

WORKPLACE INJURY REHABILITATION AND COMPENSATION ACT 2013

Conciliation

A worker is entitled to seek a review of any decision relating to their claim by the Accident Compensation Conciliation Service. The conciliation role is to seek an agreement between the parties in dispute. Conciliators may make recommendations to resolve a dispute, but these recommendations are not binding. Conciliators may give directions relating to weekly payments and these must be followed but can be revoked by another conciliator, the senior conciliator or a court. The objective of conciliation is to resolve the matter rather than deciding it.

Conciliation hearings are informal and do not allow legal representation. They are assisted greatly by employer attendance.

Employers should make it a practice to attend conciliation hearings. It ensures the agent representative is aware of all facts relating to the dispute and keeps the worker honest in their presentations. If you do not attend, the agent or the conciliator may tie you into an agreement you cannot deliver.

Common Law – being sued

Workers injured can sue the employer for damages for:

- pain and suffering, to a prescribed indexed maximum
- pecuniary loss (loss of earnings), to a prescribed indexed maximum

Common Law can only be accessed by workers who, as a result of the negligence of their employer (or a third party), have incurred an injury which:

- results in permanent impairment evaluated as being 30 per cent or more;
- results in less than 30 per cent impairment, but as a result of the injury, the worker has lost more than 40 per cent of future earning capacity; or
- was incurred more than 12 months ago.

Damages for pain and suffering only can be accessed without ceasing weekly payments. To access that sum, a worker is required to show the injury has had a dramatic effect on their life. The gateway to qualify for pain and suffering damages only is less onerous to negotiate and it is likely that many workers will seek this form of compensation.

An employer's WorkCover policy provides insurance for Common Law damages. Any writs received should be sent to the agent who will arrange legal representation to defend the matter. All legal costs and sums awarded will be paid by the WorkCover agent. Employers should refer any requests from legal representatives of workers to their agent or the agent's legal representative. Employers should never respond on their own behalf.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced health, safety and wellbeing and workplace relations advisors can assist members with a range of health, safety, wellbeing, employment, human resources and industrial relations issues.

Our experienced health, safety and wellbeing and workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide health, safety and wellbeing consulting and training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Advice Line on **(03) 8662 5222**.

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