



What happens if there is a dispute?

A guide to resolving workers' compensation disputes in WA



WorkCover WA's Conciliation and Arbitration Services provide an independent and transparent system for the fair, timely and cost-effective resolution of workers' compensation disputes in Western Australia.

The vast majority of workers' compensation claims progress to the satisfaction of all parties involved, including the injured worker, the employer and their insurer. Occasionally parties need assistance to resolve matters relating to a claim, so WorkCover WA provides both conciliation and arbitration services.

Disputes can occur at any stage of a claim and arise over a broad range of matters, including the liability to pay compensation, the amount of weekly benefit to be paid, medical and related expenses, and return to work programs.

Conciliation involves parties in dispute coming to their own agreement, with the assistance of an independent Conciliation officer.

Arbitration is a formal recorded proceeding at which evidence is heard and a legally qualified Arbitrator makes a final determination.

Resolving a dispute can be an involved process. There are forms and applications to be completed, documents to be gathered and registered, and sometimes meetings and hearings to be held.

The dispute resolution process can be complex, costly and time consuming. It is in the interest of all parties to make sure they have exhausted all other opportunities to resolve matters, before entering the Conciliation and Arbitration Services.

Conciliation Service

The primary role of the WorkCover WA Conciliation Service is to resolve workers' compensation disputes by agreement.

In the Conciliation Service, an independent and impartial conciliation officer assists parties in dispute to come to an agreement. Conciliation officers are trained and experienced in dispute resolution techniques and have an excellent knowledge of workers' compensation law. They provide guidance for the resolution of matters and may express opinions about the probable outcome of the application if it were to be determined by an Arbitrator. Conciliation officers also have statutory authority to make limited directions for the payment, suspension or reduction of compensation entitlements, in appropriate situations.

There are no fees for making an application at the Conciliation Service. All parties are entitled to have a lawyer or registered agent represent them (see "Legal representation" below). It is expected that conciliation will be concluded within eight weeks (56 days) and only in exceptional circumstances will further time be allowed.

Legal representation and other assistance

Parties in a dispute may have legal representation, but this is not compulsory. If a worker is not represented, a Conciliation officer or an Arbitrator can refuse permission for an employer or insurer to be represented by a legal practitioner or registered agent.

Registered agents regulated by WorkCover WA can represent parties at proceedings. In certain circumstances the Conciliation officer or Arbitrator may appoint a guardian, allow an interpreter to assist in proceedings or allow a family member or friend to support the injured worker during the dispute resolution process.

Under the *Workers' Compensation and Injury Management Act 1981*, maximum costs are set for legal, registered agent and related services. The costs scale is structured to promote the early settlement of disputes by agreement.

For advice, call Advisory Services on 1300 794 744.

Conciliation process

An application for conciliation can only be made after a claim for workers' compensation has been made on an employer. Before making a conciliation application, the applicant must have made reasonable attempts to resolve the dispute by negotiation with the other party.

Steps in the conciliation process are:

1. Lodge an application

The applicant must lodge a **Conciliation Application Form** (see "Forms", page 6) and any supporting documents (e.g. medical certificates) with the Conciliation Service. Strict timelines and limited opportunities exist to present a case, so proper preparation is important. Help is available at www.workcover.wa.gov.au > Conciliation and Arbitration Services or by calling Advisory Services on 1300 794 744.



Once lodged, the application is either:

- **accepted** – and a Conciliation officer provides copies of all documents to all parties
- **not suitable for conciliation** – and a separate application will need to be made to the Arbitration Service (see page 5 for details on the process), or
- **not accepted** – and the Conciliation Service advises the reasons and returns all documents.

A dispute can still be resolved externally by the parties after an application form is lodged.

2. Discuss the matters

After an application has been accepted, the Conciliation Service may contact the parties to clarify and discuss the matters. Many disputes are resolved quickly and informally at this stage. If needed, a conciliation meeting is usually scheduled within 21 days from acceptance of the application, at the WorkCover WA offices.

Disputes about medical matters may, at the discretion of the Conciliation officer, be referred to a Medical Assessment Panel (see next column).

3. Conclusion to conciliation

When the conciliation process is concluded, the result is recorded in a Certificate of Outcome, which is provided to the parties in dispute by the Conciliation Service. It outlines:

- the matters in dispute at the outset of the process
- those matters that were resolved and the basis on which they were resolved
- those matters remaining in dispute
- details of any payment directions issued.

Most disputes are resolved during conciliation, and parties comply with the terms of the agreement. In the unlikely event a party fails to comply with the monetary terms of the agreement, the Certificate of Outcome may be enforced through court proceedings (see “Other resources”, page 6). A ‘certified copy’ of the Certificate of Outcome is required for the court proceedings and is obtained by writing to the Conciliation Service.

