

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

A Guide to Conciliation of Public Sector Disciplinary Appeals

What is conciliation?

Conciliation is an important step in resolving an appeal - it is very important that both parties attend the conciliation hearing.

The purpose of conciliation is to try to resolve an appeal by agreement without proceeding to a full hearing of the case. An appeal may not proceed to hearing unless all reasonable attempts to settle it by conciliation have been made.

Conciliations are conducted in private.

Conciliation is conducted before the Commission in a relatively informal manner. The level of formality during conciliation proceedings differs from case-to-case depending on the approach the Commission member considers appropriate, having regard to the circumstances of the case.

If a claim is not settled by conciliation, it will proceed to hearing where the member of the Commission will hear evidence and make a decision that is binding on the parties. Even if a matter does proceed to a hearing, nothing prevents the parties from reaching an agreement as to the settlement of the claim prior to the Commission making a final decision.

Who conducts conciliation?

A member of the Commission will conduct the conciliation. Their role is to act as an **independent** third person to help develop possible solutions. This involves the identification and clarification of relevant issues, mediating between the parties and may involve the making of suggestions or recommendations, which the parties may accept and agree upon to settle the matter.

The amount of time allocated for conciliation is 60 - 120 minutes. Discussions may also take place between the parties outside the hearing room (this is a normal part of the conciliation process).

Where will conciliation take place?

The Conciliation will normally take place in the Commission's premises at 47 Bridge Street, Sydney; however, in appropriate circumstances the matter may be listed before a Commissioner in a regional centre.

What happens in Conciliation proceedings?

Parties may appear on their own behalf or may be represented by a union, employer organisation, friend or family member or may, subject to the leave of the Commission, be represented by a lawyer or an industrial agent. **The person appearing must have authority to allow an agreement to be reached.**

Assistance and advice is available to parties, for example, union members should contact their union. Free advice may be available from community based legal

centres or the Law Society's Community Assistance Service. Professional advice and representation is also available from lawyers, industrial agents and employers' organisations. LawAccess (1300 888 529 or www.lawaccess.nsw.gov.au) may also be of assistance.

Conciliation proceedings are not hearings so it is not necessary, for example, to bring witnesses, affidavits by witnesses, etc. unless directed to do so.

Note: At the time of fixing the date for Conciliation the Registrar shall also require the parties to **lodge and serve** a written case **setting out the arguments on which the person relies in relation to the Conciliation hearing** on a date being not less than one week prior to the date fixed for the Conciliation. All documents are to be numbered, tabulated and indexed. This means that you must file one copy with the Commission, send one copy to the other party and keep one copy for yourself.

It is very important that you prepare for the conciliation proceedings. Your matter will not be adjourned because you have not prepared for the conciliation. The next paragraph may be used as a guide in preparing documentation for filing with the Commission and serving on the other party:

Usually the Commission member will ask each party to give:

- a brief overview of the events surrounding the discipline action, including the reasons for the action taken;
- their view about a possible resolution and,
- what might be sought if the matter were to proceed to a hearing.

The Commission member may direct the parties to discuss the issues privately and may talk to both sides jointly or separately.

A matter may be dismissed if there is no attendance by the appellant without reasonable cause.

What are the likely outcomes of conciliation?

The outcome of conciliation may be a settlement between the parties on agreed terms or the appeal may be dismissed (s100F).

Where a settlement is reached, the Commission will make consent orders concerning the agreement.

If the matter does not settle at the conciliation a date for hearing and appropriate directions will be made.

DON'T DELAY - PREPARE FOR YOUR CONCILIATION NOW.