



# Understanding and preparing for conciliation

## UNLAWFUL DISCRIMINATION

### What is conciliation?

- Conciliation is an informal, quick, and cost effective way to resolve a complaint.
- Conciliation gives the person who made the complaint (the complainant) and the person or organisation being complained about (the respondent) the opportunity to talk about the issues in the complaint and try to resolve the matter themselves.
- Conciliation can take place in a face-to-face meeting called a 'conciliation conference' or through a telephone conference. In some cases, complaints can be resolved through an exchange of letters or by passing messages through the conciliator (shuttle conciliation).
- Conciliation is not like a court hearing. The conciliator does not decide who is right or wrong and does not tell either side what they must do.

### What does the conciliator do?

- After talking with both sides, the conciliator will decide how conciliation will take place and who will participate.
- The conciliator is not an advocate for either side. The conciliator helps both sides talk about the issues in the complaint and makes sure that the process is as fair as possible for everyone involved.
- While the conciliator does not decide who is right or wrong, the conciliator can provide information about the law and how the law may apply to the complaint.
- The conciliator also helps the complainant and respondent think about ways to resolve the complaint and helps them negotiate an outcome they can agree on.
- While the conciliator does not tell either side what they should do to resolve the complaint, the conciliator can provide information about how other complaints have been resolved.

### Who participates in conciliation?

- The complainant and the respondent are the main people in a conciliation process. Where the respondent is a company or organisation, the representative who participates in conciliation should understand the purpose of conciliation and have authority to make a decision on behalf of the company or organisation.

- You do not need a lawyer to participate in conciliation. If you want to bring a lawyer or another type of advocate to conciliation, you need to discuss this with the conciliator before the process begins. **Important information about the Commission's conciliation process for advocates and lawyers is on page 4.**
- You can also ask to bring a support person to assist you in conciliation. A support person usually does not take an active part in conciliation but is there to give you moral support.
- If you need assistance such as a language or sign language interpreter, the Commission can arrange this for you.

## Is conciliation confidential?

- Conciliation is a confidential process in that the Commission cannot provide information about anything that is said or done in conciliation to the court, if further legal action is taken in relation to the complaint. This allows both sides to have an open and frank discussion.
- Important information that you want to rely on to support your version of events should be provided to the Commission before or after conciliation takes place.
- The Commission also expects that the complainant and respondent will agree to keep conciliation discussions and negotiations confidential. The Commission will ask both sides to agree to this in good faith. This means that you agree not to use what is said and done in the conciliation process in any related court proceedings, if the complaint does not resolve. You also agree not to make the information public in any other way.

## What happens at a conciliation conference?

- You will usually have some private time with the conciliator before the conference begins and also at different stages during the process. As a rule, the conciliator will not tell the other side what you say in these private meetings unless you agree. If the conciliator thinks it is important to pass on something you have said, the conciliator will discuss this with you first.
- It is often the case that the complainant and respondent will then meet together with the conciliator. The conciliator will give both sides the opportunity to talk about the complaint and how they see things.
- After the face-to-face meeting, the conciliator will help you talk about ways the complaint may be resolved. This may take place with both sides together in the room with the conciliator or you may be in separate rooms, and the conciliator will pass messages between you.
- At any time during the process you can ask for a break or some private time to discuss things with the conciliator or with your advocate or support person.

## How are complaints resolved?

- De-identified examples of complaints and how they were resolved are on the Commission's website [www.humanrights.gov.au/complaints\\_information/register/index.html](http://www.humanrights.gov.au/complaints_information/register/index.html).
- How a complaint is resolved will depend on what the complaint is about and what the complainant and respondent are prepared to agree on. For example, complaints may be resolved on the basis of:
  - an apology or a statement of regret;
  - an agreement to introduce policies to prevent discrimination;
  - an agreement to provide anti-discrimination training;
  - reinstatement to a job or an offer of employment; and/or
  - financial compensation for monetary loss or injury to feelings.

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## What happens when a complaint is resolved?

- If a complainant and respondent can agree on a way to resolve the complaint, this is usually written up in a 'conciliation agreement'.
- The conciliator will help the parties negotiate what will be in the agreement and can also help write up the agreement.
- The parties can decide whether the terms of agreement are to be kept confidential or not.
- Where a complaint is resolved, the Commission will finalise the complaint under the law.

