



## Unlawful discrimination

# 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 and conversations with the conciliator.

### What does the conciliator do?

- After talking with the complainant and respondent, the conciliator decides how conciliation will take place and who will participate.
- The conciliator is not an advocate for either the complainant or the respondent. The conciliator's role is to help ensure conciliation 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, 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 a lawyer or another type of advocate to participate in conciliation, you need to discuss this with the conciliator before the day of the conference and obtain the conciliator's permission. An information sheet about conciliation for lawyers and advocates is available on the Complaints page of the Commission's website – [www.humanrights.gov.au/complaint-information](http://www.humanrights.gov.au/complaint-information).
- 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'?

- The law says that if a complaint is not resolved and proceeds to court, anything a person says or does in conciliation cannot be used in the court proceedings. The only exception to this is that the court can consider information about offers to resolve the complaint that have been rejected, when deciding whether to award costs.
- The Commission also asks those involved in conciliation to agree, in good faith, to keep what is said and done in conciliation 'confidential'. This means that what is said and done in conciliation should not be made public in any way or discussed with people who are not directly involved. Keeping conciliation 'confidential' allows both sides to have open and frank discussions.
- As information provided or discussed in conciliation cannot be used in any later legal proceedings, it is important that you do not bring any new information to support your version of events to a conciliation conference. This should be provided to the Commission outside of the conciliation process.

## 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 in 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 in a room together or you may be separated, 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?**

- 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 settlement for monetary loss 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 can help you decide on the wording of the agreement and can also help write up the agreement.
- The parties can decide if the terms of the agreement are to be kept confidential or not.
- Where a complaint is resolved, the President of the Commission will finalise the complaint.

## **What happens if a 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 a complaint can't be resolved, we may ask you for more information before making a final decision about the complaint.
- If the President is satisfied that a complaint can't be resolved or that the complaint should not continue for some other reason, the complaint will be terminated. When a complaint is terminated, the complainant may be able to take the matter to the Federal Circuit Court or the Federal Court of Australia. The complainant has 60 days to apply to the court. In some situations, a complainant will need to get the court's permission to take the matter to court.

## **How can I prepare for conciliation?**

- Make sure 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 given date.
- Make sure you tell the conciliator before the day of the conference if there is any change to 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. The officer managing 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 talk to each other and negotiate. 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.

### **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](http://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.**