

Helping resolve your dispute through conciliation



A guide to the Workers' Compensation Conciliation 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 there's a dispute that can't be resolved without outside help, which is why we offer conciliation.

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.

Conciliation can help resolve a dispute in a way that is fair, efficient and cost effective.

How does the Conciliation Service work?

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

The conciliation officer will be independent and impartial and will advise you on what is likely to happen if you don't reach an agreement. In certain situations, the conciliation officer can direct the payment, suspension or reduction of entitlements.

What should you do before applying for conciliation?

You must try to resolve your dispute before you apply for conciliation – when you apply, we'll ask you what you have done to try to resolve your dispute.

If you have not made reasonable attempts to resolve the dispute by negotiation with the other party / parties prior to lodgement, your application may not be accepted.

In most cases a single attempt at resolving your dispute will not be considered reasonable unless you receive a response indicating the other party / parties' position has not changed. Therefore, if you have not received a response to your first attempt after a reasonable amount of time has passed, you should follow up with the other party / parties.

Copies of letters, emails, texts and details of any discussions you had with the other party / parties about the issues in dispute should be submitted as evidence of the attempts to resolve the dispute by negotiation. Correspondence which does not mention the specific issues in dispute is generally not satisfactory evidence.

Where there is insufficient evidence that reasonable attempts have been made to resolve the dispute, you may be given an opportunity to provide further information.

If your application is not accepted this doesn't prevent you from lodging a fresh application with additional evidence.

How do you apply for conciliation?

To apply, you can complete an application for conciliation using *WorkCover WA Online*, which you can access at **online.workcover.wa.gov.au**.

To do this, you will need to be registered with WorkCover WA Online.

Once you have registered and verified your WorkCover WA Online account, complete and submit the online application.

You should include any documents that will help explain or support your case.

Remember to keep a copy of your documents for your records.

Please note if you are an unrepresented worker or an uninsured employer you can choose not to file your application online and can lodge the Application for Conciliation (Form 100) in person, by post or email.

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

You'll find the terms 'applicant' and 'respondent' used in the application stage and throughout the conciliation process.

The 'applicant' is the person or organisation making the application. It could be:

- the injured worker
- the employer
- the employer's insurer.

The 'respondent' is the person or organisation on the other side of the dispute. If the applicant is a worker, the respondent is usually the employer. If the case involves more than one respondent, these can be added as part of the online application process.

What happens after you lodge your application?

Your application will be checked to see if:

- you have tried to resolve your dispute (this is a requirement for acceptance of your application)

- you have included all the information we need
- you have complied with the *Workers' Compensation and Injury Management Act 1981* and *Workers' Compensation and Injury Management Conciliation Rules 2011*.

A decision will usually be made within five working days to either:

- accept your application, in which case we will provide the documents you have lodged (including details of the application) to the other parties in the dispute
- reject your application, in which case we will explain why.

In rare cases, a dispute will be considered unsuitable for conciliation. If this is the case, we will produce a certificate stating that your dispute is not suitable for conciliation. You are then free to lodge a separate application for arbitration within 28 days. You can find out more about arbitration at **workcover.wa.gov.au**.

When the application is accepted it will be allocated to a conciliation officer who understands workers' compensation matters and is trained in assisting parties to resolve disputes.

What will the conciliation officer do?

The conciliation officer will work with you and the other parties in your dispute to find a suitable resolution. This may include:

- contacting all parties to discuss the dispute
- arranging a conciliation conference (face-to-face, by telephone or in some circumstances, a video conference)
- explaining how similar cases have progressed and what outcomes you can expect
- making suggestions to help resolve the dispute
- explaining the legislation and providing information about the process
- explaining the strengths and weaknesses of each party's case.

The conciliation officer **will not**:

- take sides with either party
- provide legal advice
- decide the outcome of the case.

What powers does the conciliation officer have?

In some situations, the conciliation officer has the authority to direct the payment, suspension or reduction of entitlements. The directions may:

- require an employer to make weekly compensation payments to a worker (for a maximum of 12 weeks)
- suspend or reduce a worker's weekly payments (for a maximum of 12 weeks)
- require an employer to pay compensation for a worker's medical and other expenses
- vary, suspend or revoke a previous direction.

The conciliation officer can also make orders that would ordinarily be made by an arbitrator, providing all parties agree to it in writing.

How should you prepare for conciliation?

The more prepared you are for conciliation, the better. This means you should:

- think about what it would take to resolve your dispute
- be prepared to talk about how you think the dispute could be resolved
- lodge all reports, documents and other information that relates to your dispute with us when you apply for conciliation or before the conciliation conference
- lodge other documents as soon as you can after making your application as they become available
- consider taking legal advice, so you are aware of the strengths and weaknesses of your case in advance
- set aside time for the conciliation conference and, if necessary, make arrangements for childminding and other commitments.

Do you need representation at conciliation?

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

All discussions during a conciliation conference are confidential and private. This means that parties can negotiate openly as anything said in a conciliation meeting cannot be used in other proceedings.

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.

Independent registered agents (who are not lawyers, but can represent you at conciliation) are included on the list of Registered Agents which can be found 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 conciliation is set out in a document called the *Workers' Compensation (Legal Practitioners and Registered Agents) Costs Determination*, which you'll 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 can allow a family member or friend to attend conciliation to support you. However, please bear in mind that friends or family members cannot represent you and, normally, they cannot speak on your behalf.

How long does conciliation last?

Once your application is accepted, all parties have 56 calendar days to reach an agreement. Extensions of that time are only allowed in exceptional circumstances.

What happens at the end of the conciliation process?

The conciliation process ends when:

- you and the other parties involved in the dispute reach agreement
- the conciliation officer believes there is minimal chance of agreement being reached
- the 56 day time limit for conciliation expires.

The conciliation officer will issue a *Certificate of Outcome* when the process is complete. The *Certificate of Outcome* will be made available to all parties and will include details of:

- the matters in dispute at the beginning of the process
- the matters that were resolved (and the basis of the resolution)
- any unresolved issues and the details of any directions for payment.

If there are still matters in dispute, you can make an application to the Workers' Compensation Arbitration Service for arbitration. Find out more about arbitration at workcover.wa.gov.au.

Where are the conciliation conferences conducted?

Conciliation conferences 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).

For people living in regional areas, arrangements may be made to attend the conciliation conference via telephone or video link. Please let us know if you live in a remote or regional area.

What facilities are available during conciliation?

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.

There are limited options for obtaining food nearby, but drinks and light snacks are available from vending machines.

Please note, we do not offer childminding facilities.

Need help?

For more information or assistance:

- call our Advice and Assistance team on **1300 794 744** (8:30am to 4:30pm, 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.

Do you need an interpreter?

Conciliation 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 conciliation.

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

Accessibility

You'll find accessible parking bays designated in the visitors' car park at the front of the WorkCover WA building. Our meeting 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 Conciliation Rules 2011*. These can be found at workcover.wa.gov.au together with other WorkCoverWA brochures.

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