

Workplace Injury Rehabilitation and Compensation Act 2013

MINISTERIAL GUIDELINES IN RESPECT OF CONCILIATION

1 Preamble

- 1.1 These guidelines are made by the Minister for Workplace Safety, Ingrid Stitt MP, as to the procedures of the Accident Compensation Conciliation Service (ACCS)¹ pursuant to section 301A of the **Workplace Injury Rehabilitation and Compensation Act 2013** (WIRC Act).
- 1.2 In accordance with section 611 of the WIRC Act, these guidelines take effect from 1 September 2022 and revoke:
 - a) Ministerial Guidelines for the Arrangement of the Business of Conciliation Officers issued on 28 August 2002; and
 - b) Ministerial Guidelines as to Authorised Agent, Self-insurer, Employer and Workers' Assistant Conduct at Conciliation Conference issued on 13 April 2011.
- 1.3 ACCS has certain duties under the WIRC Act, including that ACCS must, having regard to the need to be fair, economical, informal and quick, and having regard to the objectives of the WIRC Act, make all reasonable efforts to conciliate in relation to a dispute to bring the parties to agreement.
- 1.4 Pursuant to section 301B of the WIRC Act, ACCS may make policies and procedures in relation to the conduct of conciliation.
- 1.5 ACCS must develop policies and procedures in accordance with these guidelines for the purposes of:
 - a) ensuring procedural fairness in the conduct of conciliation; and
 - b) facilitating the proper administration of ACCS for conciliation.
- 1.6 Terms used in these guidelines have the same meaning as in the WIRC Act unless otherwise stated.

2 ACCS policies and procedures for conciliations

- 2.1 ACCS policies and procedures must reflect the requirement for conciliations to be fair, economical, informal, and quick.
- 2.2 ACCS policies and procedures in relation to the conduct of conciliations must be written in plain English and be easily accessible to all parties to a dispute, particularly claimants, and published on the ACCS website.
- 2.3 ACCS must not make policies and procedures relating to the conduct of a specific conciliation or direct Conciliation Officers in relation to the outcome of a specific conciliation.

3 Extension of time to lodge and out of time lodgements

- 3.1 Under section 289B of the WIRC Act, ACCS may allow an extension of time for lodging an application for conciliation, or an application for conciliation to be lodged out of time, if it considers it appropriate in the particular circumstances, but must do so according to law, including any applicable legislation or case law, to:
 - a) ensure procedural fairness in the conduct of conciliation; and
 - b) facilitate the resolution of disputes in a fair, economical, informal and quick manner.
- 3.2 ACCS must make policies and procedures setting out the circumstances in which ACCS will allow for an extension of time for lodging an application for conciliation, or an application for conciliation to be lodged out of time, including:
 - a) the extent of, and reasons for the delay;

¹ Trading as the Workplace Injury Commission

- b) the scope and objectives of the WIRC Act, including to provide injured workers with appropriate compensation in the most socially and economically appropriate manner, as expeditiously as possible; and
- c) any other relevant circumstances.

4 Conciliation Officers

- 4.1 Under section 531 of the WIRC Act, ACCS may employ such numbers of Conciliation Officers to undertake conciliations as it considers necessary to enable it to perform its functions.
- 4.2 ACCS must ensure that, before a person is employed as a Conciliation Officer, ACCS establishes that the person:
 - a) is of good character, integrity and reputation;
 - b) has the appropriate qualifications, skills, competencies and attributes to conduct conciliations, for example, appropriate knowledge and experience of the Victorian WorkCover Scheme, or other similar workers compensation schemes or appropriate knowledge and experience in dispute resolution.
- 4.3 ACCS must ensure Conciliation Officers complete relevant induction and any ongoing training and professional development, appropriate to performing the duties of a Conciliation Officer.
- 4.4 The appropriate qualifications, skills, competencies, and training required by ACCS must be informed, as far as practicable, by contemporary best-practice in conciliation.

5 Conflict of Interest

- 5.1 Conciliation Officers must conduct conciliations impartially and independently.
- 5.2 ACCS must make policies and procedures for managing conflicts of interest (whether real or perceived) during the conduct of conciliations, including:
 - a) when and how Conciliation Officers must declare conflicts of interests;
 - b) the manner in which parties to a dispute may raise a potential conflict; and
 - c) how the conflict of interest will be resolved.

6 Conduct of conciliations

- 6.1 In the conduct of conciliation, a Conciliation Officer shall perform their duties and exercise powers to conciliate disputes in accordance with the WIRC Act and the policies and procedures of ACCS.
- 6.2 ACCS policies and procedures must require that Conciliation Officers:
 - a) conduct conciliations in a fair, economical, informal and quick way;
 - b) comply with the principles of procedural fairness; and
 - c) ensure all reasonable efforts are made to bring the parties to agreement.
- 6.3 When participating in conciliation, parties must engage in conciliation meaningfully and genuinely. Parties must take all reasonable steps to resolve disputes and conduct themselves in accordance with ACCS policies and procedures. Agents and self-insurers must take all reasonable steps to settle disputes. This will be evidenced by, among other things, the agent or self-insurer:
 - a) providing all relevant information in its possession in a timely manner prior to the conference. If unable to provide information in its possession in a timely manner prior to the conference, the reasons for the non-compliance;
 - b) attending the conference;
 - c) meaningfully and genuinely discussing all relevant issues raised at conference; and
 - d) ensuring that it maintains only the decisions which have a reasonable prospect of success were they to proceed to Arbitration or Court.

