

What is Arbitration?



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Arbitration provides injured workers, employers and insurers a final decision for workers compensation disputes that did not resolve at conciliation.

It is an alternative to going to court that aims to provide an informal, timely and inexpensive way to finalise a dispute.

At arbitration, an independent Arbitration Officer:

- Holds a hearing to hear the evidence about the issues in dispute and the parties' views, and then
- Makes a final decision that all parties must follow (called a 'determination').

Arbitration is different to conciliation as it ends with a binding determination.

Who are the parties to a dispute at arbitration?

The parties are the worker, the WorkSafe Agent or Self-insurer and the employer.

An employer has a WorkSafe Agent to conduct arbitration on their behalf, or conducts the arbitration themselves, if they are a Self-insurer.

Who requests arbitration?

Only the worker can choose to take their dispute to arbitration. If they choose arbitration, they may not take their dispute to court at the same time.

What disputes can be arbitrated?

What we can arbitrate will depend on the date of injury.

Where the date of injury is between 1 September 2022 and 30 March 2024, we can arbitrate disputes in relation to:

- Weekly payments
- Medical and like expenses, such as surgery, physiotherapy or home help
- Superannuation contributions
- Interest on an outstanding amount
- Calculation of Pre-Injury Average Weekly Earnings (PIAWE)
- The worker's capacity for work.

We can also arbitrate disputes that relate to liability or ongoing liability. This includes whether:

- A worker is a "worker" under the Act
- The worker has suffered an injury
- The injury arose out of or in the course of employment
- The worker's employment was a significant contributing factor to an injury
- The worker's condition continues to be materially contributed to by the injury
- An injury is a mental injury or disease for which there is no entitlement to compensation
- An injury is a proclaimed disease.

Where the date of injury is on or after 31 March 2024, we can arbitrate disputes in relation to:

- Alteration or termination of weekly payments
- Payment of medical and like expenses, such as surgery, physiotherapy or home help
- Alteration or termination of superannuation contributions
- Interest on an outstanding amount



- Calculation of Pre-Injury Average Weekly Earnings (PIAWE)
- Where weekly payments have been terminated after 130 weeks, the capacity of the worker and stabilisation of an injury.

If the date of injury is on or after 31 March 2024, we cannot arbitrate any disputes that relate to liability or require resolution of a question of liability.

What disputes cannot be arbitrated?

We cannot arbitrate disputes about:

- Issues that are or were in court
- Access to information requests
- Impairment benefits claims
- Provisional payments
- Return to work arrangements
- Agreements reached at conciliation or arbitration
- Medical Panel Opinions
- A decision not to accept an application for conciliation or a referral for arbitration
- An issue that was previously finalised by a court or arbitration
- An injury outside the Victorian Workers Compensation scheme
- Injuries before 1 September 2022
- Liability disputes for injuries that happened after 31 March 2024.

For more information, see our *Referral for Arbitration Policy and Procedure* on our website www.wic.vic.gov.au/resources.

How does an arbitration start?

We need to receive a *Referral for Arbitration Form* from the worker within 60 days of the worker receiving a Genuine Dispute Certificate from conciliation.

A worker can also request to lodge the Form late where more than 60 days has passed.

For more information, see our *Lodging a Referral for Arbitration Fact Sheet* on our website www.wic.vic.gov.au/resources

What happens after we receive a referral?

After we receive a referral for arbitration, we will advise the parties:

- if the dispute is a type we can accept, and
- the date of the initial hearing.

How long will arbitration take?

We must hold an initial hearing within 30 days, any further hearings within 60 days, and make a final decision within 14 days after the final hearing.

What types of decisions can we make?

Depending on the date of injury, the Arbitration Officer can decide that:

- the WorkSafe Agent or Self-insurer must accept all or part of a claim
- the WorkSafe Agent or Self-insurer must calculate the amount of compensation
- the WorkSafe Agent or Self-insurer must pay up to 52 weeks of weekly payments and up to \$20,000 in medical and like expenses
- the WorkSafe Agent's or Self-insurer's decision is correct and its decision is unchanged.

Is there a fee to start arbitration?

