

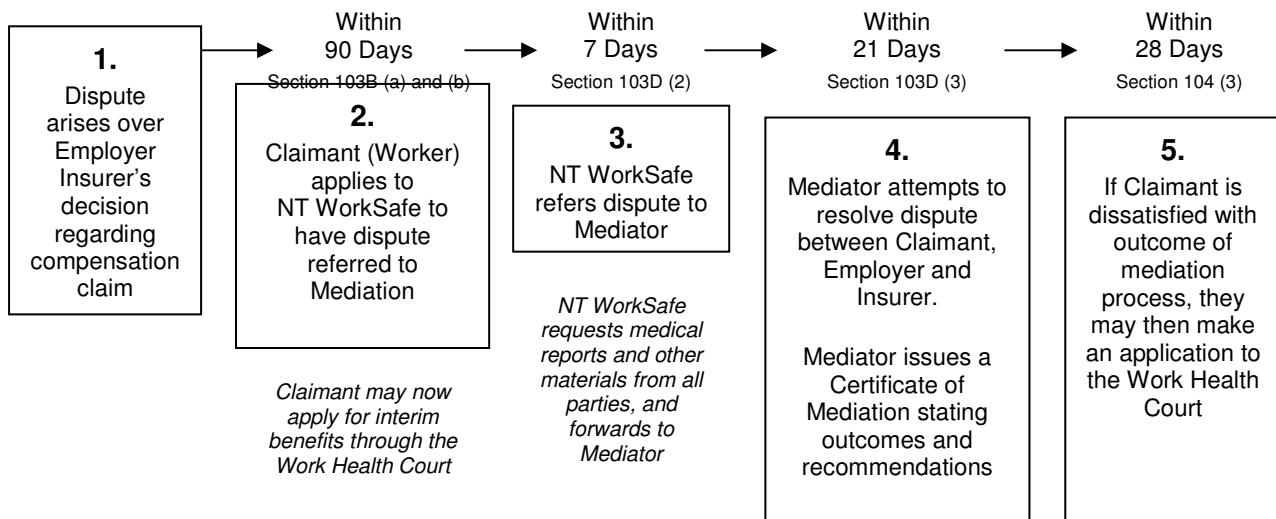
BULLETIN

Mediation Process for Workers Compensation

This information bulletin has been produced to explain the mediation process in the resolution of workers' compensation claim disputes under the Workers Rehabilitation and Compensation Act (the Act).

The mediation process

PARTICIPANTS: the claimant (worker), the mediator, the employer, and the employer's insurer.



1. What is a dispute?

Section 103B of the Act states that a dispute arises where a worker is aggrieved by the decision of an employer (which is usually the decision of the insurer) –

- to dispute liability for compensation claimed by the claimant;
- to cancel or reduce compensation being paid to the claimant; or
- relating to a matter or question incidental to or arising out of the claimant's claim for compensation.

Mediation time limit

NOTE: Under (a) and (b) above, a worker has 90 days from receipt of the insurer's Notice of Decision and Rights Appeal form to apply to NT WorkSafe for mediation if there is a dispute.

Under (c) above, there is no time limit to apply.

Workers are encouraged to lodge a request with NT WorkSafe for mediation as soon as possible after the dispute arises.

2. What is mediation?

Mediation may help solve disputes by sharing information and documents, identifying the issues in dispute, discussing them and trying to reach a mutually acceptable agreement. It is fair, informal, quick and is a free service.

How to apply for mediation

The worker applies to NT WorkSafe to have a dispute referred to mediation.

An application **MUST** be in writing and may be posted, faxed, hand-delivered, or emailed to mediationworksafe@nt.gov.au. If the dispute is in relation to claim liability, reduction or cancellation of benefits, the worker should complete the Notice of Decision and Rights of Appeal request for mediation form they will have received from the insurer and post, fax, hand-deliver or email this to NT WorkSafe. The worker may contact the mediation coordinator on 8999 5294 or 1800 250 713 for assistance with their application.