- 6.4 ACCS must also create policies and procedures regarding the circumstances and processes by which a Conciliation Officer could remove or prohibit a person from a conciliation conference, including if the Conciliation Officer determines that the person has interfered with, disrupted, or obstructed the conference or has failed to comply with ACCS policies and procedures, and how a party may make a complaint or appeal a Conciliation Officer's decision.
- 6.5 ACCS may dismiss a dispute from conciliation under section 294(1)(e) of the WIRC Act, for any appropriate reason, including if a claimant is no longer able to participate, or upon notification from parties that they have resolved the dispute by agreement. ACCS must make policies and procedures in relation to dismissal of a dispute, including how a party to a dispute can seek a dismissal and the relevant grounds for dismissal. When deciding whether to dismiss a dispute, ACCS must balance ensuring procedural fairness and facilitating the fair and final resolution of disputes.
- 6.6 Where ACCS dismisses a dispute from conciliation and the claimant makes an application for further conciliation, ACCS must, as far as practicable, ensure the dispute is heard by the same Conciliation Officer.

7 Representation by a legal practitioner

- 7.1 Under section 290A of the WIRC Act, a person who is a party to a dispute is not entitled to be represented by a legal practitioner at a conciliation conference. This means a legal practitioner does not attend a conciliation conference unless, pursuant to section 290A, ACCS agrees to the party being represented, having regard to:
 - a) the fairness of allowing the party to be represented, including whether each party is able to represent themselves effectively;
 - b) whether it would enable the matter to be dealt with more efficiently; and
 - c) any other matters specified in policies and procedures of ACCS published under section 301B.
- 7.2 ACCS policies and procedures must specify the factors ACCS will consider when deciding on a submission from a party seeking that they be represented by a legal practitioner, including:
 - a) the duty of ACCS under section 281A of the WIRC Act and the principles and objectives of conciliation;
 - b) the complexity of the dispute;
 - c) the volume, nature and technicality of relevant information;
 - d) the value of the claim;
 - e) whether the party is vulnerable, including whether they have the ability to understand, participate and effectively present their case without legal representation; and
 - f) the number of parties and participants in the conference.
- 7.3 ACCS must consider the submission of each party seeking legal representation separately. Where ACCS agrees to one party being represented by a legal practitioner, it need not agree to another party or parties also being represented.

8 Assistance by others

- 8.1 A party may be assisted at conciliation by persons who are not legal practitioners (as defined in the WIRC Act) such as union representatives, employer or self-insurer association representatives, legal guardians or another person nominated by the party to assist them at conciliation.
- 8.2 Before commencing a conciliation conference, a party wishing to be assisted by a person who is not a legal practitioner must notify ACCS.

9 Attendance of support persons

- 9.1 A support person is a person who attends a conciliation conference for the purpose of supporting a party in their personal capacity (for example, by providing emotional support) but does not represent the party in the conciliation conference.
- 9.2 Before the commencement of a conciliation conference, a party wishing to have a support person must notify ACCS.

10 Employer participation

- 10.1 Where appropriate, ACCS should encourage participation in conciliation by the employer, including attendance at the conciliation conference by an appropriate employee or officer of the employer.
- 10.2 Before commencing a conciliation conference, the employer, or the authorised agent or self-insurer on behalf of the employer, must notify ACCS in a timely manner of the employer's intention to participate in the conference.
- 10.3 A Conciliation Officer may request an employer to participate in a conciliation conference to provide information relevant to the dispute.

11 Interpreter and other services

- 11.1 ACCS must assist claimants where assistance is necessary for them to participate in a conciliation conference, including providing (free of charge):
- a) reasonable adjustments for people with a disability; and
 - b) professional interpreter services.

12 Conciliation Outcome

- 12.1 Under section 298 of the WIRC Act, a Conciliation Officer may issue a certificate stating that they are satisfied that there is a genuine dispute. ACCS must make policies and procedures requiring that the genuine dispute certificates issued under section 298 must also include information of possible next steps, including referring the dispute for arbitration under section 301C of the WIRC Act, or proceeding to court under section 273 of the WIRC Act.
- 12.2 ACCS must also make policies and procedures that set out the process of responding to a party's requests for copies of documents provided by them or other documents provided to or produced by ACCS relevant to the dispute, exchanged with the party and held as part of the conciliation file.

13 Record Keeping

- 13.1 ACCS must maintain a database of records relating to applications for conciliation. The database must include details of any applications lodged for conciliation, including the number of applications both declined and accepted for conciliation, the number of conferences held, dismissals, genuine dispute certificates and other outcome certificates issued.
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