

## Purpose

1. This policy and procedure is made in accordance with section 301B of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (**WIRC Act**).
2. This policy and procedure provides guidance to the Workplace Injury Commission (**WIC**), parties, representatives and assistants about applications for conciliation, including the criteria for acceptance of applications and the circumstances in which WIC may extend the time for lodging an application or accept an out-of-time application.

## Legislative Framework

3. Section 289A of the WIRC Act provides for the lodging of disputes for conciliation.
4. Section 289B of the WIRC Act gives WIC the power to allow an extension of time for lodging an application for conciliation or for an application to be lodged out of time.
5. This policy and procedure is made in accordance with the *Ministerial Guidelines in Respect of Conciliation (2022)* made under sections 301A and 611 of the WIRC Act, relating to policies and procedures and applications for conciliation.

## Principles

6. A Worker or a person on behalf of a Worker, may lodge an application with WIC for conciliation of the dispute or for further conciliation of a dismissed dispute.
7. Applications for conciliation should be lodged within 60 days from:
  - a. The date the decision from a WorkSafe Agent or Self-insurer was given to or served on the Worker; or
  - b. For a dispute previously dismissed from conciliation, the dismissal date.
8. WIC, at its discretion, may grant an extension of time to lodge an application or allow a late (out of time) application to be lodged, if it considers it appropriate in the particular circumstances. WIC will exercise its discretion in accordance with the law, including any applicable legislation or case law and as outlined in this policy and procedure, 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.
9. A Worker or a person on behalf of a Worker, may lodge an application for conciliation about a WorkSafe Agent's or Self-insurer's failure to respond to a request on their claim, if the Worker has not received a response from the WorkSafe Agent or Self-insurer within a reasonable time after the Worker provided them with a request or invoice.

## Scope

10. This policy and procedure applies to WIC, parties, assistants and representatives.



## Definitions

11. **Party:** a Worker, the WorkSafe Agent, Self-insurer or an Employer.
12. **Out of time application:** means an application for conciliation lodged with WIC:
  - a. More than 60 days after a decision notice from the WorkSafe Agent or Self-insurer was given to or served on the Worker;
  - b. More than 60 days after the dispute was dismissed from conciliation (the date of the *Dismissal Certificate*); or
  - c. After the expiration of an extension of time to lodge an application allowed by WIC.

## Policy Statement

### Lodging Disputes for Conciliation

13. WIC may assist a Worker to lodge an application where they need support to access the service.

### Application for Conciliation

14. An application for the conciliation of a dispute must be sent or delivered to WIC using the approved form (see the *Application for Conciliation Form* in the resources section of our website [www.wic.vic.gov.au/resources](http://www.wic.vic.gov.au/resources)).
15. A Worker may apply for conciliation of a dispute by WIC if they wish to dispute:
  - a. A decision made by a WorkSafe Agent or Self-insurer on their worker's compensation claim; or
  - b. A failure by a WorkSafe Agent or Self-insurer to respond to a request made on their claim (including a failure to pay weekly payments or medical and like expenses in a timely manner); and
  - c. The dispute has not previously been conciliated or determined at Arbitration by WIC; or determined by a Court.
16. If authorised by the Worker, a person may, on behalf of the Worker, lodge an application for conciliation.

### Application for Further Conciliation after Dismissal

17. A Worker may apply for further conciliation of a dispute or any part of a dispute that has been dismissed from conciliation.
18. An application for further conciliation of a dismissed dispute must be sent or delivered to WIC using the approved form:
  - a. If applying within 60 days of the *Dismissal Certificate*, a Worker should lodge a WIC *Application for Further Conciliation After Dismissal Form* (see the resources section of our website [www.wic.vic.gov.au/resources](http://www.wic.vic.gov.au/resources)); or
  - b. If applying more than 60 days after the date of a *Dismissal Certificate*, a Worker should include reasons for the out-of-time lodgement in the application form.



