



New Conciliation & Arbitration Services 2011

QUESTIONS & ANSWERS

Q1. What happens if the Conciliation Officer's Certificate of Outcome does not reflect all of the issues going to Arbitration?

A1. Conciliation officers understand the importance of reflecting accurately in the Certificate of Outcome the issues in dispute and those resolved. However, if a problem arises the Arbitrator has discretion to grant leave to expand the issues. It is the Arbitrator's decision whether or not to actually grant leave. Additionally, the Application for Arbitration (Form 150) has a section where 'Additional issues NOT included in the Application for Conciliation' may be listed.

Q2. What is the expected timeframe within which the Arbitrators will provide written reasons for decisions.

A2. It is difficult to place an exact timeframe on these matters as there are varying levels of complexity to disputes. It is a performance measure the organisation will monitor but it is expected that decisions will be provided within 2 – 3 months.

Q3. What is the mechanism for enforceability of agreements reached at conciliation?

A3. The Act now provides for agreements reached at conciliation as reflected in the Certificate of Outcome to be enforced in a court of competent jurisdiction. It will require the party seeking to enforce the agreement to obtain a certified copy from the Director, Conciliation and then make application in the appropriate court (Magistrates' Court Civil Jurisdiction or the District Court depending upon the monetary value involved).

Q4. Will a Medical Assessment Panel finding used for Conciliation be binding on an Arbitrator?

A4. The Act provides that a determination of a medical panel is final and binding on any court or tribunal hearing a matter in which the determination is relevant (s145E(6)).

Q5. Will particular Judges be listed to hear workers' compensation appeals in the District Court?

A5. It is understood that workers' compensation matters will be added to the general list in the District Court and that the Court does not intend to list specific Judges to hear such appeals.

Q6. What constitutes 'reasonable negotiations' or 'attempts to resolve' matters prior to conciliation?

A6. This rule is included to ensure that all parties are aware that there is a matter in dispute prior to the lodgement of an application for conciliation, and that there has been some attempt to resolve the dispute. Conciliation Service staff are likely to refer applicants to WorkCover WA's Advisory Services if there has not been any attempt to resolve the matter prior to the application.

Q7. Which matters won't be suitable for conciliation?

A7. The Act amendments enable the Director Conciliation to issue a Certificate stating that a matter is not suitable for conciliation. The provision is not expected to be used frequently but was inserted to ensure it was possible to "triage" disputes and direct them to the appropriate forum of dispute resolution where it was clearly apparent the issues in dispute were unlikely to be resolved by conciliation.

Q8. Can parties apply for a directions hearing at arbitration?

A8. Yes. In fact it is likely the Arbitration Service will list most applications for a Directions Hearing in the first instance.

Q9. How was the costs scale developed?

A9. The Costs Committee developed the costs scale having regard to terms of reference outlined in the Costs Report 2011. The Costs Committee viewed the costs as outlined in the 2011 Costs Determination as appropriate. WorkCover WA has undertaken to commence a review of the 2011 Costs Determination after 6 months of operation. You are welcome to send in submissions to WorkCover WA.

Q10. How will conciliation officers request documents prior to a hearing and will they issue 'listing notices'?

A10. Documents will be requested from the parties on both the notice that notifies of the acceptance of the application and also on the listing notice (so the answer to the second question is also yes).

Q11. Will Arbitrators be amenable to giving parties who attend for an arbitration hearing some time to privately discuss settlement?

A11. It is expected that parties will have discussed any possible settlement prior to the commencement time of the arbitration hearing. This is a matter for the individual arbitrator to assess and determine on the facts of each case. While the Arbitrator may consider the request it is unlikely that late applications to adjourn will be accepted unless there are extraordinary circumstances.

Q12. How were the time frames within the Rules developed? (eg 28 days to make an application for arbitration after the Certificate of Outcome is issued by the Conciliation Service).

A12. Stakeholders provided consistent feedback during the 2009 Legislative Review process that the current dispute resolution system lacked timeliness. The timeframes have been developed to provide greater focus on timeliness, balanced with a need to maintain procedural fairness. These timeframes will be monitored to ensure they are delivering the changes to the dispute resolution process.



2 Bedbrook Place
Shenton Park
Western Australia 6008
www.workcover.wa.gov.au
wa.gov.au

telephone 08 9388 5555
facsimile 08 9388 5550
advisory services 1300 794 744
TTY 08 9388 5537