultants are to be engaged in accordance with QBCC procurement and engagement procedures. Procurement procedures are available on [Trevor](#).

A purchase order must also be raised and approved in Salesforce.

Legal Services will determine whether it is appropriate to outsource an advice requires to an external firm. A purchase order is not required for procurement of external legal advice as this is sourced through Legal Services.

### 7.6.5 Seeking extensions of time to complete a review

The internal review decision must be made “as soon as practicable but within the required period” (s.86C(1) of the QBCC Act). The required period is 28 calendar days after the review application is made or a longer period agreed to by the applicant (s.86C(2) of the QBCC Act). Agreement will only be sought for an extension of time in accordance with the [Extension of Time Procedure](#).

If a review decision is not made within the required period, the delegated decision maker is taken to have made a review decision that is the same as the original decision (s.86C(3)). This is referred to as a ‘deemed decision’. See Chapter 7.7.2 for more information about deemed decisions.

### 7.6.6 Decision-making during legislative transitional period under QBCC Act

An assessment of a review application should include consideration of the applicable legislative provisions for which a review decision may be made and any policies or procedures relevant.

Generally, because the delegated decision maker – in making a ‘new’ decision – is applying the legislation applicable at the time of making the decision. However, an assessment is required as to whether there are any transitional provisions applicable.

A transitional provision is described as follows:

A transitional provision sets out the special arrangements that apply when changes to the law are implemented over an extended period. Transitional provisions are sometimes put together into a separate law such as a Consequential and Transitional Provisions Act. If a law is affected by a transitional provision this will usually be noted in the endnotes. <https://www.legislation.gov.au/content/whatisit#T>

## 7.7 Review outcomes

A review file may be concluded in several ways, ranging from making and communicating a review decision, sending a deemed decision, or closing a file on the basis that the applicant has withdrawn their review application.

Closing files “out of jurisdiction” or “out of time” are outlined in Chapter 7.4 above.

### 7.7.1 Review Notice

Section 86D of the QBCC Act requires that a ‘review notice’ be provided to the review applicant as soon as practicable after an internal review decision is made.

Under s.86D, the review notice must state:

- the decision
- the reasons for the decision



- that the person may apply to QCAT within 28 calendar days after the person is given the review notice, if still dissatisfied
- how to apply to QCAT for a review.

The review applicant and all affected parties will be advised in writing of the internal review decision and reasons for the decision using the “decision notice” template which has all the legislatively required information within. Any reports commissioned by or created by QBCC, if appropriate to release, should be attached and provided to all parties affected by the decision.

## Decisions categories

The delegated decision maker may make reviewable decisions which are:

- the same as the original decision (categorised as ‘upheld’)
- a change from the original decision (categorised as ‘varied’)
- a completely different decision (categorised as ‘overturned’)

Note, the above categorisation is merely for reporting purposes as the legislative requirement is to make a *new decision* as if no other decision has been made. The following is guidance on categorisation to assist with consistency:

*Upheld* – A decision is categorised as upheld where the same decision is made for the same reasons as the original decision.

*Varied* – A decision will be categorised as varied if, for example, where there are multiple direction or scope items under review and some are upheld and some are overturned/varied then the overall decision is “varied” from the original decision as it is not the same as the original decision. Sometimes where the reasons for a decision are substantially different but the outcome is the same, this may also be a “varied” decision.

*Overturned* – A decision is categorised as overturned where a different decision is made to that of the original decision (e.g. to issue a direction to rectify for a complaint item/s, when the original decision was not to issue a direction).

## Communicating outcomes with the original decision maker

Once finalised, notice of the finalisation of the review is usually sent to, at a minimum, the original decision-maker, and their supervisor/manager along with a copy of the review notice and any technical reports.

IRU will also draw attention to any operational or administrative actions that is required to give effect to the decision, such as issuing a licence or a direction to rectify, for which the operational unit or Service Centre is responsible.

Also, the operational unit or Service Centre is responsible for any follow up action that is required (e.g. checking if a direction to rectify has been followed) and consequential decisions made (e.g. failure to rectify).

The delegated decision maker must provide sufficient information to the operational area or Service Centre to give effect to a review decision including, for example, placing direction item wording.

See closure process in the [Open and Closure Procedure](#)

### 7.7.2 Deemed decision

If, under s.86C(3) of the QBCC Act, the required period (being 28 calendar days, or extension date agreed to by the review applicant) has elapsed without a review decision being made, the delegated decision maker is still required to provide a written review notice. The delegated decision maker must obtain approval from the Manager before the required period has expired explaining the issues preventing a decision being made and whether an extension of time is appropriate (in accordance with the [Extension of Time Procedure](#)).

All relevant affected parties as well as the original decision maker and their supervisor/manager (at a minimum) are also advised of this outcome.

### 7.8 Withdrawn application

A review application may also be concluded because the review applicant has withdrawn the review application or an issue/item may not be investigated on the basis that the review applicant has withdrawn the specific issue/ item. In this case, the original decision remains the QBCC decision for those issue/s or application which is withdrawn. No new external review rights apply nor do timeframe for submitting an internal review application begin again.

Wherever possible, withdrawal of an issue or application should be confirmed with the review applicant in writing (by email or mail). Any verbal requests should also be file-noted as well as confirmed with the applicant in writing.

All relevant affected parties as well as the original decision maker and their supervisor/manager (at a minimum) are also advised of this outcome.

The IRU will **not** advise the review applicant to withdraw a review application or issue, nor attempt to convince the review applicant to do so. However, this does not prevent the delegated decision maker from providing advice about likely outcomes of the review based on an initial assessment, the considerations the delegated decision maker can and will take into account, or the type of information/evidence needed in order consider making a different decision to the original decision. If the applicant indicates, based on this type of information, that they do not want to proceed with the review, the officer may provide advice on how to withdraw the review application.

If the entire review application is withdrawn, the file should be closed in Salesforce case management system as “decision not reviewable” with category “withdrawn (by review applicant)”.

If an aspect of the review is withdrawn, it need only be documented on the Salesforce file and/or the withdrawal saved on ECM.

### 7.9 Recommendations



The delegated decision maker must seek manager approval to make / document recommendations to the operational unit or Service Centre about general procedural improvements that could be made. This can be done by filling out the appropriate section of the assessment document and sending it to the Manager for approval. If approved, the recommendation/s are recorded on the Salesforce review case.

The operational unit or Service Centre will then be able to access recommendations through a Salesforce report. The reporting on recommendations can also be used to identify trends and systemic issues over time.

IRU will not monitor the implementation of recommendations. This will remain the responsibility of the relevant areas and higher management to decide whether, how and when to implement recommendations.

## **7.10 Reviews of IR decisions**

Where the review applicant or affected party disagrees with a review decision, the review applicant or affected party should make an application for external review in the Queensland Civil and Administrative Tribunal (QCAT). Additionally, complaints may be made to the Queensland Ombudsman.

Neither IRU or any other officer in the QBCC (including the Commissioner) has the power to change an internal review decision.

### **7.10.1 QCAT reviews**

Under s.86E of the QBCC Act, QCAT can review a 'reviewable decision' which has not been reviewed by the IRU (i.e. the original decision), or if the IRU has made an internal review decision, this will instead become the reviewable decision that is reviewed in QCAT.

Through the QCAT process, there may be an opportunity for the delegated decision maker to "reconsider" their decision using the powers available in section 23 of the *Queensland Civil and Administrative Tribunal Act 2009*. Generally, this will occur where there was an error in the internal review decision that becomes apparent through the QCAT process (but before a QCAT decision is made) or new information is provided during the QCAT process that could change QBCC's view on the matter. See the [Section 23 Reconsideration Procedure](#).

The best person to assist the Tribunal will generally be the person who instructs the legal officer and attends the compulsory conference and hearing. For internal review decisions, this will likely be the delegated decision maker. Other parties may also be involved including the Principal Technical Officer and/or original decision maker.

### **7.10.2 Being a model litigant**

The following is taken directly from the Queensland Department of Justice and Attorney-General website.<sup>1</sup>

The State and all agencies must conduct themselves as model litigants in the conduct of all litigation by -

### Adhering to the following principles of fairness:

- acting consistently in the handling of claims and litigation
- dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation
- endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate
- where it is not possible to avoid litigation, keeping the costs of litigation to a minimum
- paying legitimate claims without litigation, including making partial settlements of claims, or interim payments, where liability has been established and it is clear that the State's liability is at least as much as the amount to be paid
- not seeking to take advantage of an impecunious opponent
- not contesting matters which it accepts as correct, in particular by:
  - not requiring a party to prove a matter which the State knows to be true
  - not relying on purely technical defences where the State will suffer no prejudice by not doing so
  - not contesting liability if the State knows that the dispute is really about quantum
- not instituting and pursuing appeals unless the State believes that it has reasonable prospects for success, or the appeal is otherwise justified in the public interest.

### Following principles of firmness:

- appropriately testing all claims
- contesting all spurious or vexatious claims
- claiming legal professional privilege where appropriate
- claiming public interest immunity to protect confidential information such as Cabinet papers in appropriate cases
- seeking security for costs where appropriate and pursuing costs when it is successful in litigation, which will assist in deterring vexatious proceedings from being instituted against it
- not seeking to take advantage of an impecunious opponent
- relying on available statutes of limitation, which have been enacted to protect a defendant from unfair prejudice
- acting properly to protect the State's interests.