No. Lodging a referral for arbitration is free.

If a Worker is successful at arbitration, WIC will award the Worker payment of their legal fees and costs by the WorkSafe Agent or Self-



insurer (unless the claim is frivolous or vexatious).

If the Worker is not successful, they don't normally have to pay the WorkSafe Agent's or Self-insurer's costs. They will have to pay the costs of any medical reports or legal fees.

For more information, see our *Costs Fact Sheet* on our website

www.wic.vic.gov.au/resources.

Do I need legal representation?

A worker does not need a legal representative to bring their dispute to arbitration, but they may wish to have a lawyer to assist them.

WorkCover Assist and Union Assist are also available to assist a worker with arbitration.

A representative may assist a party by receiving documents from us, attending a hearing and putting their arguments in writing. A representative may or may not be a lawyer. If the representative is a lawyer, they need our permission to attend a hearing.

For more information, see our *Representation at Arbitration Fact Sheet* on our website

www.wic.vic.gov.au/resources.

What if a party disagrees with a final decision?

If any party disagrees with the final decision, they have 28 days to lodge an appeal to the Supreme Court. An appeal can only be made if a decision is legally incorrect.

For more information, see our *Appealing an Arbitration Determination Fact Sheet* on our website www.wic.vic.gov.au/resources.

Need help?

For more information or assistance, please:

- call **03 9940 1111** or **1800 635 960**
- email **info@wic.vic.gov.au**
- visit **wic.vic.gov.au**



Do you need an interpreter?



If you have trouble understanding any of the information outlined please contact 131 450 and ask for the interpreter to contact the Workplace Injury Commission on 1800 635 960 or 9940 1111 to explain further.

إذا كنت تواجه مشكلة في فهم أي من المعلومات الموضحة، فيرجى الاتصال بالرقم 131 450 واطلب من المترجم الاتصال بلجنة الإصابات في مكان العمل لمزيد من المعلومات اتصل على الرقم 1800 635 960 أو 9940 1111

如果您对上述信息有疑问，请拨打 131 450，通过口译员联系工伤赔偿委员会，电话 1800 635 960 或 9940 1111，进行进一步咨询。

Ako ne razumijete ove informacije, nazovite 131 450 i zamolite tumača da vam nazovu Workplace Injury Commission (Komisiju za ozljede na radu) na 1800 635 960 ili 9940 1111 za objašnjenja.

Εάν δυσκολεύεστε να κατανοήσετε οποιαδήποτε από τις πληροφορίες που περιγράφονται, επικοινωνήστε με τον αριθμό 131 450 και ζητήστε από τον διερμηνέα να επικοινωνήσει με την Επιτροπή Τραυματισμών στο Χώρο Εργασίας (Workplace Injury Commission) στον αριθμό 1800 635 960 ή 9940 1111 για περαιτέρω διευκρινήσεις.

Se hai difficoltà a comprendere queste informazioni chiama il 131 450 e chiedi all'interprete di contattare la Workplace Injury Commission al 1800 635 960 o al 9940 1111 per una spiegazione più approfondita.

Ако имате тешкотии да разберете која било од наведените информации, ве молиме јавете се на 131 450 и побарајте преведувач да контактира со Workplace Injury Commission (Комисија за повреди на работното место) на 1800 635 960 или 9940 1111 заради натамошни објаснувања.

'Jeśli masz problemy ze zrozumieniem którejkolwiek z podanych informacji, zadzwoń pod numer 131 450 i poproś o tłumacza, aby skontaktował się z Workplace Injury Commission pod numerem 1800 635 960 lub 9940 1111 pod dalsze wyjaśnienia'.

Ако не разумеете ове информације, назовите 131 450 и замолисте преводиоца да вам назову Workplace Injury Commission (Комисију за повреде на раду) на 1800 635 960 или 9940 1111 да бисте добили објашњења.

"Si usted tiene dificultades para entender cualquier información expuesta, póngase en contacto con el 131 450 y pida que el intérprete contacte a la Workplace Injury Commission (Comision de Accidentes de Trabajo) llamando al 1800 635 960, a fin de obtener una explicación más detallada "