

# Alternate dispute resolution: how to make the most of informal resolution conferences in compulsory third party claims

By Mary Maini

A multifaceted approach to resolution conferences can benefit both the injured person and the insurance company. Reaching a satisfactory resolution for all parties is the desired result, but an informal resolution conference can deliver significant gains if its 'goal' is not limited to a settlement outcome.

If the issues in dispute between the parties are explored prior to the resolution conference, both the solicitor and injury claims consultant are relieved of the burden of unnecessary work in preparing issues for a claims assessment resolution service (CARS).

Both parties can instead concentrate their efforts on preparing only those issues that remain.

The key to successful conferencing is preparation. Under ss 80 and 82 of the *Motor Accidents Compensation Act 1999* (NSW), insurers have a duty to resolve a claim as justly and expeditiously as possible. This includes a duty to make a reasonable offer of settlement to the injured person within either one month after the injury has stabilised or two months after the injured person has provided the insurer with all relevant particulars about the claim, whichever is the later.

The following checklist is used by NRMA Insurance to ensure that injury claims consultants are thoroughly prepared prior to settlement conferences:

- re-read all the available documents;
- if liability is an issue, assess the updated evidence available on the file. Be prepared to discuss the issue of liability based on the evidence available and formulate a list of questions to be asked at the conference;
- have a comprehensive understanding of the medical evidence. Ensure that any other evidence that supports our doctor's opinion has been forwarded to the injured person's solicitor for their consideration;
- properly evaluate the injured person's medical evidence in order to understand their position;
- evaluate the adequacy of particulars and economic

loss information. If the particulars provided are not sufficient, they should be requested prior to the settlement conference. If the required information is not available, then the injured person's solicitor should be advised that the resolution conference will be used to clarify these outstanding issues;

- provide a complete list of payments made to or on behalf of the injured person and enquire about any unpaid accounts that the injured person may seek to include in the settlement; and
- check whether the injured person or their solicitor have any outstanding materials that they propose to rely upon at the resolution conference.

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Fulfilling this checklist means that the injury claims consultant will be in regular communication with the injured person's solicitor during the preparation of the conference. If both parties are fully prepared for the resolution conference, the chances of a successful outcome are greatly improved.

Important information being provided for the first time to either party during the course of a resolution conference can mean that negotiations break down, causing frustration to all. This should therefore be avoided as far as possible, by ensuring early service of all evidence that both parties wish to rely on.

In light of the recently amended MAAS guidelines, all parties should now focus their attention on earlier preparation of the matter. The CARS guidelines<sup>1</sup> now require both parties to fully prepare the matter prior to submission of the Application for General Assessment. Late evidence risks not being considered. Following the new guidelines should assist successful conference outcomes.

Even if a final resolution is not achieved at the conference, specific heads of damages can be agreed, as can agreement on a percentage of contributory negligence. The conference can also be used to assess what further evidence may be required prior to any further settlement negotiations.

If the conference has not been successful, consider arranging a date for discussions in six to eight weeks' time. This period often gives both parties time to address

any evidentiary issues and ensures that the momentum of negotiations is not lost.

There are no adverse cost ramifications for injured persons if a matter proceeds to a CARS assessment on one issue (as opposed to all issues). However, it is important to narrow the live issues at the resolution conference, where possible.

At times, the expectations of either the injured person or the injury claims consultant can be unrealistic. The interaction at a resolution conference can help to adjust expectations on both sides, increasing the chance of a successful outcome.

Resolution conferences provide many benefits to both parties. While final settlement is not always possible, the conference can provide the opportunity to acquire updated information, discuss the strengths and weaknesses of the case and reduce the number of issues in dispute. This can increase the chances of an earlier resolution, reduce a busy practitioner's workload and allow the injured person earlier access to their settlement. ■

**Notes:** 1 Section 82. 2 See [www.maa.nsw.gov.au](http://www.maa.nsw.gov.au).

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