

What to expect at an arbitration hearing

Your workers compensation matter may proceed to an arbitration hearing if informal dispute resolution techniques have been unable to resolve the dispute by agreement between the parties. This is where a member of the Commission will decide the dispute following a conciliation conference. This fact sheet will help you understand what to expect.

What is a conciliation conference?

Conciliation conferences are used to bring the parties together in an attempt to have them reach an agreement to a workers compensation dispute before it proceeds to a formal determination by a member of the Commission.

An initial or preliminary conciliation conference is conducted via a video conference. Each party is usually represented by a solicitor at this conference and the member will try to assist the parties to reach a resolution.

What happens during the conciliation conference?

The member has a statutory obligation to assist the parties to resolve the dispute. They will identify the issues and encourage the parties to resolve the dispute on terms that are satisfactory to both parties.

During the conciliation conference, each party can split off to separate rooms to discuss settlement options and explore ways to resolve the dispute privately with their lawyers.

If the dispute is resolved at the conciliation conference there will be no need to proceed to a formal arbitration hearing and the terms of the agreement will be recorded in writing. The Commission will then issue a formal copy of the agreement.

However, if the parties cannot resolve the dispute by conciliation, the case must proceed to an arbitration hearing to be formally decided by the Commission member.

The matter will only proceed to an arbitration hearing if the member is satisfied that the dispute cannot be resolved by agreement of the parties at the conciliation conference.

A date for a further conciliation conference and arbitration hearing will be set at the preliminary conference, usually three to six weeks later.

What happens during the arbitration hearing?

Before the arbitration hearing begins, a second conciliation conference will be conducted on the same day either in person or via video conference.

Three hours in total will have been assigned by the Commission for both the conciliation conference and, if needed, the arbitration hearing. Disputes are often resolved in less time.

After the second conciliation conference ends, the member and the parties will usually take a short break before the arbitration hearing.

This hearing will be sound recorded and the legal representatives for each party will make submissions. Oral evidence from witnesses is usually not required.

After the arbitration hearing, the member will make a legally binding decision which finalises the dispute. Sometimes this decision will be given orally after the hearing, but more commonly it will be given in writing within the next 21 days.

Who should attend a conciliation conference and arbitration hearing?

All parties in the dispute or their representatives should attend the hearing. This includes a representative of the insurer. If a witness is giving evidence, they must also attend the hearing.

Attending a hearing helps the parties understand the issues in dispute, hear any evidence and the other side's views, and provides an opportunity to resolve the dispute. Any representatives should be capable of making decisions for the party. If a party does not attend, the hearing might be conducted without them.

Members of the public are not permitted to attend hearings, and witnesses may only attend to give evidence.

How can someone attend the hearing?

Our hearings are held in one of the following formats:

- in person at our hearing rooms or in a regional venue
- by telephone
- by video conference
- a combination of these.

We will let the parties know how and when to attend.

Sometimes disputes are determined without a formal hearing based only on the documents and written submissions received from each party. This is known as a hearing 'on the papers' and we will discuss this with the parties beforehand. When this occurs, no one is required to attend a hearing.

What should I do when arriving for a hearing?

If the hearing is in person, you should check in at our reception area at least 15 minutes before the scheduled hearing time. Please ensure you allow enough time for travel and/or parking so you arrive on time.

Can I bring someone with me?

You may bring a support person, but they will not be allowed to interpret or speak for you.

If you need an interpreter, you should let us know beforehand and we will arrange a professional interpreter to attend the hearing. These interpreter services are at no charge.

What does the Commission expect of people who attend a hearing?

All parties attending must honestly represent the party to the proceedings. That is, not knowingly put forward any information that is untrue, or assist or encourage a party to do anything which is dishonest or misrepresents known facts.

You should have knowledge of and comply with, the relevant enabling legislation, our rules, procedural directions, and guidelines, and the usual practices and procedures of the Commission.

You should behave courteously and respectfully to the other party and their representatives, to any witnesses called during the proceedings, to the decision maker, and to Commission staff.

You must not engage in behaviour that could reasonably be perceived to be inappropriate, unprofessional, or an abuse of process, nor engage in direct or indirect discriminatory conduct towards or in relation to any other person, including parties or representatives.

What is the role of the decision maker and Commission staff at a hearing?

At all times while at a hearing, representatives of the Commission are expected to comply with the law in relation to the conduct of proceedings, the determination of matters and interactions with other members, Commission staff and Commission users, ensuring that all decisions and determinations are legally well founded.

Members may not determine a dispute without first using their best endeavours to bring the parties to the dispute to a settlement acceptable to all of them.

The members are expected to make unbiased, impartial decisions and to give all parties the opportunity to put forward their case.

More specifically, they are required to be independent and apply the law equally, and act impartially in the performance of their decision-making functions, so that their actions do not give rise to a reasonable apprehension of bias or, amount to actual bias and maintain their independence in the discharge of their duties.

Members must advise the parties of any matter or circumstance which might give rise to bias or conflict of interest or a perception of bias or conflict of interest and determine whether in the circumstances it is appropriate to continue to conduct or determine the proceedings.

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