### Alternative dispute resolution

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<sup>1</sup> <http://www.justice.qld.gov.au/justice-services/legal-services-coordination-unit/legal-service-directions-and-guidelines/model-litigant-principles>

- The State is only to start court proceedings if it has considered other methods of dispute resolution (for example, alternative dispute resolution or settlement negotiations).
- When participating in alternative dispute resolution, the State must ensure that its representatives:

(a) participate fully and effectively, and

(b) have authority to settle the matter so as to facilitate appropriate and timely resolution of a dispute.

## **7.11 Record keeping and general administration**

### **7.11.1 Contemporaneous filenotes**

All verbal discussions about the review file (phone and face-to-face), including discussions with other staff members (such as the original decision-maker, the technical officer, the Manager etc) which are relied on in making an internal review decision, should be recorded in the Salesforce system and locked (using the “comment” boxes or a “complete” task). Notes should be made as soon as practicable following the discussion to ensure greatest accuracy.

Furthermore, filenotes should include the time and date on which the discussion occurred or action taken if not at the time upon which the filenote was created on Salesforce, on the basis that the time and date stamp of the Salesforce comment field relates to when the information was inputted, which may not be the same time/date that the discussion or action occurred.

### **7.11.2 Electronic files**

All documents should be declared on the records management system HPE Records Manager (referred to internally as “ECM”) as soon as practicable by the delegated decision maker/ case owner and at the latest, by the time the file is ready for closure. IRU files its documents in accordance with the team’s [ECM Procedure](#).

Signed copies of letter should be scanned and placed on the electronic file wherever possible.

The *Public Records Act 2002* and QBCC record keeping policies must be adhered to with all record keeping practices.

Note, documents attached to Salesforce do not meet the requirements for record keeping and must also be saved on the ECM system.

### 7.11.3 Paper files

Formal paper files will not be created, unless the delegated decision maker specifically requests a paper file. A note should be kept on the electronic file indicating that a paper file exists in such circumstances.

### 7.11.4 Disclosure of Personal Information and Privacy

Information privacy, confidentiality and information sharing must be observed in accordance with the *Information Privacy Act 2009*, *Right to Information Act 2009* and QBCC policies.

Personal information in IRU's control will only be used or disclosed for the purpose for which it was obtained, unless an exception applies, pursuant to the Information Privacy Principles.

To maintain privacy and confidentiality, it is an IRU procedure that any printed documents are locked away at the end of each day and computer screens are locked when internal review officers are away from their desk.

Questions about privacy and personal information should be directed to the Right to Information team.

### 7.11.5 Release of information directly relevant to decision-making

IPP 11 provides an exception from the prohibition of disclosing private information – section (1)(d) is most relevant to situations which arise through internal review.

#### 11 IPP 11—Limits on disclosure

- (1) An agency having control of a document containing an individual's personal information must not disclose the personal information to an entity (the *relevant entity*), other than the individual the subject of the personal information, unless—
  - (a) the individual is reasonably likely to have been aware, or to have been made aware, under IPP 2 or under a policy or other arrangement in operation before the commencement of this schedule, that it is the agency's usual practice to disclose that type of personal information to the relevant entity; or
  - (b) the individual has expressly or impliedly agreed to the disclosure; or
  - (c) the agency is satisfied on reasonable grounds that the disclosure is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or to public health, safety or welfare; or
  - (d) the disclosure is authorised or required under a law; or
  - (e) the agency is satisfied on reasonable grounds that the disclosure of the information is necessary for 1 or more of the following by or for a law enforcement agency—
    - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of laws imposing penalties or sanctions;
    - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
    - (iii) the protection of the public revenue;
    - (iv) the prevention, detection, investigation or remedying of seriously improper conduct;
    - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or
- (ea) all of the following apply—
  - (i) ASIO has asked the agency to disclose the personal information;
  - (ii) an officer or employee of ASIO authorised in writing by the director-general of ASIO for this paragraph has certified in writing that the personal information is required in connection with the performance by ASIO of its functions;
  - (iii) the disclosure is made to an officer or employee of ASIO authorised in writing by the director-general of ASIO to receive the personal information; or
- (f) all of the following apply—
  - (i) the disclosure is necessary for research, or the compilation or analysis of statistics, in the public interest;
  - (ii) the disclosure does not involve the publication of all or any of the personal information in a form that identifies the individual;
  - (iii) it is not practicable to obtain the express or implied agreement of the individual before the disclosure;
  - (iv) the agency is satisfied on reasonable grounds that the relevant entity will not disclose the personal information to another entity.
- (2) If the agency discloses the personal information under subsection (1)(e), the agency must include with the document a note of the disclosure.
- (3) If the agency discloses personal information under subsection (1), it must take all reasonable steps to ensure that the relevant entity will not use or disclose the information for a purpose other than the purpose for which the information was disclosed by the agency.
- (4) The agency may disclose the personal information under subsection (1) if the information may be used for a commercial purpose involving the relevant entity's marketing of anything to the individual only if, without limiting subsection (3), the agency is satisfied on reasonable grounds that—
  - (a) it is impracticable for the relevant entity to seek the consent of the individual before the personal information is used for the purposes of the marketing; and
  - (b) the relevant entity will not charge the individual for giving effect to a request from the individual to the entity that the individual not receive any marketing communications; and
  - (c) the individual has not made a request mentioned in paragraph (b); and
  - (d) in each marketing communication with the individual, the relevant entity will draw to the individual's attention, or prominently display a notice, that the individual may ask not to receive any further marketing communications; and
  - (e) each written marketing communication from the relevant entity to the individual, up to and including the communication that involves the use, will state the relevant entity's business address and telephone number and, if the communication with the individual is made by fax, or other electronic means, a number or address at which the relevant entity can be directly contacted electronically.

Further guidance is provided in the [Procedural Fairness Procedure](#).

### 7.11.6 Administrative Access release

An IRU team member may supply to a customer, on request, all documents which IRU have sent to them previously and all documents which the customer has previously sent to IRU, only once

the IRU team member is confident of the identity of the customer. This type of request is processed under the QBCC Administrative Access procedure and should be noted in the relevant file that these documents were supplied to the customer via the scheme. Please refer to the Administrative Access Procedure on [Trevor](#) for further information.

Questions about administrative access release should be directed to the Right to Information team.

## **7.12 Administration**

### **7.12.1.1 Email administration**

Emails to review applicants and other affected persons should be sent from the [internalreview@qbcc.qld.gov.au](mailto:internalreview@qbcc.qld.gov.au) inbox. Operational units and Service Centres are also requested to send review applications to this inbox. This will ensure that all correspondence on review cases are attended to in a timely manner, particularly when individual officers are away.

The internal review inbox is colour coded for action by certain officers. The following is a key to the colour coding:

- Each officer will have their own colour identifying that action is required by them or that the email relates to that officer and/or their open/closed case.
- Green – is used to identify that the email has been saved on ECM (do not use green if you *wish* to have saved on ECM).
- Red – is to be dealt with within 24 hours of receipt - use red with another colour e.g. red and yellow = Administration Officer to urgently deal with, red and dark green = Manager to urgently deal with. Urgent emails that have not been actioned should be forwarded to the officer's individual work email address to bring to their attention.

### **7.12.1.2 Booking travel**

Normal procedure is that the employee who is travelling fills out a Travel Requisition Form indicating dates and flight preferred and if car hire and accommodation is required. However, the Administration Officer may fill out the Travel Requisition form on the officer's behalf if the officer is willing to disclose their bank account details as required on the current form (for reimbursement of expenses).

Once filled out, the Administration Officer checks the 'Expenses' (being the amount of money allowed for meals and incidentals, travel, accommodation and car hire). Amount for meals and incidentals are transferred to the employee's bank account prior to travel. Prior to actually booking the flight and accommodation the form is sent to the Manager who approves the travel cost.

The Travel Requisition Form is then emailed to the Travel Booking Officer to book travel and accommodation, and car hire if required.

Once bookings have been made, the Travel Booking Officer attaches a PDF of the bookings to the Travel Requisition Form and sends it back to the Manager for approval. The Manager must provide their name and position and then return the form back to the Travel Officer, who will then send it to Finance for payment.

Note – Travel for the purposes of a QCAT matter is to go through Legal Services' booking and approval process.

### 7.12.1.3 Purchase orders

Expenses related to a file (e.g. to engage an external expert) should be sought and approved via a purchase order on Salesforce. The steps are:

1. Fill in the relevant fields with the estimated expense, the expert to be engaged and the reasons for the engagement
2. Send form to Manager for approval via Salesforce.
3. The Manager will approve or send the purchase order back (e.g. for more detail or another quote)
4. Once approved, engage the expert.
5. Once invoice is received, fill in relevant fields of the purchase order (invoice number and date) and attach invoice document to the purchase order object.
6. Save details – once saved, the Finance department will pay the invoice.

