

## 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
- rate of weekly income compensation
- medical and health 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 is 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. Before you make an application for conciliation, take the following steps to understand and attempt to resolve your dispute:

- Arrange to have a conversation about the dispute with the other party.
- 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 and if the person you are speaking with is not polite, ask to speak to their supervisor.

## 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 you don't agree with the other party after your conversation, 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, contact our Advice and Assistance Service on **1300 794 744**.

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 conciliators assists you and the other parties resolve the dispute.
- **What is arbitration?** If a resolution cannot be reached through conciliation, arbitration is the next step. Arbitration is 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 conciliator who will help you and the other parties involved in your dispute, with the aim of reaching an agreement.

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

For more information, please read the *Guide to the Workers Compensation Conciliation Service* available at [workcover.wa.gov.au](http://workcover.wa.gov.au)

## The Workers Compensation Arbitration Service

If a dispute progresses to arbitration, the arbitrator will make a binding decision for parties who have not been able to reach agreement at conciliation or during the arbitration process.

The arbitrator is an independent and impartial legally trained decision maker and will assess evidence from both parties at an arbitration. Orders that are made by an arbitrator 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* available at [workcover.wa.gov.au](http://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 authorised 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. Other representatives may also advertise online and 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 the *Workers Compensation Legal Profession and Authorised Agents Costs Determination 2024*, which you can find on our website. Please ask your lawyer or authorised agent about the Costs Determination.

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

A conciliator or arbitrator can allow a family member or friend to attend conciliation or arbitration to support you.

Bear in mind that friends or family members cannot represent you and, normally, cannot speak on your behalf.



