

# INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

## **A Guide to Conciliation of Unfair Dismissal Claims.**

### **What is conciliation?**

***Conciliation is an important step in resolving an unfair dismissal claim - it is very important that both parties attend the conciliation hearing.***

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

Conciliations may be conducted publicly, however, are generally 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 arbitration 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.

In the *Sydney Metropolitan area* most cases are listed for conciliation 3 weeks after filing. Matters outside the *Sydney Metropolitan area* may take slightly longer to list.

The amount of time allocated for conciliation is 60 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 Commission has hearing rooms located at:

- 47 Bridge Street, Sydney;
- 237 Wharf Road, Newcastle; and
- 90 Crown Street, Wollongong.

Wherever possible conciliation proceedings are normally held at a regional centre near the location of the former workplace, for example, matters in the vicinity of Newcastle and the Hunter Valley will be listed in Newcastle and matters in the Illawarra will be listed in Wollongong. The regional centres where the Commission usually sits include Albury, Ballina, Bathurst, Bega, Coffs Harbour, Dubbo, Gosford, Goulburn, Lismore, Moss Vale, Port Macquarie, Tweed Heads, and Queanbeyan.

### **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](http://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. It will often be helpful if the parties bring relevant documents. If parties do bring any documents, they should have three copies available, that is one for the Commission, one for the other party and one to retain.

***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. It may help if you write down what you see as the main issues. The next paragraph may be used as a guide.***

Usually the Commission member will ask each party to give:

- a brief overview of the events surrounding the termination of employment, including the reasons for the dismissal;
- 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.

An application may be dismissed at any stage if the Commission considers it is frivolous or vexatious. A matter may be dismissed if there is no attendance by the applicant without reasonable cause. The Commission may award costs against a party who unreasonably fails to agree to a settlement or whose application is considered frivolous or vexatious.

### **What are the likely outcomes of conciliation?**

The outcome of conciliation may be a settlement between the parties or the application may be withdrawn. Settlement may involve some or all of the following: a negotiated return to work to the former position or re-employment in a different position:

- a financial settlement;
- a retrospective resignation or redundancy;
- a letter of reference or statement of service;
- undertakings that the parties will not denigrate each other in the future.

If the parties choose, the terms of any settlement may remain confidential. Where a settlement is reached, the Commission may 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.**