

What happens if there is a dispute?



A guide to resolving workers' compensation disputes in WA

At WorkCover WA, we oversee and regulate the workers' compensation scheme in Western Australia. Most workers' compensation claims are managed effectively between the injured worker, their employer and their employer's insurer, but sometimes things don't go as planned and a dispute occurs between the parties.

When and why do disputes occur?

Disputes can arise at any stage of the claim process, and over any number of issues, including:

- liability to pay compensation
- weekly benefit amounts
- medical and related expenses
- a return to work program.

Contact us if:

- your employer is refusing to allow you to make a claim for compensation
- your employer tells you they do not have workers' compensation insurance
- you are an employer and your insurer is refusing to indemnify you.

What's this brochure for?

This brochure is designed to help you understand and embark on the dispute resolution process by:

- providing useful tips on how to resolve your dispute
- explaining how our Conciliation and Arbitration Services work
- advising you on your next steps and where to go for further information.

What should you do before applying for conciliation or arbitration?

Sometimes, disputes arise due to a misunderstanding. So, before you make an application for conciliation or arbitration, take the following reasonable steps to understand and attempt to resolve your dispute:

- Arrange to have a conversation about the dispute with the other party as soon as possible.
- Before the conversation, make a note of any questions you want to ask.
- Be prepared to make notes during and after your conversation, and be sure to include the date and the name of the person you spoke to in your notes.
- During the conversation:
 - check you understand the problem
 - ask if you need to provide more information
 - ask for a minute to make sure you have asked all your questions
 - remain calm – if the person you are speaking with is not polite, ask to speak to their manager (if they have one).

Useful tip

If you are speaking with an insurance company, you may want to ask them to email or write to you summarising their response to your questions.

If, after your conversation, you still don't agree with the other party, let them know why and ask if they are willing to change their position.

For some employers and workers, trying to resolve a dispute on your own may be difficult. For example English may not be your preferred language or you may have difficulty reading or writing. If you need any help or advice, please contact our Advice and Assistance line on 1300 794 744.

Important

If an insurer asks you for more information, you should provide it as soon as possible and keep copies for your records.

About our Conciliation and Arbitration Services

Our Conciliation and Arbitration Services are here to resolve disputes fairly, efficiently and cost effectively.

- **What is conciliation?** Conciliation is where one of our conciliation officers helps you come to an agreement.
- **What is arbitration?** If an agreement cannot be reached through conciliation, arbitration is the next step – a more formal process where one of our arbitrators listens to the evidence and makes a binding decision about your dispute.

The Workers' Compensation Conciliation Service

When you apply for conciliation, we'll assign a conciliation officer to help you and the other parties in your dispute reach agreement.

The conciliation officer will be independent and impartial. In certain situations, they can - within limits – direct the payment, suspension or reduction of compensation entitlements, and they may give their opinion on likely outcomes if your dispute goes to arbitration.

For more information, please read the *Guide to the Workers' Compensation Conciliation Service* (you can download the guide at workcover.wa.gov.au).

The Workers' Compensation Arbitration Service

At arbitration, the arbitrator will make a binding decision for parties who have not been able to reach agreement at conciliation.

The arbitrator – an independent and impartial lawyer – will assess evidence from both parties at a hearing and then make orders that are legally binding and enforceable in court.

Normally, only one party can succeed at arbitration (while conciliation provides the opportunity for both sides to find some middle ground). This is one of the reasons it's better to reach agreement during conciliation.

If you'd like to find out more about the arbitration process, please read the *Guide to the Workers' Compensation Arbitration Service* (you can download the guide at workcover.wa.gov.au).

Do you need representation?

Workers' compensation disputes can be complex, so we recommend you seek advice before applying for conciliation or arbitration. While it isn't essential, the majority of parties using our services have representation. Please note that:

- you may incur costs for engaging a lawyer or registered agent
- a family member or friend cannot act as your representative.

How do you engage a representative?

If you would like to engage a lawyer, you should contact the Law Society of WA on 9324 8600. They can recommend firms who regularly work in this area.

A list of registered agents (who are not lawyers, but can represent you during conciliation or arbitration) can be found at workcover.wa.gov.au.

If you are a member of a union, your union may be able to provide legal advice or other assistance.

The amount you can be charged for representation in conciliation and arbitration is set out in a document called the *Workers' Compensation (Legal Practitioners and Registered Agents) Costs Determination*, which you can find online at workcover.wa.gov.au. Please ask your lawyer or registered agent about the Costs Determination.



Can you invite a friend or family member to support you?

A conciliation officer or arbitrator can allow a family member or friend to attend conciliation or arbitration to support you. However, please bear in mind that friends or family members cannot represent you and, normally, cannot speak on your behalf.

Need help?

For more information or assistance, please:

- call our Advice and Assistance team on **1300 794 744** (8am to 5pm, Monday to Friday)
- visit workcover.wa.gov.au

Other ways we provide information

- Audio loop for people with a hearing impairment (48-hours' notice is required).
- Pamphlets and guides in English and other languages.

