



FACT SHEET:

All about conciliation

Conciliation is a private and informal opportunity for all parties to discuss what occurred, listen to each other's views and come to an agreement about how the complaint can be resolved.

Conciliation conferences usually involve all parties participating in either a face-to-face meeting or a teleconference, which is run by one of our conciliators here at the Commission. They are impartial in this process and do not take sides, or make a judgement about whether or not discrimination or other conduct has occurred.

The conciliator will arrange the conciliation conference and direct all parties to take part. Participation in a conciliation conference is compulsory.

The conciliator might also decide the complaint is suitable for early resolution. This is where the conciliator speaks with the parties separately to try to resolve it rather than organising a conference.

Resolving a complaint through conciliation at the Commission means that the issues can be informally resolved at an early stage. In some cases this will mean the parties can avoid the cost and time involved in participating in formal Tribunal proceedings.

Who attends

A conciliator from the Commission will organise the conference and manage it.

The complainant/s (the person or people making the complaint) and those they are complaining about (the respondent/s) are required to participate in the conference.

If the respondent was at work when the complaint started, the employer will usually also be named as a respondent and be required to take part in the conference.

If the complainant or respondent is a company, organisation or state government agency, their representative at the conference needs to be authorised to settle the complaint.

You can ask to bring a support person to give you moral support. However, your support person cannot speak at the conference. A support person should be someone who is not involved in the complaint. For example, witnesses or people who investigated the complaint cannot be your support person.

You can also ask to bring a legal representative or advocate to the conference to give you advice, if the conciliator agrees. This needs to be discussed with the conciliator in advance. Usually you will still have to talk about what happened.

Please tell the conciliator well in advance if you need an interpreter, or have any other particular needs for the conference. You can also ask to have someone with social or cultural knowledge to be present, to help you understand the conference.

How the conference is conducted

How the conference is conducted depends on those involved and the nature of the complaint.

The conference can be with everyone meeting face-to-face, by teleconference, or with the conciliator talking to each party in separate rooms.

The estimated time for a conciliation conference is between three and four hours – however, it can be longer or shorter depending on the progress of the negotiations. Conciliation conferences can sometimes continue into post-conference negotiations.

Discussions at a conciliation conference are confidential and private.

The conciliator's role

An impartial conciliator at the Commission, with specialist knowledge of human rights and discrimination will run the conciliation conference.

The conciliator can help all parties think about their options and reach their own agreement without making a decision for them. The conciliator will also help all parties to understand their rights and responsibilities under the Act.

The conciliator's role is to decide when, where and how the conciliation conference is held and to ensure the process is fair for all parties.

The conciliator will:

- contact all the parties before the conference to talk about the complaint and discuss the process;
- help everyone discuss the complaint and work towards resolving it at the conference;
- ask questions to help each side better understand each other;
- explain the law, point out the strengths and weaknesses of the complaint and response and provide information about the process;
- tell all parties about previous cases and what kind of outcomes are likely, if the complaint does not resolve and is decided by a tribunal; and
- make suggestions or give options for resolving the complaint.

The conciliator will NOT:

- determine whether there has been a breach of the law;
- take sides; or
- advise you what to offer, or ask for, to settle the complaint.

What happens at the conference

Each conference is a little different and the conciliator will decide how the conference is run and ensure it is fair to all parties.

In most conciliation conferences the conciliator will:

- ask the complainant/s to talk about what happened and how it has affected them;
- ask the respondent/s to talk about what happened, what they did, and to respond to what the complainant/s said;
- allow you to take a short break if needed to talk to your support person or legal representative, or just to collect your thoughts;
- ask both sides to discuss how they can resolve the complaint;
- speak to each person separately if this will help to resolve the complaint;
- write up the agreement for everyone to sign if they agree on how to settle the complaint. This agreement will be binding.

Preparing for the conference

You can watch the Working It Through video, produced by the Commission, on our website to see how our complaints process works step by step. Although it relates specifically to complaints made under the Anti-Discrimination Act, most processes are similar for complaints under the Human Rights Act and the Public Interest Disclosure Act.

Think carefully about all the points you want to make at the conference. You can make notes and take them to the conference.

Consider what the other party might say and be ready to explain, ask or answer any questions.

Collect and give the conciliator any documents, such as witness statements, diary notes, and medical reports that might help resolve the complaint. The conciliator will pass these on to everyone else.

Think about how you want to resolve the complaint.

If you are unsure about your options, phone the conciliator well before the conference, or get legal advice.

Use this checklist to prepare for conference:

- TELL the conciliator if you want an interpreter or have other special needs.
- ASK the conciliator if you want a support person or solicitor at the conference.
- DECIDE the main points you want to make.
- CONSIDER the other party's side of the story.
- GET legal, financial or other advice, if required.
- ACCESS our website to read about what happened in similar cases so you can see what outcome is realistic.
- THINK about how to resolve the complaint and tell the conciliator.
- ARRANGE your time so you are available for the conference for at least three hours.
- GIVE all important documents to the conciliator.
- PHONE the conciliator if you have any questions or need more information.

Possible complaint outcomes

It is up to the complainant and respondent to agree on the outcomes. The conciliator can assist them to resolve the complaint. The conciliator can make suggestions, but does not decide on the outcome.

Outcomes from a conference vary and may depend on whether the complaint was dealt with under the Anti-Discrimination Act or the Human Rights Act. Common outcomes to resolve discrimination complaints include:

- making an apology;
- changing organisational policy or practices;
- paying compensation for hurt feelings and lost wages;
- organising training in the workplace so that everyone understands their rights and responsibilities.

You might find it useful to look at some outcomes which have been conciliated by us here at the Commission, or decided at a tribunal hearing. It is important to remember that each case is different, so even if the facts of your situation sounds similar to another, the impact of the discrimination and the outcome may be different.

If you are unsure about your options, discuss this with the conciliator when they call you prior to the conference, or get legal advice.

If the complaint is not resolved

If the complaint is not resolved, the way forward depends on whether the complaint was dealt with under the Anti-Discrimination Act or the Human Rights Act. You might not know this when you lodge your complaint. The conciliator will tell you in writing about whether it has been dealt with under the Anti-Discrimination Act or the Human Rights Act.

For Anti-Discrimination Act complaints, the complainant can choose to have their unresolved complaint referred to a tribunal for a public hearing. Work-related complaints are decided by the Queensland Industrial Relations Commission and all other complaints are decided by the Queensland Civil and Administrative Tribunal (QCAT).

For Human Rights Act complaints, if the complaint is not resolved through conciliation, the Commission will prepare a report for the parties. This report may include recommendations for actions the respondent should take to ensure its actions and decisions are compatible with human rights.

If the complaint is resolved

If the complaint is resolved the Commission will write it down and ask the parties to sign it.

For Anti-Discrimination Act complaints, this agreement is filed in a Tribunal and enforceable as if it were a court order.

For Human Rights Act complaints, a copy of the agreement will be given to each of the parties.