



Workers Compensation
Commission

GUIDE FOR LEGAL PRACTITIONERS

**HOW TO CONDUCT TELEPHONE CONCILIATIONS/ARBITRATIONS
AND TELEPHONE MEDIATIONS**

Before telephone con/arb or telephone mediation date:
Legal representatives must ensure they can answer 'yes' to these questions

Did I give the Commission the correct telephone numbers for me and any other person who will be participating for my client? <u>Note:</u> Direct telephone numbers only will be accepted. 1300 telephone numbers will not be accepted. An insurer representative must attend the con/arb or mediation.	YES
Have I consulted sufficiently with my client, and well in advance of the telephone con/arb or mediation? <u>Note:</u> This consultation should include preparing clients for the logistics of a matter that is run by telephone.	
Have I properly briefed any legal counsel in the matter?	
Have I consulted with the other party or parties sufficiently, and well in advance of the teleconference, telephone con/arb or telephone mediation?	
Have I identified the issues in agreement and in dispute?	
Have I identified potential resolution options?	
<u>For telephone con/arb only:</u> Am I ready for arbitration hearing if the matter does not settle, and have I advised my client about likely outcomes?	

On the day of the telephone con/arb or telephone mediation:
Legal representatives must ensure they can answer 'yes' to these questions

Does the Commission have the correct telephone number to call me and the other participants for my client?	YES
Do I have a drink and anything else I may want during the event?	
Is my phone charged for the duration of the event or plugged into a charger?	
Do I need a laptop or other device and, if yes, is it charged for the duration of the event or plugged into a charger?	
Do I need headphones and, if yes, do I have them?	
Do I have access to all required documents?	
Am I in a stable, quiet and private location?	

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Waiting for the conference call	
Be ready 5 mins before the scheduled call time	
If the operator does not call before the commencement time	Text 0420 204 105 with your name and matter number and state you have not been connected. A backup number is 0478 882 248
Introducing the conference	
You will be connected to the conference before the arbitrator or mediator	
The operator will ask the arbitrator or mediator if they want a roll call	
The arbitrator or mediator will welcome participants and do a roll call	
The arbitrator or mediator will ask if the insurer representative is on the line.	An insurer representative must be present at the commencement of a conference but may be released if the arbitrator or mediator is satisfied the conference can proceed without them and the insurer representative can be contacted, if required. If the insurer representative does not attend the conference, or their details have not been provided by the legal representative, the arbitrator or mediator is required to notify the Commission.
The arbitrator or mediator will confirm that everyone is in a stable, quiet and private place (not driving etc)	
The arbitrator or mediator will deliver their usual introduction with additions below	
The arbitrator or mediator will ask: <ol style="list-style-type: none"> 1. If the worker has a support person with them? 2. If others are on the call (i.e. other than those on the roll call)? 	The arbitrator or mediator will state that no-one is permitted to record the call during the conference and, if anyone enters the room, the relevant party must advise the person that the call is confidential.

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<p>The arbitrator or mediator will explain technology issues, such as:</p> <ol style="list-style-type: none"> 1. If there is a problem, you can text 0420 204 105 for assistance A backup number is 0478 882 248 2. If you want the operator, dial *1 3. When you contact the operator (*1) there may be delay, so please be patient 4. Do NOT keep dialling *1 as you will move out of the queue and you will need to *1 to get back in (last on queue) 5. When on the joint line, everyone can hear you, unless you mute your phone 6. It is ok to have side discussions by email or phone, but the arbitrator or mediator will usually stay on the joint line 7. The operator can move you into a sub-conference for private conversations with your client 8. Please mute your phone when not speaking 	
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During the conciliation phase

<p>The arbitrator will tell you that you may take a break within the conference to allow you to communicate and exchange offers and facilitate lawyer-client communications.</p>	<p>The arbitrator can arrange for the operator to move participants between rooms. The arbitrator will give the parties a specific time when the operator will bring everyone back to a joint conference. Alternatively, the arbitrator may tell the parties they can remain on the line with their phone muted, until they are ready to speak to the arbitrator and each other.</p>
<p>The arbitrator can organise multiple conciliation sessions during the conciliation phase.</p>	<p>Before the arbitrator terminates the phone call, they will tell everyone when the operator will re-call the participants (i.e. the arbitrator will give you a specific time and will generally not allow long periods between sessions).</p>