19. If authorised by the Worker, a person may, on behalf of the Worker, lodge an application for further conciliation after dismissal.
20. When an application for further conciliation of a dismissed dispute is lodged, WIC may request parties to confirm:
  - a. If they wish to rely on the documents provided for the original dispute; and
  - b. Whether there are any new documents to be produced or new information to be provided.

### **Timeframe for Lodgement of Applications**

21. An application for conciliation should be lodged within 60 days from the date:
  - a. That a decision notice from the WorkSafe Agent or Self-insurer was given to or served on, the Worker; or
  - b. Of a *Dismissal Certificate*.
22. WIC allows up to three additional business days, in addition to 60 days, to allow for delivery by post.
23. A Worker may lodge an application by a later date if WIC has allowed an extension of time to lodge.
24. A Worker may lodge an application for conciliation about a WorkSafe Agent's or Self-insurer's failure to respond to a request on their claim if they have not received a response from the WorkSafe Agent or Self-insurer within a reasonable time after they provided them with a request or invoice.
25. An example of reasonable time may be 28 days after the WorkSafe Agent or Self-insurer is provided with an invoice for payment. Reasonable time may be different depending on the request.

### **Allowing an Extension of Time or Out-of-Time Application for Conciliation**

26. Before lodging the application form, a Worker may request an extension of time to lodge their application. A request for an extension of time to lodge, with reasons, should be made on the appropriate form (see the resources section of our website [www.wic.vic.gov.au/resources](http://www.wic.vic.gov.au/resources)).
27. A Worker may also lodge an out-of-time application. The Worker, or person lodging the out-of-time application on behalf of the Worker should submit an *Application for Conciliation Form* or an *Application for Further Conciliation after Dismissal Form* (see the resources section of our website [www.wic.vic.gov.au/resources](http://www.wic.vic.gov.au/resources)) with reasons.
28. WIC may take the following factors into consideration when deciding whether to allow an extension or out-of-time application:
  - a. The objectives of the WIRC Act, including to provide Workers with appropriate compensation;
  - b. The extent of and reasons for the delay;
  - c. The Worker's particular circumstances that may have contributed to the delay, such as their:
    - i. Health or capacity to lodge the application;
    - ii. Ability to obtain legal advice; or
    - iii. Access to documents and information (including medical and other reports);



- d. The status of additional disputes at conciliation;
- e. The type of decision in dispute;
- f. The complexity of the dispute;
- g. The views of the WorkSafe Agent or Self-insurer;
- h. Any prejudice to parties; and
- i. Any other relevant circumstances.

### Insufficient Information

29. There may be a delay in accepting an application if information is missing from the application form including:
- a. The claim number;
  - b. Personal details;
  - c. Details of the dispute, that is:
    - i. Why the Worker is applying for conciliation; or
    - ii. In the case of a dispute previously dismissed from conciliation, stating what the dispute is about or what, if any, part of the dispute has been resolved or is no longer relevant; and
    - iii. Supporting information such as the WorkSafe Agent's or Self-insurer's decision, unpaid accounts/invoices or treatment requests.
  - d. The reasons for the out of time lodgement if the application is received out of time.
30. If insufficient information is provided, WIC may contact the Worker, their assistant or representative to request the information.

### Duplicate Disputes

31. WIC should only conciliate a dispute once; except where allowed by law (for example, where a dispute is referred from arbitration for further conciliation).
32. If WIC identifies a dispute as a duplicate of an existing or previous dispute between the parties, an application for conciliation may not be accepted where:
- a. An *Outcome Certificate* has been issued by WIC and there is no material difference between the conciliated dispute and the new application;
  - b. The same dispute is currently the subject of an arbitration or court proceedings;
  - c. A determination has already been made at arbitration or a court has issued a decision or judgment in relation to the dispute;
  - d. WIC has dismissed a dispute at conciliation in specific circumstances (for example, the dispute was resolved by agreement outside of conciliation and the parties agreed to the dismissal of the dispute in finalisation of the matter).
33. However, an application may be accepted as a new dispute, where a conciliation *Outcome Certificate* has been issued by WIC, or a determination has been made by WIC in arbitration, and the WorkSafe Agent or Self-insurer has issued a further decision in relation to the claim on a similar issue or where there has been a material change in circumstances.