When the dispute is not resolved by agreement, the matter(s) remaining in dispute may be progressed by making an application to the Arbitration Service. *Details of the arbitration process are set out on page 4.*



Medical assessment panels

Where the dispute is of a medical nature, the Conciliation officer or Arbitrator may refer the matter to a medical assessment panel, made up of medical practitioners. For example, questions may be referred to a panel if there is a conflict of opinion between the worker’s and employer’s medical practitioners, about the nature or extent of an injury or a worker’s capacity for work. The panel may require the worker to attend a medical examination.

The determination of the panel is final and binding on all parties and on any court or tribunal.

Visit www.workcover.wa.gov.au > Conciliation and Arbitration Services or call Advisory Services on 1300 794 744.

Parties are encouraged to resolve the dispute at any stage of the process.

Arbitration Service

The primary role of the WorkCover WA Arbitration Service is to make determinations on workers' compensation disputes which are binding upon parties. Arbitration can be an expensive and lengthy process, however, the aim is to resolve disputes as quickly as possible and parties are encouraged to resolve the dispute at any time in the process.

In the Arbitration Service, independent and impartial Arbitrators determine disputes by making decisions (called orders), which are enforceable in court. Arbitrators are legal practitioners who make orders based upon evidence, facts and law and are not permitted to speak to parties about the dispute outside of an official proceeding (called a hearing).

There are no fees for making an application to the Arbitration Service. Legal representation is often used by parties (see "*Legal representation*", page 2). The time it takes to resolve a dispute through arbitration depends upon the complexity of the matter and proper preparation by the parties.

Arbitration process

Before an arbitration application can be made, the dispute must have been conciliated by the Conciliation Service or a certificate issued by the Director of Conciliation advising the matter is not suitable for conciliation.

Steps in the arbitration process are:

1. Lodge an application

The applicant must lodge an **Arbitration Application Form** (see "*Forms*", page 6) and supporting documents with the Arbitration Service, together with relevant certificate(s) from the Conciliation Service within 28 days of the Certificate of Outcome.

Any supporting documents not available at the time of lodging must be listed on the application. If this is not done they cannot be used without permission of an Arbitrator. Incorrectly completed applications may not be accepted.

Once registered the application is either:

- **accepted** and returned to the applicant, bearing the official seal of the Arbitration Service. Unlike in conciliation, it is the responsibility of the applicant to officially provide a copy of the application and supporting documents to the other party or parties in the dispute (i.e. serve the respondents)
- **not accepted** and the applicant will be advised of the reasons.

Help is available at www.workcover.wa.gov.au > *Conciliation and Arbitration Services* or by calling Advisory Services on 1300 794 744.

2. Reply to an application

The respondent is required to file a reply to the application within 14 days of being served with the application by completing a **Reply Form** (see "*Forms*", page 6). The reply must set out the grounds on which the matters have been disputed and be accompanied by any documents the respondent(s) plan to use to support their case at arbitration. Any additional documents or information cannot be used without the permission of an Arbitrator.

3. Arbitrator's determination

An Arbitrator makes his or her determination based on evidence. Witnesses may be sworn in and cross-examined to give verbal evidence. Parties may be required to attend a directions hearing to clarify matters and address preliminary matters and this will be followed by a recorded arbitration hearing where the Arbitrator considers all available evidence and hears from each party before making a formal determination. Hearings may take anything from a few hours to a number of days depending upon the evidence to be considered.

