

ACCIDENT COMPENSATION CONCILIATION SERVICE

CODE OF CONDUCT

The Accident Compensation Conciliation Service provides Victorian workers, employers and WorkCover agents with a service that facilitates the resolution of workers compensation disputes by involving all parties in an informal process to achieve a fair agreement. Its role is to:

- assist the parties to achieve durable resolutions and agreements wherever possible;
- be even handed and fair;
- maximise flexibility and informality;
- facilitate early return to work opportunities;
- enhance on-going worker/employer employment relationships;
- be prompt and timely in the conduct of conciliation processes and in dealings with the parties;
- endeavour to ensure that matters do not unnecessarily proceed to the courts.

These objectives for the Conciliation Service under the Accident Compensation Act 1985 (the Act) give rise to the following Code of Conduct -

- **Achieve agreement wherever possible**

The Conciliation Service will operate a case management dispute resolution process which focuses on agreed outcomes notwithstanding the nature and complexity of the dispute. The emphasis should be on maintenance of good workplace relationships, durability of agreement and, where appropriate, facilitation of early return to work.

The Conciliation Service will assist the parties to reach joint agreement by encouraging the parties to identify the issues in dispute, understand each others point of view, develop options for resolutions, negotiate their differences and reach an outcome which meets their needs.

- **Be even handed and fair**

The Conciliation Service will be impartial in its dealings with all parties: impartiality means freedom from favouritism and bias in both word, action and appearance and implies a commitment to equally assist all parties in reaching a mutually satisfactory resolution. It has a responsibility to maintain impartiality while raising questions for the parties to consider as to the reality, fairness, equality and feasibility of their perspectives and any proposed options for resolution.

The Conciliation Service will disclose to any party if it is aware of any circumstance which may affect impartiality, or that could be reasonably perceived as affecting its impartiality. It is committed to managing a dispute resolution process in which all parties are able to participate equally.

The Conciliation Service will demonstrate respect for colleagues and participants in the conciliation process by ensuring freedom from bullying, discrimination and harassment.

The Conciliation Service is an independent statutory body. Conciliation Officers are engaged by the Conciliation Service and are independent of all parties. In the performance of their duties, the independence of Conciliation Officers is further guaranteed by protection and immunity provisions contained in the legislation.

- **Exchange of information and confidentiality**

The Conciliation Service conducts a productive process which requires parties to actively participate in the proceedings and to exchange all information relevant to the dispute. A Conciliation Officer has a discretion about the dissemination of information and documentation depending on the circumstances of the case. In exercising this discretion, a Conciliation Officer will be mindful to balance the needs of the parties, the objective of resolving the dispute and the confidentiality provisions required by legislation and the Ministerial Guidelines.

- **Manage conciliation processes promptly and maximise informality**

The Conciliation Service will deal directly with all parties and encourage discussions between the parties wherever possible to resolve the dispute. Explanations of the processes and the medical and legal issues involved will be in simple language. Commonsense solutions will be actively sought. Outcomes will be recorded in a clear and accurate way.

The Conciliation Service will identify at the earliest stage opportunities for resolution. It will seek the most efficient and effective dispute resolution process options that meet party needs. Flexible arrangements for assisting the parties to resolve the dispute will be attempted, including on-site conferences.

All parties will have accessible information about the conciliation process including their rights and responsibilities in assisting the process.



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PROTOCOLS

Introduction

The following *procedural protocols* detail the manner in which the Conciliation Service Code of Conduct is given effect.

Public Information

The Conciliation Service is committed to the provision of accessible information to all parties. A multi-lingual brochure is attached to all adverse notices from WorkCover agents informing the worker of the telephone *Hotline*. The *Hotline* gives information about the conciliation process.

A conciliation conference *DVD* (subtitled into 3 languages) and brochure (9 languages) is made available to all parties.