## Multiple Disputes

34. If a Worker seeks the conciliation of more than one dispute, wherever possible, the applications should be lodged at the same time. This may be done on the same application form or on separate forms.
35. If referring additional disputes for conciliation at a later date, a Worker should lodge a new *Application for Conciliation Form*. If a new application for conciliation is received by WIC, it may be joined with the existing dispute or dealt with separately.
36. The decision to conciliate the disputes together or separately will be made by WIC, taking into account the timing of the additional lodgement and the appropriateness of having them conciliated together. WIC may seek the parties' views with regard to joining the disputes.

## Procedure

### Lodging an Application for Conciliation or Application for Further Conciliation after Dismissal Form

37. To lodge an *Application for Conciliation Form* or an *Application for Further Conciliation after Dismissal Form*, the following process applies:
  - a. A Worker or a person on behalf of the Worker may lodge an application form with WIC by email, postal mail or delivery in person. All forms lodged electronically receive an automated email to confirm receipt.
  - b. If the form has insufficient information, WIC may contact a Worker or their representative to request further information.
  - c. WIC should assess each application to ensure the required legislative criteria are met and, if accepted, WIC should provide the parties and their assistants or representatives with an acknowledgement letter including a conciliation reference number and further information about the conciliation process.
  - d. If WIC considers the application does not meet the requirements referred to in this policy, it should notify the Worker and their representative and provide the reasons why the application does not appear to meet the criteria for acceptance. WIC may invite a response from the Worker or their representative within a specified timeframe.
  - e. After receiving the response or further information, WIC should decide whether the application meets the criteria for acceptance and, as soon as practicable:
    - i. Accept the application and issue an acknowledgment letter; or
    - ii. Notify the Worker in writing of its rejection of the application, together with the reasons.

### Request an Extension of Time to Lodge an Application

38. To request an extension of time to lodge an application for conciliation, the following procedure applies:
  - a. The Worker or person on behalf of the Worker should submit a *Request for an Extension to Lodge Form* including the reasons for the request and the length of time requested. The form should be submitted within 60 days from the date:



- i. A decision notice from a WorkSafe Agent or Self-insurer was given or served on the Worker; or
  - ii. Of a *Dismissal Certificate*.
- b. WIC may contact the WorkSafe Agent or Self-insurer to seek their response, within a specified timeframe, to the request for the extension.
- c. WIC should as soon as practicable make a decision about the extension-of-time request. If WIC:
- i. Allows the extension of time, it should notify the parties and confirm the time period of the extension; or
  - ii. Does not allow the extension of time, it should notify the parties in writing, together with the reasons.
39. If the Worker does not lodge the application for conciliation within the extended timeframe, they cannot request a further extension and may be required to lodge an application out of time.

### Lodge an Out of Time Application

40. To lodge an out-of-time application, the following procedure applies:
- a. When submitting an application form the Worker or their representatives must provide the reasons in writing for lodging out of time.
  - b. WIC may contact the WorkSafe Agent or Self-insurer to seek their response, within a specified timeframe, to the out-of-time application.
  - c. WIC should, as soon as practicable, make a decision about the out-of-time application. If WIC:
    - i. Allows the late lodgement, it will send an acknowledgment letter; or
    - ii. Does not allow the late lodgement, it will notify the Worker or their authorised representative in writing, together with the reasons.

### Questions About This Policy and Procedure

41. If you have any questions about this policy and procedure, please contact the Principal Conciliation Officer.

### Review

42. This policy and procedure will be reviewed every three years, or more frequently if there is a change in business or legal requirements.