



Resolving a WorkCover dispute through arbitration

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Date: Monday September 26, 2022

Options for injured workers to dispute adverse decisions related to their [worker's compensation claim](#) have changed. Since 1 September 2022, the Accident Compensation Conciliation Service (ACCS) has a new name and expanded powers. The former ACCS is now called the Workplace Injury Commission (WIC). These changes have been made in response to the Victorian Ombudsman's recommendations. In this blog, we look at the powers of the WIC and the impact on an injured worker's WorkCover claim.

What powers does the Workplace Injury Commission have?

The WIC has all of the original powers that the Accident Compensation Conciliation Service had previously with regard to hearing matters at conciliation. We have written about these previously, in our blog, ["Can I review a decision made by WorkCover?"](#)

Conciliators are appointed to assist the parties to try and resolve their worker's compensation dispute. If the parties are unable to reach an agreement, then the conciliator can refer the dispute to the medical panel if there is a medical question in dispute. For all other disputes, a Genuine Dispute certificate will be issued, allowing the worker to take the matter to the Magistrates Court.

The new WIC also has arbitration powers. Arbitration is designed to offer a final decision for workers' compensation disputes that have not resolved through conciliation. It is an alternative to going to court and aims to provide an informal, timely, and inexpensive way to finalise a dispute. At arbitration, an arbitrator will consider all of the relevant evidence, both written and oral, and provide a binding determination concerning the dispute.

Who can refer a WorkCover dispute to arbitration?

Workers are the only party that can choose to refer their worker's compensation dispute to arbitration. The dispute must concern one of the following:

- Weekly payments;
- Medical and like expenses;
- Provisional payments;
- Superannuation contributions;
- Interest on outstanding amount.

To refer a dispute to arbitration, you must:

- have a dispute with the WorkCover insurer concerning a decision made on or after 1 September 2022;
- have referred the dispute to conciliation;
- have been unable to resolve it at conciliation; and
- have received a Genuine Dispute certificate.

Once you have a Genuine Dispute certificate, you can apply to have the matter heard at arbitration.

Is there a timeline to lodge a referral for arbitration?

Workers must lodge a referral for arbitration within 60 days from receiving a Genuine Dispute certificate from conciliation.

In certain circumstances, an extension of time may be granted; however, this will only be in exceptional circumstances.

What evidence can be submitted at arbitration?

Evidence that is relevant to your worker's compensation dispute can be presented at arbitration. This can include medical reports, clinical notes, vocational reports, income and employment records and any witness statements, photographs and video footage.

The worker, employer and insurer must provide the Workplace Injury Commission with all evidence they have relating to the dispute. The documents that were exchanged at conciliation will be made into an Arbitration Book by the insurer. The Arbitration Book will be sent to the worker and referred to in the arbitration hearing.

It is crucial that workers ensure that all relevant evidence is included in the Arbitration Book. If any information is missing, this should be provided as soon as possible.

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Can witnesses be called to give evidence at arbitration?

If the worker, insurer or employer requires a witness to give evidence at a hearing, they are required to ask for permission. Furthermore, expert witnesses such as medical practitioners can be asked to give evidence.

What powers does arbitration have?

Arbitration has a number of powers to deal with disputes about your WorkCover claim. These include:

- Deciding that the insurer's decision is correct.
- Deciding to change or cancel an insurer's decision.
- Deciding that the insurer must pay up to 52 weeks of weekly payments and up to \$20,000 in medical and like expenses.
- Deciding that the insurer must accept all or part of a claim.
- Ordering the insurer to calculate the amount of compensation to pay.

Can I have representation at arbitration?

Workers can be represented by any person they chose. However, if a worker wishes to be represented by a lawyer at arbitration, they need to seek permission first.

When determining if the worker should have legal representation, the Workplace Injury Commission will take into account:

- the fairness of allowing a lawyer to represent the worker;
- if being represented will help the worker resolve the dispute efficiently;
- the complexity of the dispute; and
- any other circumstances that are relevant.

What are the timelines regarding arbitration of my worker's compensation dispute?

Once a matter has been referred to arbitration, a hearing must be held within 30 days from the date the referral is accepted. Sometimes, more than one hearing may be required. Any additional hearings must be concluded within 60 days of the initial hearing.

Once the final hearing has concluded, a final decision must be made no later than 14 days after the hearing ends.

What are the costs of going to arbitration?

There is no cost for taking a worker's compensation matter to arbitration.

If the worker is successful, then their costs for attending arbitration including travel expenses, lost wages and accommodation expenses can be claimed from the insurer.

If the worker has legal representation, then certain costs incurred by the lawyer in preparing the dispute can also be claimed.

If the worker is not successful, then the insurer will not pursue the worker for their costs associated with referring the matter to arbitration. The only exception to this is where the worker is found to be fraudulent or deliberately deceptive.

If arbitration makes a decision that either party disagrees with, can it be appealed?

If arbitration makes a decision that either party disagrees with, whether that be the worker or the Victorian WorkCover Authority, this decision can be appealed to the Supreme Court within 28 days.

An appeal can only be made if the party is of the view that the decision is legally wrong, not because they don't like the decision.

A word of caution

Although arbitration is designed to provide a final decision so that workers can avoid the expenses and time of going to court, the legislation surrounding WorkCover claims can be complex and difficult to navigate.

Where a worker disagrees with a decision made by the WorkCover insurer, appropriate and considered evidence is essential to ensure the best outcome is obtained.

Given the finality of the decision made by arbitration, workers should understand all of their rights and entitlements, before referring a dispute for determination.

Is legal advice from a WorkCover lawyer necessary?

Before deciding to refer a decision to the arbitration service, obtaining legal advice is essential. There can often be not only a significant amount of money at stake, but also crucial medical and like expenses to help workers recover.

At Guardian Injury Law, we are experts in WorkCover matters. We will listen carefully to you so that we can provide clear advice to ensure the best outcome possible. Whether that be resolving a matter at conciliation, referring it to the medical panel or arbitration or alternatively taking it to the Magistrates' Court.

Call us to obtain legal advice on a "no win, no fee" basis.

Contacting Guardian Injury Law

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