



Can I review a decision made by WorkCover?

Author: [Tanya Neilson](#)

Email: tanya@guardianinjurylaw.com.au

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If you've been [injured in a workplace accident and you've lodged a WorkCover claim](#), over time the insurers are regularly required to make decisions concerning your claim and the benefits and entitlements you should receive. Sometimes, you will disagree with the decisions that the insurer makes. In this blog, we explore your options to dispute or appeal a decision made about your WorkCover entitlements.

Insurers are required to comply with the *Workplace Injury Rehabilitation and Compensation Act 2013* (the Work Act) when making decisions related to their claim. Nonetheless, there are occasions when they make incorrect decisions.

Some of the decisions we see insurers getting wrong

1. Rejecting an initial Workcover claim.
2. Terminating a claim on the basis that the worker's injury is no longer materially contributed to by employment.
3. Rejecting or denying medical and like expenses on the basis that they are not considered reasonable or necessary.
4. Incorrectly calculating a worker's pre-injury average weekly earnings, resulting in incorrect weekly payments.
5. Terminating a worker's weekly payments at 130 weeks on the basis that they do not have an incapacity for all employment for which they have the necessary skills, training and experience.

Your options to have your adverse WorkCover decision reviewed

When an insurer makes an incorrect decision, you are provided with a number of options to have the decision reassessed.

1. Lodge an internal review with the authorised insurer

You can lodge a request for an internal review directly with the insurer. Unless it is an obvious error that has been made by the insurer, seeking an internal review generally does not result in the decision being repealed or withdrawn. There is also no set timeframe for the insurer to provide their reconsideration.

2. Lodge a request for conciliation with the Workplace Injury Commission (WIC)

The WIC is an independent service whose sole purpose is to facilitate disputes between workers, insurers, employers and self-insurers.

The WIC can handle most decisions made by the WorkCover insurer or self-insurer, as well as disputes concerning the insurer's failure to make a decision.

Timeframe for lodging a request for conciliation

If you have received a decision from a WorkCover insurer that you don't agree with, you generally have 60 days in which to lodge a request for conciliation. In most circumstances, this timeframe can be extended. A request for conciliation can be lodged by [downloading and completing this form](#).

Representation at conciliation

On this form, you can nominate a representative. Unfortunately, for most conciliations, lawyers are not allowed to represent injured workers. If you are a union member, you may be entitled to assistance at the conciliation from a Union Assist representative. To determine whether your union is listed as an associated member of the Union Assist program, [check their website here](#).

If you are not a member of a union, you can list WorkCover Assist as your representative. [WorkCover Assist](#) provide free impartial representation at conciliation.

Although your lawyer cannot represent you at conciliation, they can advise you and assist you in preparing for conciliation.

Medical reports request

Once the request for conciliation has been lodged, you can expect to receive correspondence from the insurer outlining the conciliation process. You will also receive an authority so that the

WIC can obtain reports from your treating doctors.

If you have legal representation, your lawyer will generally request the medical reports on your behalf to ensure the appropriate and relevant information is obtained. You should check with your lawyer to see if you need to sign the authority or if they will obtain the reports on your behalf.

Who attends conciliation?

Your matter will then be listed for a conciliation conference. Some conferences occur over the phone, whilst others can occur in person, if appropriate.

The following people will attend conciliation:

- You;
- Your representative;
- The conciliator; and
- The insurer.

Your employer may be invited to the conference, however, their attendance is not compulsory.

What outcomes are possible from conciliation?

A number of outcomes are possible as a result of the conference, depending on the type of decision in dispute.

These can include:

- the WorkCover insurer may withdraw their termination or rejection notice.
- the WorkCover insurer may offer a limited period of weekly payments or medical and like expenses to resolve the dispute.
- the parties may not be able to resolve the matter.

If a resolution is not able to be reached, and the matter in dispute concerns a medical question, the conciliator may refer the dispute to an organisation known as the [Medical Panels](#). They are an independent panel of doctors who will be convened to assess your injuries and provide a final and binding decision.

If the dispute concerns a question of fact or law, the conciliator will issue a Genuine Dispute Certificate. This certificate allows the parties to progress the dispute by way of issuing proceedings in the Magistrates' Court.

In some circumstances, the conciliator may issue a direction to the WorkCover insurer that they are required to withdraw their notice or make payments of medical and like expenses.

If you have a matter at conciliation, it is crucial that you seek the advice of Guardian Injury Law to ensure that you receive the correct legal advice and your rights and entitlements are protected.

[FREE ADVICE FROM A WORKCOVER LAWYER: 1300 700 761](#)

3. Lodge a complaint with the Workers Compensation Independent Review Service

Introduced in 2020, the [Workers Compensation Independent Review Service](#) (WCIRS) is designed to provide free, quick and impartial reviews of certain decisions made by WorkCover insurers.

The WCIRS can review decisions made by panel insurers (not decisions made by self-insurers) on or after 3 December 2019. These matters must have been to the WIC and a Genuine Dispute Certificate must have been issued.

The WCIRS can review decisions concerning:

- the rejection of claims;
- weekly payments; and
- medical and like expenses.

To lodge an application for an independent review you should [download and complete this application form](#).

Once the WCIRS has received your application, they will allocate it to an Independent Review Office (IRO) who will make contact with you.

Timeframe for the IRO to make a decision

The IRO has 42 days to make a decision relating to a medical and like services dispute. They also have 52 days to make a decision concerning disputes regarding the rejection of claims or weekly payments.

What outcomes are possible from an IRO?

There are two possible outcomes from a review. If the IRO agrees with the insurer's decision, they will confirm their decision and you can proceed with your Magistrates' Court dispute.

If the IRO disagrees with the insurer's decision, they will determine that it is not a "sustainable decision" and following consultation with WorkSafe, the insurer will generally withdraw the incorrect decision resulting in the acceptance of your claim or the reinstatement of weekly

payments and medical and like expenses

Which option is best?

As every dispute is different (and indeed, every claim is different), it is crucial that you seek advice from Guardian Injury Law to ascertain which dispute resolution path will suit you best and provide the best potential to win that dispute.

We are experienced at navigating the maze that is the Victorian WorkCover scheme and will take the time to listen to you and provide plain English advice that will provide you with the best outcome possible.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

enquiries@guardianinjurylaw.com.au

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.