We can provide interpreter services for you:

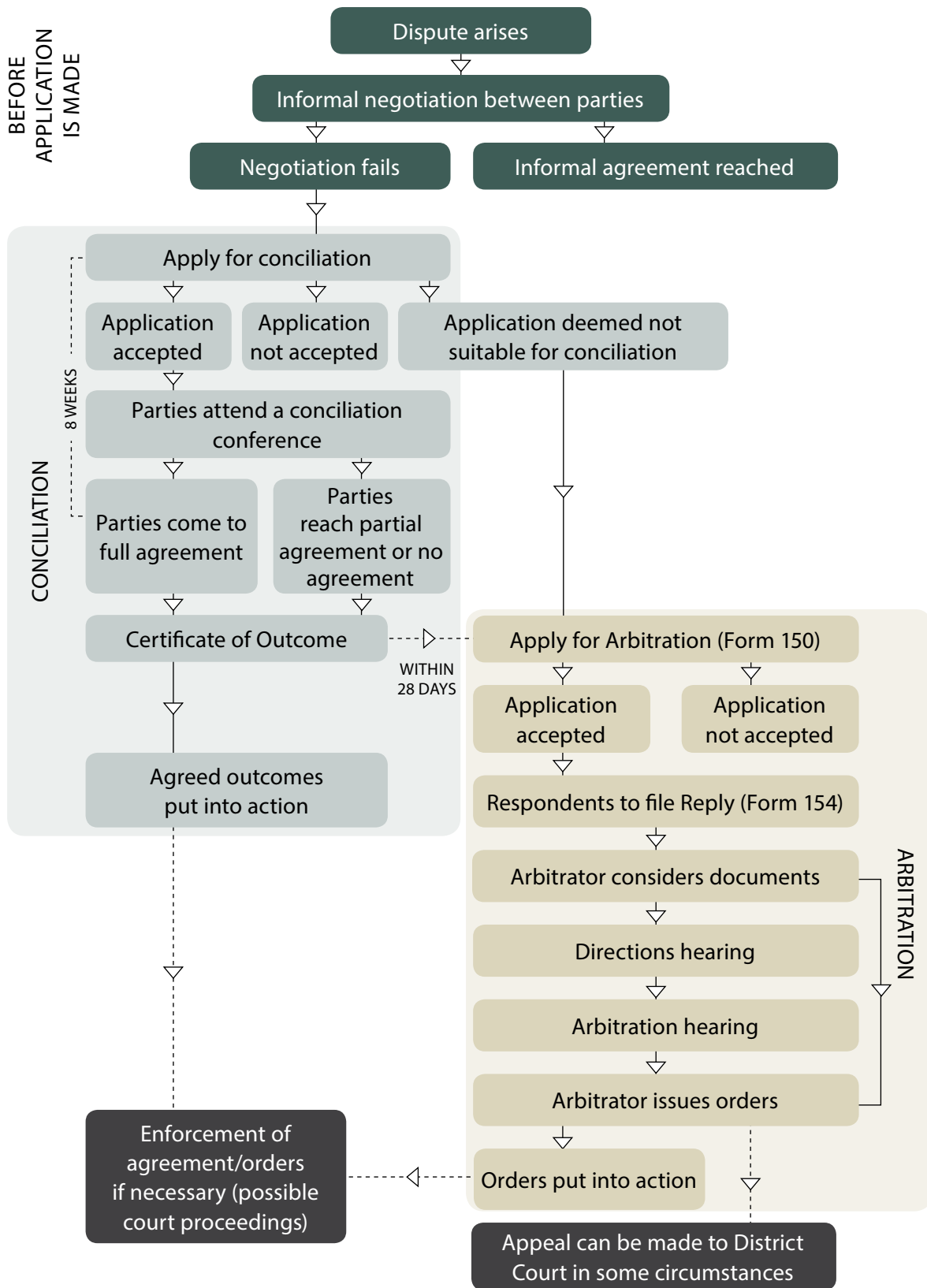
- when you call our Advice and Assistance line for information
- during conciliation and arbitration.

There is no cost for interpreters, but you need to let us know in advance if you need an interpreter for conciliation and arbitration

Please note we prefer to use an independent interpreter rather than a family member or friend.

How the process works

The dispute resolution process can be costly and time consuming, so it's worth bearing in mind that agreement can be reached at any point – the sooner, the better for all involved.



Disclaimer

This brochure provides general information about the dispute resolution process and the Workers' Compensation Conciliation Service and Workers' Compensation Arbitration Service. 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*, *Workers' Compensation and Injury Management Conciliation Rules 2011* and *Workers' Compensation and Injury Management Arbitration Rules 2011*. These can be found at workcover.wa.gov.au together with other WorkCover WA brochures.

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