Consultants are to be engaged in accordance with QBCC procurement and engagement procedures. Procurement procedures are available on [Trevor](#)

### 7.12.1.4 General enquiries

The Salesforce "General Enquiries" case type should be used to record contact with a person where the contact does not result in the creation of an IRU case type (i.e. where the person has contacted IRU for reasons other than to make a review application).

For example, where a person contacts IRU seeking an extension of time *to lodge* a review application, a general enquiry should be created recording the request and the response. The notes should include the original decision file number relevant to the request.

### 7.12.1.5 Infringement notices while under review

In circumstances where a review application is received about an original decision where an infringement notice was issued by the original decision-making area as a result of the associated breach (e.g. disputes unsatisfactory rectification; certification unsatisfactory conduct) the IRU follows its normal processes of:

- Advising the original decision maker and manager that there is a review of the matter; and
- Advising the original decision maker and manager of the closure of the review file.

It is the original decision maker and/or their manager's responsibility to advise the QBCC SPER Officer to withdraw the infringement notice when they are advised of the review application, and to advise the QBCC SPER Officer to re-issue the infringement notice (if warranted) when the review file is closed.

## 8. Procedure review and history

This procedure will be reviewed yearly or as required.

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## Appendix 1 – Internal and external referrals

### Referrals from IRU

Where a matter is not a reviewable decision or procedural issue, it may be referred to:

- an internal operational unit or Service Centre; or
- an external agency.

#### *Internal referrals*

Internal referrals will general occur where:

1. an original decision has not been made (i.e. premature for review); or
2. the review/consideration is to be undertaken by the operational unit or Service Centre itself (i.e. non-reviewable decisions).

Referrals may be 'direct' or 'indirect'. A direct referral occur where IRU will send the review application including relevant documentation directly to the operational unit or Service Centre, ordinarily using a GE or email. IRU may liaise with the operational units and Service Centres to arrange the best way in which a direct referral can be facilitated. The review applicant will be advised that the operational unit or Service Centre will contact them for further information, if required.

An indirect referral is where the review applicant is advised how to make a complaint with the operational unit or Service Centre. This usually occurs where the complaint cannot be directly referred. For example, if the review applicant indicates that they wish to think about their options (e.g. taking the builder to court instead) and will initiate a complaint directly with the operational unit or Service Centre if they decide that is appropriate.

Issues which became apparent through investigation of a review application which are outside the jurisdiction of IRU but within the jurisdiction of another internal operational unit or Service Centre, may also be referred – for example, potential breaches of the QBCC Act by a builder which is identified during the review may be referred to the Compliance division for consideration.

#### *External referrals*

A review applicant may be indirectly referred to the appropriate external agency to deal with their complaint. This will usually occur if:

1. their internal review rights have been exhausted; or
2. the matter is out of the jurisdiction of the QBCC (listed within table 2, above)

Internal review rights will be exhausted where IRU has made a decision about the same or similar matter.

To assist the review applicant or other affected party resolve their complaint about a review decision, IRU officers should reiterate the external review rights available.



## Referrals to IRU

Section 86B of the QBCC Act requires an internal review application to be 'lodged at an office of the commission'.

IRU may receive review complaints from a variety of sources:

1. Records Unit (post) – case created in Salesforce by Records
2. Webform – automatic case created in Salesforce
3. Direct referrals of emails from a review applicant from the operational unit or Service Centre
4. Direct contact with the IRU by email - case created by Administration Officer
5. Referred by the Minister or Department of Housing and Public Works
6. Referred from an external agency.

Section 86B does not preclude lodgment through an external agency such as the Minister, the Department or the Queensland Ombudsman, or by another person (e.g. a family member or solicitor) as there is no requirement for the application to be personally lodged.

An application is considered 'lodged' when received by the QBCC in writing. This means that if it is received via the Minister etc, the timeframe for review begins upon receipt by QBCC.

### 1. Records Unit

The Records Unit will create a case in the case management system, Salesforce. The Records Unit will also create an internal review file in the document management system, HP Content Manager. The Records Unit will allocate the case to the IRU queue. The IRU Administration Officer will monitor the IRU queue to identify new cases.

### 2. Direct referrals from an operational unit or Service Centre

IRU will accept direct referrals from other operational units or Service Centres if it is a reviewable decision and made in writing by the review applicant or authorised agent. If the complaint is out of time, the operational unit or Service Centre should still refer it to IRU to exercise its discretion with regards to conducting a review out of time.

It is not enough that the person has complained to the operational units or Service Centre about a decision or wants clarification of the decision, and the officer thinks it should go to IRU. The person must request an internal review (or clarification should be sought by the operational unit or Service Centre whether an internal review is being requested) as s.86B of the QBCC Act requires the affected person to "apply" for a review.

The IRU Administration Officer will monitor the internal review inbox and will create a Salesforce case for any referrals.

### 3. Direct contact by the review applicant with IRU

If IRU receives a direct request for a review by an applicant in writing, the IRU Administration Officer will create a new Salesforce case. If the request is made verbally, the review applicant will

be directed to the online webform or to otherwise lodge in writing to the IRU inbox or QBCC postal address.

### **Ministerial referral**

Complaints that amount to a written request for an internal review, which are directed to a Minister or the Department of Housing and Public Works, may be referred to the QBCC for response. This is generally done through the QBCC Ministerial Liaison Unit.

If IRU receives a referral of an internal review application, the Administration Officer will create a new Salesforce case. The relevant Ministerial Liaison Officer may need to be advised when a review is completed.

### **4. Referred from the Queensland Ombudsman**

Complaints about a reviewable decision, which have been raised by the review applicant with an external complaints agency may be referred to IRU.

Generally this will occur where a complaint has been made to the Queensland Ombudsman. The Queensland Ombudsman may deal with complaints about administrative decision making by an agency, including QBCC. Administrative decision-making includes whether QBCC was fair, reasonable, and applied legislation/policies/procedures/discretion in undertaking its regulatory function (for example, its function to approve licences, manage defect complaints etc).

The Queensland Ombudsman is unlikely to investigate a matter that has not first gone through an internal review and will usually refer a complaint back to QBCC, with the permission of the complainant, where an internal review has not been undertaken. Usually the Queensland Ombudsman only requires the review response be provided to the review applicant, but may decide to request a copy of the decision. If this is the case, a letter must be drafted to the Queensland Ombudsman with a copy of the review notice and letter to the applicant and/or affected party at the conclusion of a review.

Original decision regarding a direction to rectify (DTR)	DTR originally issued?	Review submissions	Internal review decision	Requirement to issue a new DTR?	Subsequent action by original decision maker (ODM)
To <b>give</b> a DTR	YES	All items should <b>not</b> be directed on (builder review)	<b>Upheld</b> – To give a DTR for all items (e.g. items 1 to 5)	YES	New DTR with original DTR items
			<b>Varied</b> – To give a DTR for some items (e.g. items 1, 2, 5), not to give a DTR for some items (e.g. items 3 and 4)	YES	Items not directed on to be removed from DTR (e.g. items 3 and 4) and new DTR issued with remaining items (e.g. items 1, 2 and 5)
			<b>Overturned</b> – Not to give a DTR for all items (e.g. no DTR for items 1 to 5)	NO	ODM to withdraw DTR
To <b>give</b> a DTR	YES	Some items on DTR should <b>not</b> be directed on (builder review)  (some = application on only item 1 and 3 – item 5 is not disputed)	<b>Upheld</b> – To give a DTR on all items under review	YES	New DTR containing items on review and items directed on which were not under review
			<b>Varied</b> – To give a DTR on some items under review; not to give a DTR for other items	YES	New DTR with all original items except the item(s) removed by review (e.g. item 1 and 5)
			<b>Overturned</b> – Not to give a DTR for items on review	NO	No requirement to give a DTR as a result of the IRU decision, but Resolution Services may decide to reissue the original DTR (minus the overturned items) to give opportunity for compliance
<b>Not to give</b> a DTR on <u>some</u> items (others directed on)  Eg. Items 2 and 4 are not directed on	YES	Some/all items not directed on <b>should</b> be directed on (owner review)  (some = application on only item 2 item 4 is not disputed) (All = items 2 and 4 under review)	<b>Upheld</b> – Not to give a DTR for reviewed items	NO	NFA (DTR has not changed). However, Resolution Services may reissue the original DTR if it was stayed during the review process.
			<b>Varied</b> – To give DTR for some items reviewed; not to give a DTR for some items reviewed (e.g. DTR for item 2 but not item 4)	YES	New DTR with original items plus those additional items (e.g. add items 2 to DTR)
			<b>Overturned</b> – To give a DTR for all items under review (e.g. item 2 and 4)	YES	New DTR with original items plus those additional items (e.g. add items 2 and 4 to DTR)
<b>Not to give</b> a DTR for <u>all</u> items  E.g items 1 to 5 (of a total of five complaint items)	NO	Some/all items should be directed on (owner review)  (some = application on only item 2 item 4 is not disputed) (All = items 2 and 4 under review)	<b>Upheld</b> – Not to give a DTR for reviewed items	NO	NFA – there remains no DTR on builder's record
			<b>Varied</b> – To give DTR for some items reviewed; not to give a DTR for some items reviewed (e.g. DTR for item 2 but not item 4)	YES	DTR with those items (e.g. item 2)
			<b>Overturned</b> – To give a DTR for all items (e.g. items 1 to 5)	YES	DTR with those items
To <b>give</b> a DTR for some items (others not directed on)	YES	Both parties review, and the review by the builder encompasses all direction items	<b>Both decisions upheld</b>	YES	New DTR with original DTR items
			<b>Variation to one or both decisions</b> – variation to DTR by the addition of items (from homeowner review) or the subtraction of items (from builder review), but neither decision entirely overturned	YES	New DTR with original items minus any items removed, and plus any items added
			<b>Decision to direct overturned, decision not to direct upheld</b>	NO	ODM to withdraw DTR
			<b>Decision not to direct overturned, decision to direct upheld</b>	YES	New DTR with original items plus those additional items (e.g. add items 2 and 4 to DTR)
To <b>give</b> a DTR for some items (other not directed on)	YES	Both parties review, and the review by the builder encompasses only some direction items	<b>Both decisions upheld</b>	YES	New DTR with original DTR items
			<b>Variation to one or both decisions</b> – variation to direction by the addition of items (from homeowner review) or the subtraction of items (from builder review), but neither decision entirely overturned	YES	New DTR with original items minus any items removed, and plus any items added
			<b>Decision to direct overturned, decision not to direct upheld</b>	NO	No requirement to give a DTR as a result of the IRU decision, but Resolution Services may decide to reissue the original DTR (minus the overturned items) to give opportunity for compliance
			<b>Decision not to direct overturned, decision to direct upheld</b>	YES	New DTR with original items plus those additional items (e.g. add items 2 and 4 to DTR)