Interim benefits

The worker may apply to the [Work Health Court](#) for interim benefits (wages) at any time after they have applied for mediation.

NOTE: The worker should be aware that if their claim is subsequently denied, action might be taken to recover these benefits from the worker.

Claimant's role

Once the request for mediation is lodged the worker **MUST** ensure that they are available during the 21 days to supply any additional information that may assist the mediator in resolving the dispute. This is especially important where it appears to the mediator that a conference needs to be convened to assist in the resolution of a dispute. If a mediator decides to convene a mediation conference, participation is compulsory.

3. NT WorkSafe's role

After NT WorkSafe receives the request for mediation, a mediator is appointed within 7 days. NT WorkSafe will also, by notice in writing, require each party (worker, employer and employer's insurer) to provide it with:

- All written medical reports in the party's possession or control relevant to the dispute (including reports on which the party does not rely); and
- All other written material in the party's possession or control on which the party relies.

On receipt of this information NT WorkSafe will provide the reports and other material to the mediator and will assist them in making copies available to parties in the course of the mediation.

4. Mediator's role

Once appointed, the mediator has 21 days to progress and complete the mediation process.

The mediator may contact the worker regarding any additional information that may be available to assist in resolving the dispute. This additional information will be passed on to the insurer.

The insurer may reconsider the claim, taking into account the additional information provided.

If in the opinion of the mediator, a conference would help resolve the matter then the mediator will convene a mediation conference and require the worker, the insurer and sometimes the employer to attend.

Outcome of mediation

Mediation may result in:

- the reasons for a decision becoming clearer or better understood by the worker;
- the decision being changed;
- an undertaking by the insurer to reconsider their decision on receipt of further information; or
- no change to the decision.

All parties will be advised in writing, by the mediator, of the outcome of the mediation including any recommendations. The written advice of the mediator is referred to as a Certificate of Mediation.

5. Claimant dissatisfied with the mediation outcome

If a worker is dissatisfied with the outcome of the mediation process, they may then make an application to the Work Health Court.

The application to commence Court proceedings should be made within 28 days from the **DATE OF RECEIPT** of the Certificate of Mediation.

NOTE: Before making an application to the Work Health Court, the worker **MUST** first apply for, and complete, the mediation process.

Mediation conference

Who attends?

The worker, the insurer, and the employer are all parties to a mediation conference. While employers are a party under the Act they may not always have to attend unless directed by the mediator.

The employer should speak with their insurer and the mediator about the benefits of attending a mediation conference.

If because of distance, it would be impractical for all parties to attend, the mediation conference may be conducted by a telephone conference.

If the worker speaks another language other than English, or speaks English as a second language, the worker, insurer or mediator can request NT WorkSafe to arrange an interpreter.

Claimant's participation

A worker is entitled to have a support person attend the conference with them such as a union representative, a family member or a friend. Lawyers are only allowed to attend with the approval of the mediator. Lawyers can, however, play a beneficial role in assisting a worker to articulate their dispute.

At the conference, the worker will be asked to explain why they disagree with the insurer's decision. The insurer will be asked to explain the reasons for their decision. Following this, the mediator will assist in identifying the matters actually in dispute; then, with both parties, endeavour to resolve those issues and, if possible, bring about agreement.

This is an opportunity for the worker to present their case to the insurer in an impartial and informal atmosphere. If there is any additional information that may assist the claim, the worker should provide this to the mediator.

Mediator's participation

The mediator is required to be independent, fair and impartial. The mediator will assist discussion, keep control of the process and assist the parties to reach agreement. If required, the mediator may make recommendations to assist either party to resolve the issue/s under dispute.

Insurer's participation

The insurer's role is to listen to the worker, to provide explanation and information to the worker regarding the decision under dispute, and to consider any new information that is provided.

For further information please contact NT Worksafe on 1800 250 713 or visit www.worksafe.nt.gov.au