Receipt of Conciliation Referrals

A *Request for Conciliation* form must be lodged with the Conciliation Service within 60 days of the worker receiving the *Notice* of the decision of the WorkCover agent or self-insurer. The Senior Conciliation Officer may allow an extension of time for lodging a Request, or a Request to be lodged out of time, if the particular circumstances are considered appropriate. Reasons for a late lodgement must be provided.

The Conciliation Service will provide written acknowledgement of the request to all parties, including any assistants or representatives involved. A copy of the request is also provided to the employer and the WorkCover agent or self-insurer. The WorkCover agent or self-insurer is required to provide all information relevant to the case to the Conciliation Service within 48 hours.

For the majority of cases, once the request has been assigned to a Conciliation Officer, a conciliation conference is scheduled to take place within about 4 weeks, and the parties advised in writing. The worker and employer will also be advised of the type of information required that would assist resolution of the dispute. The direct telephone number of the Conciliation Officer is included in this advice, giving an opportunity for any party to make direct contact with the Conciliation Officer prior to the conference.

The Conciliation Officer or his or her assistant may also contact the parties to clarify the issues in dispute. Discussion at this stage may lead to early resolution of the dispute. An Outcome Certificate is issued once a case is finalised.

Functions of a Conciliation Officer

A Conciliation Officer:

1. Informs the parties of the nature and purpose of the Conciliation process and the roles of the Conciliation Officer.
2. Encourages parties to take responsibility for the resolution of the dispute themselves.
3. May request appropriate information pursuant to section 56(5A) of the Act.
4. Informs the parties of their obligation to have all relevant information available and of the Conciliation Officer's discretion to exchange information.
5. Chooses the most beneficial forum for discussions (eg telephone, separate meeting rooms, on-site, tele-conferencing, country/city meeting).
6. In on-site conferences, ensures that all relevant parties agree to a conference at the workplace and the process to be followed.
7. Ensures that professional interpreter services are available where required.
8. Advises that representation by a legal practitioner at a conference is only possible with the agreement of the Conciliation Officer and each party.
9. Advises parties of their right to seek advice during the Conciliation process if necessary.
10. Advises workers and employers of their right to have an assistant and explains their role.
11. Makes all medical and circumstantial information available to parties, exercising discretion as to whether the information would aggravate a dispute or involve a breach of confidence.
12. Promotes discussion from the parties about their interests and concerns, rather than focussing on positions.
13. Ensures that all parties are able to discuss and negotiate in a fair and orderly manner.
14. Endeavours to ensure that any agreement reached is fair, equitable, lawful, and has the capacity to endure over time.
15. Terminates or adjourns the process when appropriate.

Representatives and assistants

If a worker has a representative or assistant, the Conciliation Officer may require written advice of their involvement prior to distributing personal or confidential information to them.

The Conciliation Conference

The principal role of the Conciliation Officer at Conference is to

- facilitate a flexible process of discussion in which the parties in dispute are helped to find a mutually acceptable agreement.

If a mutually acceptable agreement is not possible, the Conciliation Officer may -

- refer medical questions to the Medical Panel,
- make Recommendations to the parties,
- in the case of disputes over weekly payment and medical and like services,
 - consider whether or not there is an “arguable case” and hence whether or not there is a “genuine dispute”,
 - where there is no arguable case or genuine dispute, the Conciliation Officer may give Directions for the commencement or reinstatement of payments or medical and like services for a period of time.

At the conference the Conciliation Officer:

1. Ensures the parties involved in a conference understand what is expected of them, the functions of the Conciliation Officer and the way in which the conference is to be conducted.
2. Decides how the conference will be conducted, including whether joint or separate meetings of the parties are held.
3. Will manage who is in the conference room to ensure fair discussion. So far as is possible and practicable the Conciliation Officer will try to ensure that there is a balance of people in the conference room on behalf of the worker, employer and the Victorian WorkCover Authority agent of self-insurer.
4. Informs the parties that anything done or said, or any document prepared for the conference, is not generally admissible in any court or tribunal.
5. Advises the parties of their right to consult with their assistant, or to obtain legal advice at any time on any issue arising from the conference, including terms of agreement.
6. In matters relating to return to work issues, involves (where appropriate and practicable) practitioners in rehabilitation, occupational medicine or para-medicals.
7. Where agreement is reached, ensures all parties clearly understand the details of the agreement.