In every "yes" to issuing a new DTR:

- Should check existing DTR wording? – Yes, make appropriate changes, reword as required
- Should the items you haven't reviewed which formed an existing DTR be included in the new DTR? – up to Resolution Services/Service Centres.
- Should you decide the number of days for which the direction should be issued and provide that information to Resolution Services/ Service Centres? Yes.

## Extensions of Time Procedure

### SCOPE

This procedure provides guidance for when and how to seek extensions of time to complete an internal review under section 86C(2)(b) of the *Queensland Building and Construction Commission Act 1991*.

It does not relate to requests for extensions of time to make an internal review application. For further information about these types of extensions, refer to the Out of Time Procedure.

### TERMINOLOGY

In this document:

Reference to “case officer” is a reference to officers with a case load, conducting reviews including Review Officers, Senior Review Officers or Principal Review Officers.

Reference to a “technical officer” is a reference to Principal Technical Officers and the Building Inspector IRU. The below relates to circumstances where they are providing technical advice through a site inspection report or desktop report rather than informal advice via discussion with the case officer.

Reference to “legal officer” is a reference to the legal officers in the Legal Services team.

References to “Manager” is a reference to the Manager Internal Review.

Reference to “affected party” refer to parties other than the applicant who are affected by the original and review decision.

Reference to the approving officer is a reference to the relevant Principal Review Officer or Manager, who has the role of approving extension of time requests.

### PURPOSE

Legislative provisions contain requirements to make a “new decision” under internal review, and is considered a merits review. However, unlike the original decision making area in QBCC and decision-making by the Queensland Civil and Administrative Tribunal (QCAT), IRU has a 28 calendar day timeframe in which to make this decision.

Although the provisions also allow for an extension to be agreed upon with the applicant, the legislative intention is for a prompt review decision to be made within or as close as possible to the 28 day timeframe.

This procedure will consider:

- what circumstances would likely give rise to an extension request

- how an extension should be sought (internally) and requested (of the applicant)
- what happens if an extension is not sought, approved or accepted by the applicant.

## Guiding principle

***A review decision should be made with a proper evidence base and including procedural fairness, all within a reasonable time***

The expectation set in legislation is that, in most cases, reviews should be able to be completed within 28 calendar days.

Achieving a balance between proper evidence based decision making (including procedural fairness) and timeliness is heavily reliant on the quality of evidence gathered during the original investigation (and the ability to find that information on our records system); as well as any new information provided on application and any necessity to conduct further investigation or evidence gathering (especially where site inspections and/or regional travel is required).

The obligation to give a fair hearing also means giving proper consideration to all evidence from both parties and accepting reasonable arguments (e.g. party's engineering reports), which may also take time.

## Factors

***Extensions should be justifiable***

To achieve the key principle of justifiable extensions, one or more factors below (and/or other reasonable considerations) may be taken into account. This is not an exhaustive list and judgment should be exercised as to whether an extension of time is required. Extensions of time are to be the exception and not the rule.

These factors include:

- providing opportunity to afford parties procedural fairness – including where IRU has to cure procedural fairness absent in the original decision making process;
- to account for time taken out during public holidays/office closures (particularly Easter and Christmas, rather than one day holiday periods) or unexpected closures (e.g. natural disasters);
- whether there could be an unreasonable adverse effect on the applicant or an affected party;
- the complexity of the matter/s (requiring more evidence/investigation), for example -
  - number of issues/items
  - expert advice requirement
  - travel / remoteness
- if the applicant needs time to provide information/make submissions about their review application\*.

\*noting that applicants are not necessarily sophisticated in building matters and regulation as to sufficiently understand what is required of them, but also balanced with other considerations.

The above list is **guidance only**. The circumstances of the individual case may raise different or other justifiable reasons for extension.

## Length of extension

***Extensions should be for a reasonable length of time***

The extension should be no longer than required to make the internal review decision. More than one extension may be justifiable in limited circumstances, such as where the first extension was thought to be enough but unexpected/ unforeseen circumstances arise necessitating a further extension.

## Approvals

The approving officer is to approve extensions of time requests. Ideally, requests should be sent at least 2 business days before expiry of the review timeframe. The request should include the reasons for the extension (referring to this procedure for guidance).

## Agreement by applicant

It is not enough for QBCC to decide to extend the legislated timeframe for making a review decision – the applicant must also agree to the extension **before** the statutory period expires. In requesting agreement for an extension, the case officer should provide the applicant with:

- an estimated date of completion
- an explicit request for agreement to the extension
- the deeming provisions of the legislation.

If the review applicant's acceptance or non-acceptance of an extension is obtained verbally, the case officer should also confirm in writing (by email, preferably).

The legislation does not allow for the affected party does to have the ability to influence or prevent this extension agreement from occurring between the QBCC and the applicant.

## Deemed decisions

Section 86C(3) states:



if the internal reviewer does not decide the application within the required period, the internal reviewer is taken to have made an internal review decision at the end of the required period that is the same as the reviewable decision. [referred to as a “deemed decision”]

There should be no “decision to deem” a matter. That is, a case officer should not obtain a file and decide to take no action and “deem” it. The deeming of a decision is merely a consequence of being unable to complete a review within the required period.

If a matter cannot be finalised in 28 days and does not raise sufficient justification for an extension request to the approving officer, or an extension request is denied by the approving officer, or not agreed by an applicant, the case officer and approving officer will explore options for finalising the matter in time (if any). The result of these considerations may be that the matter (or part of the matter) is not finalised within the required period, resulting in a deemed decision.

If the case is considered a high priority (for example, serious health and safety risks are involved) and has been extended but the matter is unlikely to be finalised with a further 28 day extension (the recommended longest extension timeframe), a risk assessment should be undertaken prior to the expiry of the required period and the Executive Director Integrity and Review consulted with regards to how to proceed. See also Prioritisation Procedure.

## System input

The extended due date must be updated on Salesforce. Ensure the ‘reason for extension’ field provides brief but sufficient detail for why the extension was required.

If a deemed decision occurs, it is categorised as an “upheld” outcome but “deemed decision” should be selected in the review decision reasons drop down list.

## Opening and closure process

### To open:

Follow process in Administration Procedures regarding SF case creation, email folder creation and acknowledgement process	Admin Officer
Create ECM subfolder for IR case file – See <a href="#">ECM Procedure</a>	Admin Officer
Drag email from un-allocated cases to drop folder in case officer's IRU open case folders	Case officer
Make up Trevor IRU Team Folders folder	Case officer
Save draft assessment document in team folder	Case officer
Email if necessary to confirm what is being reviewed	Case officer
Implement a process for monitoring due dates	Case officer

### To close:

Change case status to “decision and action”	Case officer
Call parties if necessary: give brief overview of decision and offer contact details if they want to call back after reading the decision	Case officer
In your team folder - Move current review folder to completed review folder	Case officer
Complete Decision in Salesforce and save.	Case officer
Change decision status to complete and save.	Case officer
Ensure all remaining documents are saved to ECM	Case officer
Enter direction items into Salesforce if necessary	Case officer
Email completed decision notice to Admin officer. Email must (using the template table): <ul style="list-style-type: none"><li>state whether decision is overturned, varied or upheld</li><li>Note any action that the ODM will need to take – e.g. issue new DTR</li><li>attach decision notice and any other documents which need to be sent to the parties</li></ul>	Case officer
Email copy of decision notice to ODM and their immediate supervisor and manager (include closure table)	Admin Officer



Draft cover letters (with case officer's contact details at the top of the letter), sign 'for' decision-maker, scan signed copy and post cover letters and decision notices	Admin Officer
Email parties a copy of decision correspondence (include case officer's contact number in the email if not already in decision notice)	Admin Officer
Save all communication and letters to ECM	Admin Officer
Check that review officer has changed status to 'Decision and Action' (if not done, please change status)	Admin Officer
Hit 'Close Case' and complete checklist	Admin Officer

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## Out of Time Applications Procedure

### SCOPE

Review applicants have a right to internal review within 28 days from “being given notice of or otherwise becoming aware of” the original decision. After this time, the right expires it is at the discretion of the Commission whether to except the application out of time.