## What happens if the complaint is not resolved?

- Sometimes if a complaint is not resolved at a conciliation conference, the conciliator may help the parties continue to negotiate by conveying information by telephone.
- If it appears that the complaint can't be resolved, the Commission may ask you for more information before making a final decision about the complaint.
- If the complaint can't be resolved or the Commission thinks the complaint should not continue for some other reason, the complaint will be terminated. Once a complaint is terminated, the complainant can apply to have their allegations heard and determined by the Federal Magistrates Court or the Federal Court of Australia. The complainant has 60 days to apply to the court.

## How can I prepare for conciliation?

- Make sure that you commit to the date and time for the conciliation process. The Commission may be unable to reschedule the conciliation and so it is important that you make every effort to participate on the allocated date.
- Make sure that you tell the conciliator before the day of the conference if there is any change in who will be attending with you.
- Make sure you understand how the law may apply to the complaint and what might happen if the complaint can't be resolved in conciliation. The officer handling the complaint can explain this to you.
- Think about what you want to say about the complaint. If conciliation is going to be successful, both sides need to be able to talk and negotiate with each other. Therefore, it is important that you are prepared to listen to the other side and treat everyone in a respectful way.
- It is also important to remember that while both sides may see things differently; this doesn't mean that the complaint can't be resolved. It is often the case that complainants and respondents will disagree about what happened but they can agree that it is better to try to resolve the complaint than go to court.
- Think about how you would like the complaint to be resolved and be prepared to explain why you think this is fair. Try to have a number of different options in mind. Also, think about how far you may be willing to compromise to resolve the complaint.
- You may want to get advice from an advocate or lawyer, if you feel this is necessary. If you get advice from a lawyer you will need to pay for this yourself. You may be able to get free legal advice from a Community Legal Centre or industry group.

## What if I have more questions?

- If you have more questions about conciliation, please contact the officer who is handling the complaint.
- More information is available on the Complaints section of the Commission's website – [www.humanrights.gov.au](http://www.humanrights.gov.au).

The Commission has a DVD about conciliation that we can send you. You can also see the DVD on the Commission's website – [www.humanrights.gov.au/complaints\\_information/pathways\\_to\\_resolution/index.html](http://www.humanrights.gov.au/complaints_information/pathways_to_resolution/index.html)

## Important information for advocates and lawyers

The following information is provided to assist advocates and lawyers understand and participate in the Commission's conciliation process. If you have any questions about this information, please contact the officer who is handling your client's complaint.

- It is part of the conciliator's role to decide, in consultation with the complainant and respondent, whether advocates or lawyers will attend and/or participate in a conciliation conference. This is to ensure that the conciliation process is as fair as possible for everyone involved.
- The Commission's conciliation process is not like a court hearing. It is not a forum for determining facts, cross-examining parties, deciding legal issues, judging whether or not a breach of the law has occurred or making orders about what action should be taken.
- The Commission expects that advocates and lawyers will participate in conciliation with the aim of trying to resolve the complaint and will communicate in a conciliatory manner.
- The Commission also expects that advocates and lawyers will cooperate with the conciliator and be available to discuss the complaint and their client's views prior to a conciliation process.
- Advocates and lawyers can assist their client prepare for conciliation by:
  - providing advice about the law and the strengths and weaknesses of the case;
  - providing advice about what may happen if the complaint is not resolved;
  - helping their client understand benefits and risks of pursuing or defending a complaint at court;
  - encouraging their client to actively participate in conciliation, as appropriate;
  - helping their client consider a range of different options to resolve the complaint;
  - helping their client prioritise these resolution options and consider how far they may be willing to compromise to resolve the complaint;
  - thinking about the preferred form and content of any conciliation agreement.

### Complaint Information Service

Telephone: 1300 656 419

Website: [www.humanrights.gov.au/complaints\\_information](http://www.humanrights.gov.au/complaints_information)

Email: [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

### Disclaimer

The information on this fact sheet is only intended as a guide. It is not a substitute for legal advice.