4. Arbitrator's orders

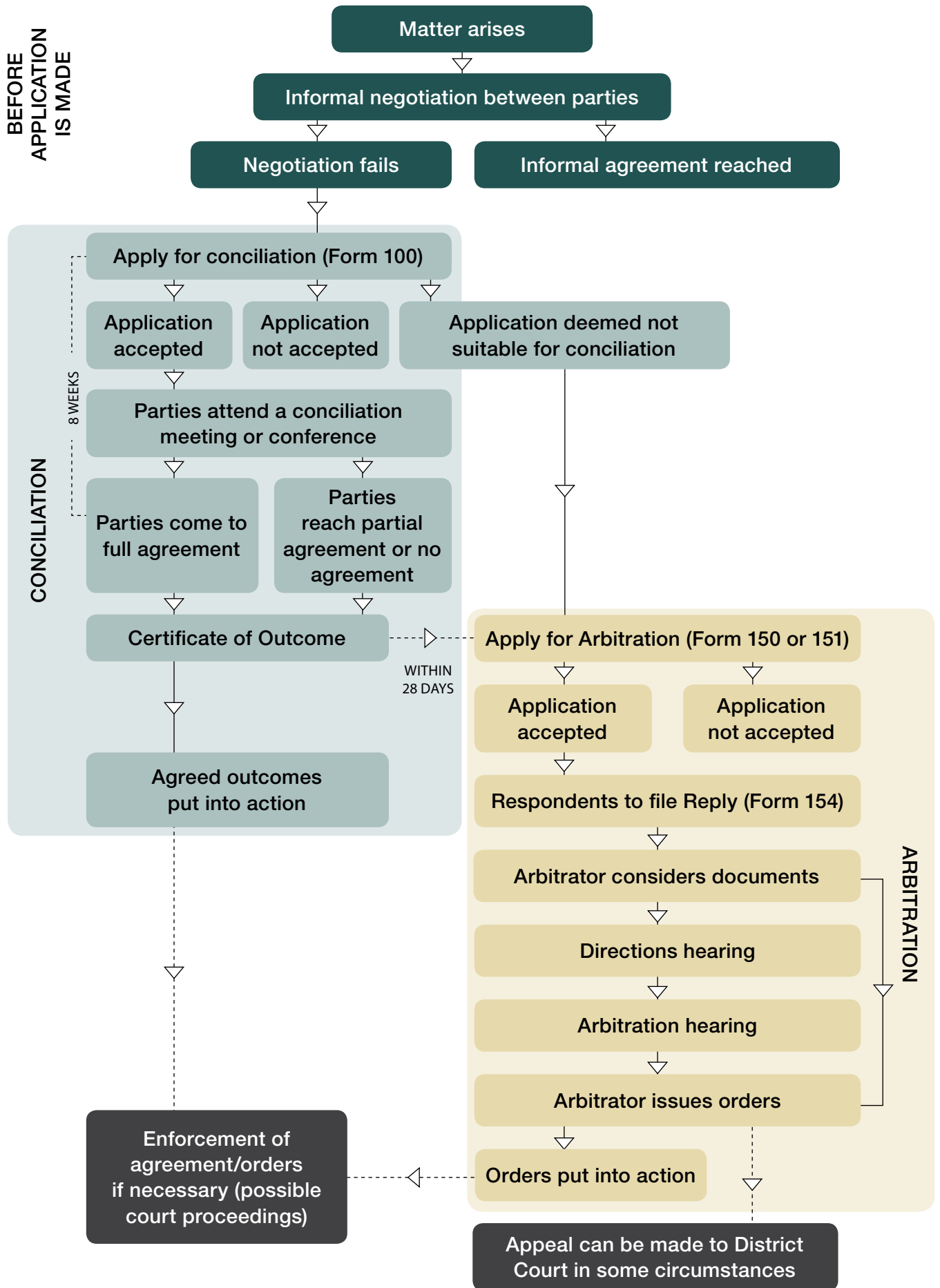
At the end of the hearing process, the Arbitrator will give his or her orders and issue written reasons for the determination. Orders are effective immediately or as otherwise stated. If new information becomes available after the dispute has been determined, an Arbitrator may reconsider the order and revoke or vary it or make further determinations.

If monetary orders made by an Arbitrator are not complied with, any amounts not paid can be legally enforced, which is undertaken in either the Magistrates Court or the District Court of WA, depending upon the monetary value involved (see "*Other resources*", page 6).

Arbitration appeals

A determination by an Arbitrator is legally binding upon the parties, but questions of law may be appealed to the District Court of Western Australia, providing certain thresholds are met. An appeal to the District Court must be made within 28 days from when the Arbitrator provides the parties with the written reasons for the determination. The District Court may affirm, vary, quash, substitute or make an addition to the original Arbitrator determination.

How the process works





WorkCover WA Forms

Approved conciliation and arbitration application and reply forms are located and registered at:

www.workcover.wa.gov.au > *Conciliation and Arbitration Services* > *Conciliation Forms*

telephone 1300 794 744

facsimile (08) 9388 5690

mail WorkCover WA,
Reply Paid 71078, WA, 6008

visit WorkCover WA,
2 Bedbrook Place,
Shenton Park, WA, 6008

More assistance

Information is available in alternative formats for people with disabilities, including an audio loop which is available on 48 hours notice for the hearing impaired.

Interpreter services, paid for by WorkCover WA, can be made available for proceedings subject to prior notice.

Where can I get more information?

If you have any queries visit www.workcover.wa.gov.au > *Conciliation and Arbitration Services* or call the Advisory Services on 1300 794 744. Advisory officers are able to provide information about the dispute resolution process and procedures. They cannot give legal advice on workers' compensation and injury management matters or provide representation in any proceedings.

Other resources

- For court proceedings information contact: www.magistratescourt.wa.gov.au, Civil Matters (08) 9425 2222 or www.districtcourt.wa.gov.au, General enquiries (08) 9425 2128.
- For work safety and health issues contact the WorkSafe Info line: 1300 307 877.
- For wage rates and award conditions contact Wageline: 1300 655 266.

Disclaimer

This brochure provides general information about the processes involved in applying to the Conciliation and Arbitration Services to have a matter resolved. You should not act or omit to act on the basis of anything contained herein. In relation to a particular matter, you should seek appropriate legal/professional advice. This brochure should be read in conjunction with the *Workers' Compensation and Injury Management Act 1981* and the *Conciliation and Arbitration Rules*. These can be found at www.workcover.wa.gov.au together with other WorkCover WA brochures.

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