Specifically, under section 86A(a)(ii) of the *Queensland Building and Construction Commission Act 1991* (QBCC Act), an internal review application may be made after 28 days if allowed by the delegated decision maker, whether **before or after** the end of the 28 day period.

### PURPOSE

This procedure will provide guidance for:

- calculating timeframes to determine when the application is within or out of time;
- assessing whether to accept an applicant's requests for an extension of time to make an application before the 28 days expires i.e. extensions for lodgment (completed by Manager or with Manager approval);
- assessing whether to accept an application made after the 28 days (where there was no approval of a request prior to expiry) i.e. an out of time application.

### TERMINOLOGY

In this document:

Reference to “case officer” is a reference to officers with a case load, conducting reviews including Review Officers, Senior Review Officers or Principal Review Officers.

References to “Manager” is a reference to the Manager Internal Review.

### Calculating days

*Note, the way in which the application period is calculated is the similar to calculating when the review period expires except that ‘day 0’ arises when an application is “lodged with the Commission”.*

### Giving notice or otherwise becoming aware (“day 0”)

The timeframe starts from when “notice is given or the applicant otherwise becomes aware” of the original decision.

These terms are taken to mean:

- “notice” – usually this refers to the written decision notice therefore the date of the letter may be used as guidance/starting point but postage may need to be considered;

- “otherwise becomes aware” – may be other forms of written description of the decision (e.g. email describing/explaining the decision) or anything else, for example a phone call from the decision-maker describing the decision

It can be accepted that the date on which a person is “*given notice*” is the date the information is served to them. Service is generally considered to occur on delivery of the documentation. “Otherwise becomes aware” should be interpreted along the same lines, being the date of delivery of the information, by phone or email etc.

Below is some guidance on when information is taken to have been delivered, based on the type of communication:

Communication	Given notice	Otherwise becomes aware
Decision letter sent by mail i.e. (properly addressed, prepaid and posted)	Service is taken to have been effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved*	N/A
Decision letter emailed	The time of receipt of the electronic communication is the time the electronic communication becomes capable of being retrieved by the addressee at an electronic address designated by the addressee**	N/A
Decision discussed by email	N/A	The date the email is received**
Decision discussed by phone	N/A	The date the filenote is dated or an alternative reference date in the filenote (e.g. because the filenote was not created on the same date as the conversation)

\**Acts Interpretation Act 1954*, s. 39A(1)(b). Note Australia Post provides a Postal Calculator online to provide guidance for “ordinary course of post”.

\*\*NB The electronic communication must be capable of being retrieved by the addressee when it reaches the addressee’s electronic address – e.g. if there is a bounce back of the email, it is not capable of being retrieved by the person who was sent the email, and this cannot be taken to be the date of receipt.

The earliest communication is taken to be the relevant communication. For example, a decision is:

- posted and emailed – refer to the email date
- posted and phone call describing the decision (as filenoted) – day of call
- emailed and phone call – whichever came first

## When is day 1?

Once you've identified the date on which the applicant was "given notice or otherwise becomes aware" of the decision, this date is "DAY 0" **not** day 1.

The legislation uses the words "after" being given notice or otherwise becoming aware of the decision (s.86B). Therefore, day 1 starts the next day from when the notice/awareness began.<sup>1</sup>

Note, if day 1 falls on a weekend or public holiday, it still counts!

## When is day 28

The legislation deals with calendar days, not business days, therefore public holidays and weekends are counted in the 28 day period. Therefore, the application can come at 11:59pm on the 28<sup>th</sup> day and still be within the 28 day timeframe.

*Example - The applicant receives notice of the original decision by email on Friday 15 December, and by post on Tuesday 19 December - the 28 days for lodging an application with the Commission starts on Saturday 16 December. Therefore, they have until midnight on 12 January (the end of the 28<sup>th</sup> day) to lodge an application for internal review.*

However, if the 28<sup>th</sup> day falls on a weekend or public holiday, it is taken to be the following business day.<sup>2</sup> Therefore, if in the above example 12 January was a Saturday, the applicant would have until the end of Monday 14 January (the next non-weekend/ non-public holiday day) to make an application.

## Extensions for lodgment

The following relates to requests for extension to provide a late application where the request is made **before** the expiry of the 28 day period for making the application.

QBCC staff who receive requests from customers requesting an extension of time to lodge an internal review application outside of the 28 day period should take the following steps:

1. Create a General Enquiry case on Salesforce;
2. Allocate the General Enquiry to the Manager for consideration.

The Manager will consider the following factors, as relevant:

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<sup>1</sup> s.38(1) *Acts Interpretation Act 1954* (AIA).

<sup>2</sup> s. 38(2), AIA

To help guide IRU in exercising this discretion, I suggest the principles below should be applied. These are the same principles considered by Australian tribunals in conducting merits reviews (see *Hunter Valley Developments Pty Ltd v The Honourable Barry Cowan, Minister for Home Affairs and Environment* 3 FCR 344; *Gallagher v Queensland Building Services Authority* [2010] QCAT 383.).

The factors to consider in exercising an extension of time discretion are:

1. whether a reasonable explanation for delay has been provided;
2. whether granting an extension would be fair and reasonable;
3. any prejudice suffered by QBCC or others by reason of the delay;
4. the merits of the review application.

All types of reviewable decisions are equally eligible for an IRU extension of time.

Not all factors may be considered nor do they hold the same weight. The factors are considered on a case by case basis.

Generally extensions will not be granted in circumstances including (but not limited to) the following:

- the timeframe for application are not definitive (for example, an unacceptable timeframe is – “an extension until 2 weeks after I get my legal advice”);
- the review applicant is seeking an extension in order to decide *whether* to make a review application;
- the reason for delay outlines circumstances that could have reasonably occurred/ been resolved within the 28 days from when the decision was made but for the review applicant’s lack of diligence;
- the reason has no relevance to the delay;
- the applicant is awaiting the outcome of a Right to Information application, where the majority of the information sought has no bearing on the decision or the applicant has requested an unreasonable amount of documentation;
- no reason is provided.

Evidence may be sought to support any statements that exceptional circumstances have arisen (e.g. medical certificate where the person indicates they had been ill). The evidence should then be assessed to determine whether to provide an extension and the length of the extension.

If there are no exceptional circumstances or adequate justification for the delay, the potential applicant should be advised that they may still seek to make an application out of time once they are ready to do so. The application may be accepted on its merits, weighing up all factors. See below for guidance on accepting out of time applications.

Once the Manager has made a decision, the reasons for the granting or not granting of the extension request should be communicated to the customer and recorded in the General Enquiry case (either in comments or by attaching the relevant email sent to the customer). The extension date should be recorded on the General Enquiry (if the extension is granted) and the General Enquiry reference number provided to the potential applicant for future reference.

## Out of time applications - exercising discretion

The following relates to situations where an application is made after the 28 day application period, or after the extended timeframe approved by the Manager (where relevant). The case officer can make this decision to accept an application made out of time, without manager approval.

### Reasons for delay

As with extensions for lodgment of an application, the factors to consider in exercising discretion to accept an out of time application include:

1. the length of the delay;
2. whether a reasonable explanation for delay has been provided;
3. whether granting an extension would be fair and reasonable;
4. any prejudice suffered by QBCC or others if the application was accepted out of time;
5. including whether the reasons were directly relevant to the delay and out of the review applicant's control;
6. the merits of the review application, including whether it is "in the interest of justice" to review the matter.<sup>3</sup>

Not all factors may be considered nor do they hold the same weight. The factors are considered on a case by case basis.

Generally applications will not be accepted out of time in circumstances including (but not limited to) the following:

- the reason for delay outlines circumstances that could have reasonably occurred/ been resolved within the 28 days from when the decision was made but for the review applicant's lack of diligence;
- the reason has no relevance to the delay;
- the applicant waited for the outcome of a Right to Information application, where the majority of the information sought has no bearing on the decision or the applicant has requested an unreasonable amount of documentation;
- no reason is provided.

Reasons for accepting or declining an out of time application should be recorded on Salesforce file and communicated to the applicant.

If accepted, the case is reviewed and decided. If not accepted out of time, the case is closed in Salesforce case management system as "decision not reviewable" with subcategory "out of time".

### Why do we require reasons for delay?

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<sup>3</sup> *Pantha Homes Qld Pty Ltd v Queensland Building and Construction Commission* [2017] QCAT 456, at [31]

In QCAT, Member Howe found, when considering an application for an extension of time to commence a QCAT review proceeding, said:

It has been said that it is the prima facie rule that proceedings commenced outside the prescribed period will not be entertained. Further it has also been said that it is a precondition on the exercise of discretion in the applicant's favour that the applicant for extension show an acceptable explanation of the delay.<sup>4</sup>

Similarly, the Court found that:

An applicant concerned to challenge a decision which has implications for other public or for day to day public administration may properly be regarded as being under a heavier duty to act expeditiously than is an applicant who is aware that his case has no such implications.<sup>5</sup>

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<sup>4</sup> *Cardillo v Queensland Building Services Authority* [2011] QCAT 574, at [33].

