

Resolving your dispute through **arbitration**



A guide to the **Workers' Compensation Arbitration Service**

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. Sometimes things don't go as planned and a dispute occurs between the parties. When a dispute can't be resolved by agreement through the Conciliation Service, arbitration is a step the parties may need to take.

About the Arbitration Service

Arbitration is a more formal process than conciliation. Once you have successfully applied for arbitration, an arbitrator – an independent and impartial legal practitioner – will assess evidence presented by you and the other parties to the dispute at a formal hearing or series of hearings.

Based on this assessment, the arbitrator will then make a decision on the outcome, which is legally binding and enforceable in a court.

Before you can apply for arbitration, your dispute must have been through the Conciliation Service. You'll need a *Certificate of Outcome* or *Certificate of Unsuitability* from the Conciliation Service indicating the dispute cannot be resolved through conciliation. You can find out more about conciliation and the Conciliation Service at workcover.wa.gov.au.

Workplace fatality claims

When a worker has died as a result of a work related injury, a claim for compensation can be made by the worker's dependant(s).

Claims relating to the lump sum entitlement and child's allowance must also be lodged with the Arbitration Service which will be expedited to an arbitrator for determination.

If your claim is accepted or disputed the insurer will notify you and provide you with a copy of the *Form 150A – Application for Arbitration – Workplace Fatality*.

You may wish to lodge your application electronically via WorkCover WA Online. See "How does the arbitration process work?" for more information about lodging an application online. You can find out more about workplace fatality claims at workcover.wa.gov.au.

Dependency claims relating to the lump sum entitlement and/or child's allowance where a worker's death has occurred in circumstances unrelated to their work related injury, must also be lodged with the Arbitration Service. These claims will be expedited to an Arbitrator for determination.

Contact WorkCover WA's Advice and Assistance Service if you have any questions in relation to making a claim for dependency, on 1300 794 744.

Important

You must lodge your application and supporting documentation within 28 days of the date your Conciliation Service certificate is issued. An extension to this period can only be granted in exceptional circumstances.

How does the arbitration process work?

Step 1: Application

There is no cost for applying for arbitration and you can complete an application for arbitration using WorkCover WA Online, which can be accessed from the Quick Access menu on WorkCover WA's website workcover.wa.gov.au.

In order to use WorkCover WA Online, you will need to be registered. Once you have registered and verified your account, you can complete and submit the online application.

You'll also need to provide supporting documentation (evidence) and the *Certificate of Outcome* or *Certificate of Unsuitability* from the Conciliation Service.

If there are supporting documents that aren't available at the time you lodge your application, you must make a note of them in the section provided for foreshadowed documents. This is very important as you will have limited opportunity to submit evidence or information after you have made your application.

Please note, your application may be rejected if:

- it is not properly completed or lodged
- it is not accompanied by materials required by the *Workers' Compensation and Injury Management Act 1981* (the Act) or the *Workers' Compensation and Injury Management Arbitration Rules 2011* (the Rules)
- it does not otherwise comply with the Act or Rules
- you do not include a *Certificate of Outcome* or *Certificate of Unsuitability* from the Conciliation Service.

Important

It is your responsibility (as an applicant) to officially provide a copy of the application and supporting documents to the other parties involved in the dispute. This is called 'serving' the application.

The *Workers' Compensation and Injury Management Arbitration Rules 2011* set out the rules for service and can be found at workcover.wa.gov.au.

After the application for arbitration is accepted, a sealed copy will be made available online or returned to you to serve on the other party/ies. At this point, we will assign an arbitrator and arrange a directions hearing, usually within 35 to 40 days.

Please note

If you are an unrepresented worker, an unrepresented dependant making a dependency claim or an uninsured employer, you can choose not to lodge your application or reply online. Instead, you can complete the relevant form which is available at workcover.wa.gov.au and can be submitted in person, by mail or via email.

Who is the 'applicant' and what is a 'respondent'?

A person or organisation making the application is called the 'applicant.' The person or organisation that is on the other side of the dispute is called the 'respondent.' If the applicant is the worker, the respondent is usually the employer.

Step 2: Reply

The respondent must lodge a reply to the application, using WorkCover WA Online, within 14 days of receiving the application outlining the reasons they do not agree with the application, along with evidence they propose to rely on to support their position.

Step 3: Hearings

The arbitration process may include a number of different hearings – **directions hearings, interlocutory hearings, arbitration hearings** and **costs hearings** – all of which are digitally audio recorded.