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Ending the conciliation phase	<p>The arbitrator will determine when the conciliation phase should end.</p> <p>The arbitrator will inform the parties in joint session either:</p> <ol style="list-style-type: none"> 1. The arbitrator's understanding of any resolution outcome and the actions the parties must take to execute the resolution; or 2. The arbitrator is now moving the parties into the arbitration phase.
What happens when parties reach an 'in-principle agreement' but a legal representative wants to obtain written instructions from their client who is not present with them?	<p>The arbitrator will order that the matter be remitted to the Registrar for the parties to hand up consent orders within 14 calendar days, failing which, the matter will be relisted before the same arbitrator for a second con/arb.</p>
During the arbitration hearing	
The arbitrator will tell the parties that the arbitration phase will be recorded.	
If a second hearing date is requested/needed.	<p>The arbitrator will pause the arbitration and call the Commission to see if a second event can be held.</p> <p>A second event will not be scheduled without prior approval.</p>
During the mediation conference	
The mediator will tell you that you may take a break within the conference to allow you to communicate and exchange offers and facilitate lawyer-client communications.	<p>The mediator will press *1 to ask the operator to move participants between rooms.</p> <p>The mediator will tell the parties when the operator will bring everyone back together.</p> <p><u>Remember:</u></p> <p>If you press *1 again, you go out of the queue (and return to the end of the queue when you press *1 again).</p> <p>Alternatively, the mediator will tell the parties they can remain on the line with their phone muted, until they are ready to continue with the mediation.</p>

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<p>The mediator can organise multiple sessions during mediation.</p>	<p>Before the mediator terminates the phone call, they will tell everyone when the operator will re-call the participants (i.e. the mediator will give you a specific time and will generally not allow long periods between sessions).</p>
<p>What happens when parties reach an 'in-principle agreement' but a legal representative wants to obtain written instructions from their client who is not present with them?</p>	<p>The mediator can keep the mediation open for up to 14 days after the mediation conference ends.</p> <p>If the parties do not notify the mediator of a settlement outcome, the mediator will ask the parties for offers by 5pm on the deadline and will issue a certificate certifying the final offers made.</p> <p><u>Note:</u> The certificate will be issued without offers, if they are not received by the deadline.</p>
<p>If second mediation conference is requested/needed.</p>	<p>The mediator will pause the mediation and call the Commission to see if a second conference can be held.</p> <p>A second conference will not be scheduled without prior approval.</p>
<p>Ending the mediation</p>	<p>The mediator will:</p> <ol style="list-style-type: none"> 1. Ask the parties to confirm final offers, or 2. Ask the parties to confirm settlement terms and the actions they must take to execute settlement, or 3. Tell the parties the mediation will remain open until a specific date (see above).

What are typical telephone con/arb and mediation challenges?

<p>An insurer representative does not participate in a telephone con/arb or mediation.</p>	<p>If the insurer representative does not attend the con/arb or mediation, or their details have not been provided by the legal representative, the arbitrator or mediator is required to notify the Commission.</p>
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<p>The legal representative has not properly or adequately briefed their legal counsel.</p>	<p>Arbitrators and mediators will remind the legal representative they are required to properly brief counsel well in advance of the listing. The arbitrator or mediator will advise the Commission about non-compliance.</p>
<p>The legal representative has not consulted with their client sufficiently or has only consulted immediately prior to the con/arb or mediation.</p>	<p>Arbitrators and mediators will remind the legal representative they are required to consult with their client well in advance of the listing. The arbitrator or mediator will advise the Commission about non-compliance.</p>
<p>The parties have not consulted with each other sufficiently prior to the con/arb or mediation.</p>	<p>Arbitrators and mediators will remind the legal representatives they are required to consult <u>before</u> the telephone con/arb or mediation.</p>

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