<sup>5</sup> *Hunter Valley Developments Pty Ltd v The Honourable Barry Cohen, Minister for Home Affairs* (1984) 3 FCR 344, at [352].



## PRIORITISATION PROCEDURE

### SCOPE

Unlike other areas of the organisation, the legislation provides a particular timeframe in which most reviews are to be completed – 28 calendar days.

This Procedure provides guidance for what matters may be categorised as high, medium or low priority in order to allocate the limited review resources (particularly in relation to expert advice such as technical or legal) to the highest priority files. This is not a risk matrix, although risk is a relevant factor to prioritisation.

### TERMINOLOGY

In this document:

Reference to “case officer” is a reference to officers with a case load, conducting reviews including Review Officers, Senior Review Officers or Principal Review Officers.

Reference to a “technical officer” is a reference to Principal Technical Officers and the Building Inspector IRU.

References to “Manager” is a reference to the Manager Internal Review.

### PURPOSE

The intention of this procedure is to provide **guidelines and principles** for how the internal review resources should be focused **only**. Variations may arise from case by case considerations.

The procedure should minimise risk in “deeming” high priority matters. A deemed decision is a consequence of not completing a review within a required period (being 28 days or an extended date), whereby under s86(3) of the *Queensland Building and Construction Commission Act 1991*, a review decision is taken to be the same as the reviewable decision.

In most cases, the case officer should aim to follow the principles and intentions of the legislation, being:

1. timely decision making within 28 calendar days in the majority of cases;
2. one extension of no more than 28 calendar days, where appropriate in certain and limited circumstances\*;
3. deeming decisions where it is not possible to finalise a review within 28 calendar days and not appropriate to request an extension or a further extension (if one is sought)\*.

\*Refer to Extension of Time Procedure

## PROCESS

### Section 1: Review application prioritisation

To prioritise, consider the level of impact the decision has on the lives and livelihood of the parties affected by the original decision, health and safety and the statutory timeframes involved (if any) for making a decision.

Case officers should **not** automatically work through their cases sequentially (i.e. oldest to newest case). Instead, case officers should work on cases in order of priority.

**Prioritisation may shift** throughout a review process as new information comes to light or as uncovered during investigation.

#### 1.1 Prioritising applications – initial assessment process

Generally, allocation to case officer should occur as soon as possible upon receipt of application and an assessment should be undertaken by the case officer within 7 calendar days of receipt of application by the commission, wherever possible. The case officer is to record the priority level and assessment of priority within the Assessment Document.

During the assessment phase of the review, information is still being gathered to determine the scope of the review and the direction that needs to be taken. Therefore this is a preliminary assessment of priority based on the available information.

Prioritisation may include considerations such as where, on the face of the matter:

- it appears to raise high risk issues including genuine concerns of health and safety by an affected party, the original building inspector, and or from expert advice; and
- eminent expiry of statutory timeframes, particularly the ability to issue a direction to rectify within 6 years and 6 months of the completion of the building work\*.

#### 1.2 Managing caseload – investigation process

During the investigation phase of the review, more information from the applicant (and perhaps affected party) may be provided and time will be needed to give consideration to material. Therefore, further considerations may be given to prioritisation in determining how to proceed, as the case progresses.

***For example, where you will need an expert to go to site, this matter may need to be prioritised over other cases for a short time, in order to make these arrangements without delay.***

Depending on the above, if the matter warrants review and has a technical component, further prioritisation considerations are to be considered in section 2 below.

## Section 2: Procedure for prioritising technical advice requests

One of the more time consuming processes that occurs in a review is obtaining technical advice from the limited technical resources in the team. Therefore, prioritisation should occur when deciding whether to request technical advice and by the technical officer advice in addressing technical advice requests.

Technical advice requests should be made in accordance with the Technical Request Procedure.

### 2.1 Consider all issues other than technical

Although most matters will have a technical aspect, not all matters require technical advice.

#### 2.1.1 DTR reviews

Before seeking technical advice for decisions about whether or not to issue a direction to rectify, consider non-technical arguments which do not require advice including, for example:

- ✓ Can a decision be made based on other s.72 factors – e.g. the work is not “building work”, it is unfair to direct the builder and/or defective work is not the responsibility of the builder?
- ✓ Has the applicant made sufficient submissions to warrant full investigation? For example, provides no reasonable evidence that would effectively challenge the original building inspector’s technical opinion (e.g. an expert report with a contrary or conflicting technical opinion)?

The above is not an exhaustive list of questions/considerations and other situations may arise on a case by case basis which may influence whether a case officer should seek technical advice.

#### 2.1.2 Satisfactory rectification under a DTR and insurance Scope of Works reviews

Before seeking technical advice for decisions about whether “building work at the direction of the commission is of a satisfactory standard”, consider non-technical arguments which do not require advice including, for example:

- ✓ the builder never returned to site after being issued a direction to rectify (regardless of the reasons given) – no work “undertaken” therefore not reviewable;
- ✓ the builder has undertaken some works but argues that he was not provided an extension on the direction to finish the works and/or where the builder argues that he was not afforded adequate access by the owner – if work remains only partly rectified it is not satisfactory;
- ✓ the builder argues the work was not defective/ he was not responsible for the defective work/ not fair that direction was issued – this is about a different reviewable decision (the decision to issue a direction to rectify) which the builder had the opportunity to review.

The above is not an exhaustive list of questions/considerations and other situations may arise on a case by case basis which may influence whether a case officer should seek technical advice.

For a decision “about the scope of works” under the statutory insurance scheme to rectify or complete tribunal work, consider non-technical arguments which do not require advice including, for example:

- ✓ where the builder is disputing responsibility for the defective works (which is a different reviewable decision – decision to issue a direction to rectify) which the builder had the opportunity to review.
- ✓ where the builder feels the quotes are excessive in cost rather than raising issues with the specific methodology outlined for rectification being excessive.

The above is not an exhaustive list of questions/considerations and other situations may arise on a case by case basis which may influence whether a case officer should seek technical advice.

## 2.2 Prioritising technical advice requests

If the case officer cannot make a determination without technical advice, an assessment may be made with regards to the category of priority for the technical advice request. The following prioritisation for technical advice requests in Tables 3, 4 and 5 provides guidance for how matters may be prioritised in consideration of the subject matter. NB Priority categorisation of technical advice requests is ordinarily only used in times of highly constrained technical resourcing.

The assigned prioritisation of the technical advice should be considered by the technical officer in identifying the order in which the matters should be dealt with. However, other relevant considerations the technical officer may include in considering priority includes whether a site inspection is required, whether external experts need to be organised to provide advice and whether any other time consuming investigation procedures are needed, requiring the matter be prioritised.

**Table 3: DTR reviews**

Circumstance/Application*	Priority
All complaint items under review were originally categorised as non-structural defective complaint items	Low
All complaint items under review were originally categorised as no defect or not building work or 'contractual' findings	Low
All complaint items under review were originally categorised as structural defects	High
Some complaint items under review non-structural/ no defect/ not building work/contractual and some structural defective complaint items	Medium
Any categorisation of the complaint item where <b>all</b> items relate a structure that is not a dwelling (e.g. carport, garage, shed, retaining wall) and it does not significantly impact on the main dwelling	Low

The items have been referred for insurance assessment and a contract for rectification has not yet been entered into**	<b>High</b>
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\*generally the case officer is to rely on the original categorisation even if the categorisation is what is under review. This is usually our best technical evidence at the time. However, this can be considered on a case by case basis where, on its face (and without tech advice) it appears that there is technical evidence to the contrary (as opposed to mere assertions) or where evidence of a technical nature might prove otherwise (e.g. applicant provides an independent technical report).

\*\* A direction to rectify cannot be issued if a contract has been entered into with a rectifying builder to rectify the defects under the Statutory Insurance Scheme (i.e. unfair to direct), or if the builder has returned to site and rectified the defect (i.e. no defect).

Technical advice for decisions regarding satisfactory rectification at the direction of the commission are to be prioritised in Table 4 in the following circumstances:

**Table 4: Satisfactory/unsatisfactory rectification (at the direction of the Commission)**

<b>Circumstance/Application*</b>	<b>Priority</b>
About structural defects	<b>High</b>
About non-structural/ no defect/ not building work/contractual and some structural defective direction items	<b>Medium</b>
Any categorization of the direction items where <b>all</b> items relate a structure that is not a dwelling (e.g. carport, garage, shed, retaining wall) and it does not significantly impact on the main dwelling	<b>Low</b>
The items have been referred for insurance assessment and a contract for rectification has not yet been entered into*	<b>High</b>

\* To ensure proper use of the Insurance Fund and a fair outcome to the parties, it is important to finish a review about scope of works prior to a contract being entered into, if possible.