8. Where agreement is not reached, explains to the parties that the matter may be taken to the appropriate court.

Medical Questions and the Medical Panel

The Conciliation Officer may-

1. Adjourn or reschedule the Conference while further medical reports are sought.
2. Refer the dispute to the Medical Panel for a conclusive medical opinion in this way:
 - The Conciliation Officer prepares a referral for the Panel and sends a draft copy to all parties for their comment where appropriate.
 - Sends the final referral to the Panel and the parties.
 - Sends the opinion from the Panel to all parties

Recommendations

The Conciliation Officer -

1. May make a Recommendation, which is a suggestion for a fair way of reaching agreement, normally when he or she expects the parties to accept it.
2. Informs all parties that the Recommendation requires their approval to become an agreement.
3. Where specifically requested to make a Recommendation in terms which would resolve the dispute, will do so unless there are good reasons for further discussions.
4. Explains that any payment made in accordance with a Recommendation does not involve any admission of liability by the Employer, WorkCover agent or self-insurer.

Genuine Dispute/Arguable Case

The Conciliation Officer -

1. Closes the consensual stage of Conciliation if the parties have been unable to reach agreement and marks the point of moving into another role.
2. Considers whether the WorkCover agent, employer or self-insurer has an arguable case for the decision they have made in relation to the claim.
3. If there is an arguable case, concludes the process by declaring that a “genuine dispute” exists and informs the parties that application may be made to court to determine the matter.
4. If there is not an arguable case, declares there is no genuine dispute, and
 - May direct the employer, WorkCover agent or self-insurer to make or to continue to make weekly payments; pay medical and like expenses for the term of the direction; or pay medical and like expenses up to \$5,000

- Advises the parties of their right to seek revocation if they are dissatisfied with the Direction
- Informs the parties that they may contact the Conciliation Service at the end of the period of Direction concerning a future period of Direction
- If contacted at the end of the Direction period, make enquiries regarding any changed circumstances before considering a further Direction.

Outcome Certificate

Within seven (7) days of the conclusion of the conciliation the Conciliation Officer issues a *Conciliation Outcome Certificate*.

The Outcome Certificate will be in a form approved by the Senior Conciliation Officer and will be provided to the worker, employer, and the WorkCover agent or self-insurer. If the dispute was resolved, it will set out any terms on which the dispute was resolved and certify that each party to the dispute is bound by the result. It will also state that the Outcome Certificate is evidence of the resolution of the dispute between the parties and the terms on which the dispute has been resolved.

If the dispute does not resolve, and the Conciliation Officer is satisfied that a claimant, usually a worker, has taken all reasonable steps to resolve a dispute, then the Conciliation Officer must issue a certificate to that effect. This certificate will usually form part of the Outcome Certificate.

Bullying and discrimination

A Conciliation Officer will not practise, condone, facilitate or collaborate bullying or harassment. A Conciliation Officer will not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, sex, religion, marital, parental or carer status, age, political or religious belief or activity, disability, or any other preference or personal characteristic, feature, condition or status.

Any complaint about bullying should be made to the Senior Conciliation Officer. Complaints about bullying will be investigated in accordance with the Procedures for Investigating Bullying Complaints (attached).

Complaints

A party may advise the Senior Conciliation Officer in writing of circumstances where they consider the Conciliation Officer or Service has been in breach of the Conciliation Service Code or Protocols. Complaints may be made by telephone or in writing but the Senior Conciliation Officer will require that all complaints to be made in writing for ease of investigation.

Secrecy

Conciliation Officers are bound by the secrecy provisions of the Act and shall not record, or divulge or communicate to any person any information acquired during the course of the conciliation process, except for the purpose of conciliation.