Directions hearing

Before the arbitration hearing, you may be required to attend a directions hearing (or series of directions hearings) where the arbitrator will:

- check the issues in dispute are clearly defined
- check whether all of the evidence has been filed, and if not, when it will be filed
- check whether there is any argument as to the accuracy or authenticity of the documents lodged
- check if witnesses are required to give evidence and when they are available
- make any orders needed to ensure matters are completed in a fair, just and timely manner.

Once you have completed your application we recommend that you keep a copy for your records.

Interlocutory hearing

An interlocutory application enables any of the parties involved in the dispute to seek an order regarding matters they consider important to the arbitration process.

For example, an interlocutory application might be made for the postponement of a hearing, or for permission to file additional supporting documentation (that was not referred to in the original application for arbitration), or to give evidence by phone or by video link.

Please note interlocutory orders are not decisions about the final outcome of the dispute.

Arbitration hearing

In some circumstances, the arbitrator may make a decision based only on the documents provided, but in most cases will conduct a formal arbitration hearing.

An arbitration hearing can be lengthy and allows the arbitrator to hear evidence and review documents.

At the conclusion of the hearing, the arbitrator will normally take time to consider all of the information presented and provide their final decision in writing at a later date.

Please note if you or any of the parties fail to comply with any orders made by the arbitrator for the payment of monies, those orders can be legally enforced through the Magistrates Court or the District Court of Western Australia (depending upon the monetary value involved).

If new information becomes available after the dispute has been determined, a party may make an application asking the arbitrator to reconsider the decision and revoke or vary the previous orders, or make further orders.

Appeals

In some circumstances an arbitrator's decision may be appealed to the District Court of Western Australia, although time and other limits apply. We recommend you seek legal advice before lodging an appeal.

The *Workers' Compensation and Injury Management Act 1981* requires arbitrators to act fairly and ensure you have a reasonable opportunity to present your case.

Costs hearing

Once the arbitrator has provided a decision, a party may apply to the arbitrator for a further decision as to whether legal costs should be paid, the amount to be paid and who should pay those costs. The arbitrator will decide whether the matter should be resolved at a hearing or whether a decision can be made based on the documents available.

Costs are not usually awarded against a worker, unless their application is considered to be "frivolous or vexatious, fraudulent or made without proper justification."

How do you prepare for arbitration?

The more prepared you are for your arbitration hearing, the better. This means you should:

- review the dispute and consider ways to resolve it (including a negotiated resolution)
- make sure you have collected, lodged and served on the other parties all evidence you want the arbitrator to consider
- bring all relevant materials, including a copy of your application form and all supporting documents, to the hearing
- familiarise yourself with the *Rules* and the arbitration procedure (visit workcover.wa.gov.au for more information)
- set aside time for the arbitration hearing and, if necessary, make arrangements for childminding and other commitments.

Can you have representation during arbitration?

Arbitration can be a complex and difficult process, so we recommend you seek advice prior to making an application for arbitration.

However, please note that:

- you may incur costs for engaging a lawyer or independent registered agent
- a family member or friend cannot act as your representative (they can attend the arbitration hearing at the arbitrator's discretion to support you, but cannot speak on your behalf).



How to 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.

Independent registered agents (who are not lawyers, but can represent you at arbitration) are included on the list of Registered Agents at workcover.wa.gov.au.

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

The amount you can be charged for representation in 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.

Where are arbitration hearings conducted?

Arbitration hearings are conducted at the WorkCover WA building, at 2 Bedbrook Place, Shenton Park, 6008 (corner of Bedbrook Place and Lemnos Street).

If you're driving, please park in the visitors' car park at the front of the building. Alternatively, you can get here by bus or train (we're a 10–15 minute walk from Shenton Park train station).

What facilities are available during arbitration?

We can provide copies of documents and access to DVD, CD and video facilities. If you need any other equipment, such as a computer, please bring your own.



Need help?

For more information or assistance,

- call our Advice and Assistance team on **1300 794 744** (8am to 5pm, Monday to Friday) or,
- 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.

Do you need an interpreter?

The Arbitration Service staff can arrange an interpreter, if you need one. There is no cost for interpreters, but you need to let us know in advance if you need an interpreter during arbitration.

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

Accessibility

You'll find accessible parking bays in the visitors' car park at the front of the WorkCover WA building. Our hearing rooms are wheelchair accessible.

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* 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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