**Table 5: Scope of Works (Statutory Insurance Scheme)**

<b>Circumstance/Application</b>	<b>Priority</b>
Scope of works where the contract has already been entered into for rectification (i.e. applicant = builder)*	<b>Low</b>
Scope of works where a contract has not been entered into with rectifying builder**	<b>High</b>

\*Once a contract is entered into with a rectifying builder, the cost to QBCC and the builder is set and there is no way in which to change it. It is then down to debt recovery as to how much should be recovered from the builder.

\*\* To ensure proper use of the Insurance Fund and a fair outcome to the parties, it is important to finish a review about scope of works prior to a contract being entered into, if possible.

The above tables are not exhaustive and provide **guidance only**. Judgment should be exercised as to how to categorise priority in the circumstances of the individual case, which may raise different or other priority considerations.

## Section 2.3 – Technical advice request

Technical advice requests are to be made using the Assessment Document and in accordance with the process and timeframes outlined in the Technical Request Procedure.

RELEASED UNDER RTI

## PROCEDURAL FAIRNESS PROCEDURE

### SCOPE

This Procedure provides guidance for how to exercise procedural fairness within the constrained timeframes of the internal review process.

### TERMINOLOGY

In this document:

Reference to “case officer” is a reference to officers with a case load, conducting reviews including Review Officers, Senior Review Officers and Principal Review Officers.

Reference to a “technical officer” is a reference to Principal Technical Officers.

References to “Manager” is a reference to the Manager Internal Review.

### PURPOSE

Under section 86A, a person who is given, or is entitled to be given, notice of a reviewable decision (an affected party) may apply to have the decision reviewed. Affected parties may be an individual or individuals, a company, body corporate or other business structure.

These parties are also entitled to procedural fairness. The intention of this procedure is to provide **guidance** for how case officers can ensure that they are exercising the principles of procedural fairness.

### What is procedural fairness

Put in practical terms, ensuring that all affected parties have knowledge of all relevant information upon which you are relying to make your decision, allowing them to respond / make submissions about that information and making a decision that holds “no surprises”.

In *Kioa v West* (1985) 159 CLR 550 at 583-5, Mason J described procedural fairness as a duty to act fairly and adopt fair procedures which are appropriate and adaptable to the circumstances of the particular case and in light of the legislative requirements:

And it has been recognized that in the context of administrative decision-making it is more appropriate to speak of a **duty to act fairly** or to accord procedural fairness [rather than natural justice]. In this respect the expression “procedural fairness” more aptly conveys the notion of a flexible obligation to **adopt fair procedures which are appropriate and adapted to the circumstances of the particular case**. The statutory power must be exercised fairly, i.e., in



accordance with procedures that are fair to the individual considered **in the light of the statutory requirements**, the interests of the individual and the interests and purposes, whether public or private, which the statute seeks to advance or protect or permits to be taken into account as legitimate considerations: cf. *Salemi* [No.2], per Jacobs J. (Citation omitted)

## How can you exercise procedural fairness

In light of the limited time that the case officer has to conduct a review under legislation, it is important to exercise procedural fairness that is adaptable to the particular case.

Generally, procedural fairness can be achieved in many ways, including one or more of the following:

- ✓ Ensure all affected parties<sup>1</sup> (who are not the applicant for the review) are aware of the review (often this is done by the acknowledgment email).
- ✓ Ensure that relevant affected parties are aware of the subject matter and any *relevant* grounds or arguments made in the application – you can do so by providing a copy of the internal review application to the affected parties. If you are concerned that providing a copy of the application will disclose irrelevant and/or confidential information, you could summarise the relevant grounds / arguments included in the application and provide that to the affected parties.
- ✓ Ensure that all affected parties (including the applicant) have been provided with:
  - any technical reports produced internally or commissioned by QBCC from a third party if the report was relied on to make the original decision– if not already provided. An RTI/ IP application is not required (see IPP 11)
  - any technical reports or information provided to QBCC to any other affected parties for their consideration and response, if you are seeking/ have been asked to rely on that information to make your decision (see IPP 11)
  - any reports commissioned during the internal review process with the review decision notice
  - NB **do not** share legal advice – this is protected under “legal privilege” and only certain delegates can consent to waive privilege.
- ✓ Invite all parties to a site inspection (if a site inspection is required).
- ✓ Where there is a “he said” “she said” scenario and the information is relevant to making your decision – share what each party said/alleges to the other party (whether by disclosing the actual document in which the allegation arises, or by summarising the allegations yourself).
- ✓ If you have questions of your own about a matter relevant to your decision, put these questions to the relevant party or parties. You may need to ask the same questions to both parties, but this might not always be necessary or appropriate.

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<sup>1</sup> There may not be an affected party – e.g. licence decision. There may only be one affected party (e.g. builder in a defective work review brought by an owner).

- ✓ Allow all affected parties to respond to your preliminary “findings” before making your final decision, to allow a final opportunity for any relevant information to be provided (nb this need not be a formally drafted preliminary decision). Ensure that you communicate this in a way that the parties are aware that you have not formed an intractable view.

The above list not an exhaustive list and provides **guidance only**. Judgment should be exercised as to how procedural fairness may be provided in the circumstances of the individual case, which may raise different or other avenues for procedural fairness.

## What do you do with these responses

It is not enough to merely give parties information – you must also allow sufficient time for response. Sufficient time needs to be balanced between how fresh the information is, how complex the information/ matter is and how much time is left in the internal review period. Where warranted, you may need to obtain an extension of time to allow sufficient time for response – see the Extension of Time Procedure.

You must also appropriately assess the response/s, if any, and consider whether it assists you to form your decision or changes any preliminary views you have reached.

## Communicate your decision

In your review decision notice, be sure to explain to a reasonable extent any consideration you have given to the information and submissions obtained from the parties and any third party/ QBCC reports, and how these considerations led to your decisions.

Your assessment of the information/ submissions and reports should also be outlined in your assessment document. The assessment document is also a place to provide more detailed considerations about what you considered *irrelevant*; this may not be necessary in the review notice itself but should be available should there be an external review or further complaints (e.g. Ministerials, Ombudsman).

## Section 23 Reconsideration Procedure

### PURPOSE

This document outlines how the IRU will deal with matters where, as part of external review proceedings in the Queensland Civil and Administrative Tribunal (QCAT), QCAT invites the QBCC to reconsider its decision under s.23 of the *Queensland Civil and Administrative Tribunal 2009* (QCAT Act).

### TERMINOLOGY

In this document:

Reference to “Section 23 decision maker” is a reference to decision maker delegated to make section 23 decisions. Currently Principal Review Officers, Principal Technical Officers, Manager IRU and the Executive Director Integrity and Review.

Reference to a “technical officer” is a reference to Principal Technical Officers and Building Inspector IRU. The below relates to circumstances where they are providing technical advice through a site inspection report or desktop report rather than informal advice via discussion with the IR decision maker.

Reference to “legal officer” is generally a reference to a legal officer of the QBCC Legal Services team. However, from time to time, a matter is outsourced to an external legal officer. The procedure applies in both situations, unless explicitly indicated otherwise.

Reference to “original decision maker” is a reference to the delegated decision maker whose decision was reviewed by the internal review (IR) decision maker.

### Section 23 decision maker

Under section 17(2) of the QCAT Act, the decision maker for the purposes of a QCAT proceeding is the entity that made the reviewable decision, that is, the QBCC. Therefore, the “decision maker” must first have delegation to make section 23 decisions under the delegation power of the QBCC Act (i.e section 115A of the QBCC Act).

Section 115A(2) requires delegation be given to “appropriately qualified” officers, which includes having the qualifications, experience or standing appropriate to perform the function or exercise the power.

For reconsidered decision, the “appropriately qualified” officer is generally either:

- the person who made the decision that is now being reviewed in QCAT;
- the person’s manager/supervisor or senior officer in the team; or

- a person in a separate team who has the skills and experience to make the reconsidered decision.

## How do s.23 reconsiderations arise?

Often an invitation to make a reconsidered decision arises during a compulsory conference (CoCo) when new information is raised or an issue appears to have been missed which could, on further consideration, change the QBCC's decision. In such cases, QBCC should request an opportunity to reconsider the decision in light of the new/missed information. Alternatively, the Tribunal member may invite the QBCC to reconsider without request.

If the person at the CoCo is not the section 23 decision maker, they may still request or accept an invitation to reconsider a decision.

## Making the reconsidered decision

The reconsidered decision is essentially made in the same way as the review decision but with a few slight differences, outlined below.

### Timeframes

A decision should be made within 28 calendar days of being "invited" by QCAT to make the reconsideration – starting from the day after the directions are given to QBCC. However, if the section 23 decision maker believes they are unable to make the reconsideration in time, they may consult with the relevant legal officer about seeking further time from QCAT through section 61 of the QCAT Act (relief from procedural requirements).

### Procedural fairness

Many QCAT matters are conducted with only the applicant (to QCAT) involved and therefore the affected party to the QCAT matter may be unaware of the QCAT review.

When providing a reconsidered decision, in the interests of natural justice and procedural fairness, section 23 decision maker should advise the affected party that they are reconsidering the decision through a QCAT review process and provide the affected party with any new information obtained through the QCAT process (which is relevant to the reconsidered decision) as well request any further information or clarification necessary to make the reconsidered decision.

