**INFORMATION SHEET:**

**Conciliation Process**

* 1. **Procedural Matters**

Whilst the conciliation process is flexible, the Tribunal will follow the procedures set out below unless it is not practicable to do so:

1. An initial teleconference between the parties and/or their solicitors and the conciliator will initiate the conciliation process. The main aim of this teleconference is to identify the issues in dispute and to outline a time frame for both parties to complete the preparation of their evidence prior to the actual conciliation conference. This **may** include:

* One or both parties providing a **statement of facts, issues and contentions,** outlining the key facts relied upon, the issues in dispute and the contentions a party believes should be drawn from the asserted facts.
* Obtaining and providing **statements of witnesses** who may be called to give evidence.
* Making medical appointments and obtaining **medical opinions and medical records.**
* Making **discovery** by way of a list of documents in accordance with regulation 6.

1. Parties issued with a notice to attend a teleconference should ensure the Tribunal is provided with the name and contact details of any solicitor or other person who will be representing them.
2. If an adjournment is being sought, consent is to be obtained from the other party prior to contacting the Tribunal with a request. The Tribunal staff will not obtain this consent for the parties.
3. Particular attention will be given to the early identification of a “medical question”, so as to remove the need for parties to obtain multiple medical opinions.
4. Preliminary issues or legal points, once identified, will be referred separately for determination by the Tribunal, unless to do so would be inappropriate for reasons such as cost or delay.
5. The conciliator will, insofar as is possible, ensure the conciliation process proceeds without any undue delays. Procedures that may be utilised for this purpose are:

* telephone conferences between all parties and the conciliator;
* use of the powers under s42I(2)(a) or (b); and/or
* referral to the Tribunal for appropriate directions or orders.

1. The actual conciliation conference will be listed after the conciliator has confirmed with the parties or their solicitors the time necessary for that particular conference, taking into account the nature and extent of issues and other factors that have been identified.
2. When the conciliation process is concluded (without the matter being resolved) the conciliator will prepare the notice as required by s42G(4). The conciliator will, as part of this process:

* confirm that no reasonable prospect exists for a conciliated outcome;
* confirm that the question of whether there is an issue that could be resolved by a Medical Panel has been considered;
* confirm that witnesses are identified and, if applicable, witness statements and proofs of evidence have been provided;
* identify any amendments to the claim, referral or application that may be required;
* confirm either that discovery has been completed or detail what discovery is proposed and if necessary give time limits for its completion;
* confirm and document the issues that are still outstanding.

1. Where a conference is unsuccessful in resolving the matter but the parties wish to continue settlement endeavours, the conciliator (if he or she believes a conciliated outcome may be possible) will, at the conclusion of the conference, provide a time and date for another conference.
2. There may be circumstances where the conciliation process is concluded save that the parties wish to consider or need to attend to some matter before committing to arbitration. In this instance a further teleconference would then be held with the parties concerned, and after confirming any outstanding action has been completed, the conciliator will then confirm the matter is ready to proceed to a hearing.
3. At the conciliator’s discretion, a conference may be held prior to the completion of the exchange of medical opinions or witness statements, where the parties believe that such a conference may be beneficial in the resolution process. This is to be by exception only and will require the consent of all parties. If this fails to achieve an outcome then another conference can be set by which time all relevant evidence is to be exchanged.
4. Attendance at a conference by telephone or Microsoft Teams is not appropriate except in exceptional circumstances. However, the Tribunal accepts that in some instances it is impractical for a party to appear in person and these requests will be considered on an individual basis by the conciliator.
5. Once the conciliation process has concluded and the conciliator confirms that discovery has been completed and that there are no outstanding issues, the conciliator will advise the parties that the conciliation process is at an end and that the matter will be listed for directions before the Tribunal so the matter can be set down for hearing.
6. Prior to the directions hearing the Registry staff will provide potential dates for the hearing and it is expected that at the directions hearing the parties will advise the suitability of those dates as well as the availability of counsel and all witnesses on those dates.
   1. **Disclosure of medical reports/proofs during conciliation process**

#### Section 90D excludes (without exception) the use by any party of expert medical opinion that has not been disclosed as required by the Act. Note that s90B operates irrespective of there being a dispute or a referral before the Tribunal.

#### Notwithstanding s90A-90D, s42G still applies and ought to be read in conjunction with the above provisions.

#### When providing reports to another party a copy should be provided to the Tribunal at the same time. This willensure that the conciliator is fully aware of the medical issues prior to a conciliation conference

* 1. **Conciliation Conference**

During the conciliation conference the conciliator will take an active role, setting out options and exploring whether an agreed outcome can be reached.

Any negotiated settlement of a claim for compensation arrived at during the conciliation process within two years of the date of the claim for compensation will at all times be subject to the approval of the Tribunal as provided by s132A.

* 1. **Attendance at Conciliation Conferences**

All parties served with notices should attend a conciliation conference. Leave not to attend may be granted in special circumstances, upon discussion with the conciliator concerned before the date of the conference. Section 42E(4) notes that failure to attend without reasonable excuse may result in a penalty.

* 1. **Referrals Resolved at Conciliation**

The parties must complete a resolved in conciliation form with respect to any referral which is settled at a conciliation conference or informally between the parties. If there is more than one referral between the parties which has been settled then those referrals can be included in the one form. This form must be completed even if a subsequent s132A referral is required. Any order sought in the form disposing of the referral will not be made until the s132A referral has been approved.