



Human rights and discrimination in employment

Understanding and preparing for conciliation

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 is not like a court hearing. The person who manages the conciliation (the conciliator) does not decide who is right or wrong or how the complaint should be resolved. The Conciliator's role is to help both sides talk to each other and try to reach an agreement.
- Conciliation can take place in a face-to-face meeting or a meeting over the telephone. This is called a 'conciliation conference'. In some cases, complaints can be resolved through an exchange of letters/emails, discussions with the conciliator or by passing information through the conciliator.

What does the conciliator do?

- 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.
- 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. The conciliator can also help the complainant and respondent think about ways to resolve the complaint.

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 conciliation begins and obtain the conciliator's permission. An information sheet about conciliation for lawyers and advocates is available [here](#).
- You can also ask to have a support person assist you in conciliation. The role of a support person is to provide moral support. Usually, a support person does not speak for you or play an active role in conciliation.
- 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 President will not consider information about what is said or done in conciliation if the complaint does not resolve and the President is required to make a decision about 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 outside of the conciliation process.
- The Commission also expects those involved in conciliation to 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 further 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.
- Generally, 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 this 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/on the phone with the conciliator or you may be separated, and the conciliator will pass information 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?

- 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/a breach of human rights;
 - an agreement to provide anti-discrimination/human rights training;
 - reinstatement to a job or an offer of employment; and/or
 - financial compensation for loss of money or injury to feelings.

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.

What happens if the complaint is not resolved?

- Sometimes if a complaint is not resolved at a conciliation conference, the conciliator may help negotiations continue for a short period.
- If it looks like the complaint can't be resolved, we may ask you for more information before making a final decision about the complaint.
- The President may decide not to continue with a complaint. For example, where the President is of the opinion that the complaint does not have merit, has already been dealt with by another agency or there is no reasonable prospect of the matter being settled by conciliation. If this happens, we will explain why.
- If the complaint is not discontinued and the President is of the opinion that there has been a breach of human rights or discrimination, the President may report the matter to the Federal Attorney-General. This report may include recommendations, for example, the President may recommend that the respondent change its policies or practices.

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.

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- 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 themselves.
- 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.

What if I have more questions?

- If you have more questions about conciliation, please contact the officer who is managing the complaint.
- More information is also available on the Complaints page of the Commission's website – www.humanrights.gov.au/complaint-information.

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