If the affected party provides new information or has provided information that requires a response from the applicant, section 23 decision maker will need to then provide the applicant with the relevant information and an opportunity to respond.

As always, the s.23 decision maker should provide the party/parties an adequate opportunity to respond and consider the information provided (if any) before making the reconsidered decision. See Procedural Fairness Procedure for further guidance.

## Consultation

If the reconsideration is being made by the same person who made the internal review decision, they must consult with the legal officer about the correct or preferable decision that should be made on reconsideration to obtain advice. If agreement cannot be reached between the delegated decision-maker and the legal officer, the officers should escalate to the Manager IRU (as another delegated decision-maker). If agreement still cannot be reached, the matter can be escalated to the Executive Director Integrity and Review and the Chief Legal Officer for final determination.

## Decision outcome

Unlike the internal review decision where the decision maker is tasked to make a 'new decision', the decision making powers for a reconsidered decision is different. The power falls under the QCAT Act whereby the section 23 decision maker may either confirm, amend or set aside and substitute the internal review decision.

In the reconsidered decision, the section 23 decision maker should communicate their decision as on of the following:

- **Confirm:** A decision should be described as being "confirmed" where the decision maker, on reconsideration, forms the same view as the internal review decision for the same reasons.
- **Amend:** A decision should be described as being amended where the section 23 decision maker forms a similar view as the internal review decision and which has essentially the same effect as the internal review decision but with a change to the items or the reasons (or both). For example, a decision to issue a direction to rectify is amended to issuing a direction to remedy consequential damage; or where an item is removed or added from a scope of works under the Statutory Insurance Scheme.
- **Set aside and substitute:** A decision should be set aside and substituted where it's completely different to the decision that is under QCAT review and QBCC needs to give effect to the new decision. For example, if on reconsideration QBCC will grant a licence rather than refuse the licence application.

## Reasons

All decisions should have sufficient reasons to explain the decision. However, where the section 23 decision maker is simply confirming the internal review decision, it may be appropriate to also confirm the reasons in

the internal review decision notice rather than explaining it all again (and attach the internal review decision notice to the reconsideration for ease of reference). However, the section 23 decision maker should explain **why** they have decided to confirm the decision, including an assessment of any new information / submissions provided during the process.

Similarly, if the decision is to amend the internal review decision, the section 23 decision maker may want to rely on any portion of the internal review decision notice which is remaining the same (but should be explicit, if that is the case) and only focus on the variation. To do this, the s.23 decision maker should be clear about what is the same is and what is different, attach the internal review decision notice and explain **why** there is this variation.

If the section 23 decision maker is setting aside and substituting the decision, it may be appropriate to refer to the internal review decision only so far as it outlines any background or findings of fact to avoid repetition.

If in doubt, or to avoid confusion, the s.23 decision maker may choose to copy and paste the relevant sections of the internal review decision notice into the reconsideration decision instead.

## Review rights

Unlike section 86C of the *Queensland Building and Construction Commission Act 1991* (QBCC Act) where QBCC must advise parties of their QCAT review rights and how to apply for a QCAT review, there is no such requirement to communicate to the parties their review rights under s.23 of the QCAT Act.

However, to assist the Tribunal, the reconsidered decision template reflects s.23(4) of the QCAT Act, which states:

- the QCAT review must continue for the reviewable decision (i.e. the reconsidered decision) unless the applicant for the QCAT review withdraws the application for review; and
- if a person other than the applicant (i.e an affected party) applies to the Tribunal to review the reviewable decision—the Tribunal may hear and decide each application for the review of the reviewable decision.

## Sending a reconsidered decision

The reconsidered decision should be sent with a cover letter created by the Administration Officer, and sent in the same manner as the review decision, by mail and email. It should be sent to:

- Applicant (in this case, the QCAT applicant)
- Affected party (if any)
- The original decision maker etc (same group as obtains internal review decision) – include any actions to be taken to update the relevant systems or send out documents (only if setting aside and making a new decision – and if requires such actions)

It should also be sent to:

- QBCC Legal Services (for filing)

## Recording the decision on Salesforce

The QCAT section of the 'decision' object in Salesforce includes a section to record whether a section 23 decision (reconsidered decision) has been made and the outcome of that decision. These are categorised in the words we use when describing IR decisions internally:

- If confirmed - choose "upheld" from the drop down list
- If amended - choose "varied" from the drop down list
- If set aside and substituted - choose "overturned" from the drop down list.

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# Technical Request Procedure

## Scope

This document outlines the process for requesting technical advice from internal technical staff in the Internal Review Unit (IRU). It is not about procuring external technical advice.

## Terminology

Reference to “case officer” is a reference to officers with a case load, conducting reviews including Review Officers, Senior Review Officers or Principal Review Officers.

Reference to a “technical officer” is a reference to Principal Technical Officers or Building Inspector IRU. The below relates to circumstances where they are providing technical advice through a site inspection report or desktop report rather than informal advice via discussion with the case officer.

References to “Manager” is a reference to the Manager Internal Review.

Reference to allocating officer is a reference to the relevant Principal Review Officer who has the role of approving and allocating technical advice requests.

Reference Admin Officer is a reference to the Administration Officer/s assisting IRU.

## Process

1. If the matter **cannot** be decided without technical advice, the case officers are to assess matters in accordance with Prioritisation Procedure.
2. Case officer to complete a basic assessment in the main body of the Assessment Document and the portion of the Assessment Document entitled “Technical Advice Request Form”:
3. Case officer to ensure:
  - Links or attachments to **specific** documents are provided for the information of the allocating officer and technical officer.
  - Fill in table in Assessment Document (per screenshot below) with the items that are under review

Item number (complaint item/DTR item/SOW item per above)	Original decision (e.g. non-structural; not satisfactory; SOW item)	Specific queries by applicant or review officer (attach/link any relevant docs not already attached above)

□

- The technical officers **must not** vary from that list without consulting the case officer first e.g. where it becomes apparent that an item may have accidentally been left off the list by case officer.
4. Wherever possible, request is sent from case officer to allocating officer within **7 calendar days** of application date via a task in Salesforce including:
    - The subject line – “Technical advice request”
    - Set due date for technical advice to be provided
    - Link or attach the Assessment Document
    - Write in the current case due date
  5. The allocating officer will assess the request and may either allocate to technical officer or discuss with case officer regarding other options (e.g. whether technical advice is required to make the decision, whether external or alternative technical advice can be sought).
  6. Various factors will be considered in deciding which technical officer will be allocated the matter, including (but not limited to):
    - in accordance with geographical locations for SEQ (or availability for travel for regional matters)
    - whether the technical officer has already dealt with a previous reviewable decision in the matter
    - (if relevant) specific expertise or experience of the technical officer (e.g. with subsidence matter)
    - workload of the technical officer (including other tech requests and QCAT matters)
  7. The allocating officer will allocate to technical officer **via Salesforce task within 1-2 business days**. The task will set out:
    - the “priority” of the case according to the Prioritisation Procedure (e.g. if it is about one/all structural defects or where the statutory period is about to expire it is high priority, a mixture of non-structural and structural may be medium); and
    - the due date for advice to case officer (based on KPIs below).

Task fields should be filled out as follows:

\* Assigned to: [Allocating officer’s name]

\* Type: Internal advice/discussion

\* Subject: Tech Advice required\* – [DTR/FTR/SOW] – [Site address]

\* Actual due date (i.e. date tech advice should be finalised) – ordinarily 7 calendar days before review is due

\* Status – Not started (Manager to change status to “in progress” once received/allocated)

\* Priority – Normal

\* Comments – Link / attached Assessment Doc (nb Assessment document template will include section to fill out for technical requests).

\* Reminder – should be set for 1 business day before actual due date (per above)

8. The technical officer should review the file and have a preliminary discussion with the case officer within **1-2 business day** of receiving the task and advise the case officer if a site inspection is required. If a site inspection is required, the technical officer with advise:

- the available date/s for inspection
- any experts required to be procured and the estimated cost for those experts\*

\*NB Technical officer should indicate why a desktop review will be insufficient, for example no site inspection at original decision stage, a change in circumstances reported in the internal review application or response etc.

9. The case officer is to:

- make the site inspection arrangements with applicant and affected parties within **1 business day** of receipt information\*\*
- send any purchase order for Manager's approval (for external technical, if required)\*
- send travel approval requests to Manager for any regional site inspections (if required)\*
- once approved, arrange for 'expert' attendees and travel
- consider if extension of time is required – follow approval procedure (Extension of Time Procedure)

\*\*for expediency, it is likely to be better to arrange a "preliminary" time with the parties before, or while awaiting necessary approvals for experts and travel. This can be confirmed after all relevant approvals are obtained

10. Manager to respond to purchase orders within **1 business days** of receipt.

11. Technical officer will provide advice to case officer at least **7 calendar days** of due date. Technical officer will update case officer before this time if there is a delay in meeting this KPI.

- consider if extension of time is required (for example if the technical officer makes a new finding that requires response by the parties for procedural fairness – follow approval procedure (Extension of Time Procedure)

#### Templates

- template requests for site inspections and confirmation of site inspections – Templates folder
- IR site inspection and re-inspection reports.