Initial conference with a staff conciliator (dismissal disputes only)

Overview
Employees and employers (the parties) involved in general protections dismissal disputes have the opportunity to reach a resolution with help from a Fair Work Commission staff conciliator.

This guide outlines what a conference with a staff conciliator is, what happens at a conference and how to prepare for one.

Note: if your conference is before a Commission Member (a Commissioner, Deputy President or Vice President) you will find the relevant information in our general protections Guide 4B: Conference before a Commission Member (all general protections disputes).

What is a conference?
A conference is an informal method of resolving a general protections dismissal application, usually conducted over the phone. Using dispute resolution techniques such as mediation and conciliation, an independent staff conciliator can help the parties explore options for a resolution without the need for more formal proceedings in the Federal Court, Federal Circuit Court or the Fair Work Commission.

Fair Work Commission must convene a conference and the parties must participate in that conference.

Most general protections dismissal cases are resolved at a conference, with an agreement made between the parties at this informal stage.

Benefits of a conference
The conference provides a quick, flexible and informal method of resolving a general protections dismissal application, as it:

- is quicker and less costly than a Federal Court, Federal Circuit Court or Fair Work Commission hearing, and parties who are able to reach a resolution of their dispute often feel more satisfied and more in control of the outcome
- allows parties a wider range of options for resolving the matter
- is private and confidential, with no public record of the outcome of the conference, and
- avoids the need for a hearing before the Court or a Member of the Fair Work Commission, who will decide if the dismissal is in breach of a general protections right if the matter does not resolve at a conference.

Who are staff conciliators?
Staff conciliators are Fair Work Commission employees who are trained and experienced in dispute resolution, workplace relations, unfair dismissal and general protections law.
The conciliator was great. He explained his role, what he was required to do, not required to do, what could happen next. He was genuinely attempting to try to get us to resolve the matter. Very much appreciated.

Party in a general protection dismissal dispute, 6 July 2016, General Protections Survey

What do they do?
Staff conciliators help the parties to resolve their dispute by:

- remaining impartial and keeping the discussion on track
- leading discussions and providing guidance on the strength and weaknesses of cases, based on their knowledge of general protections law
- exploring the issues that are important to the parties, and
- challenging views expressed, exploring alternatives and commenting on possible outcomes, which may include expressing a view as to the strengths and weaknesses of a party’s case.

Staff conciliators do not:

- represent or advocate for either employees or employers, or
- give legal advice or make decisions that are binding on the parties.

Staff conciliators will remain impartial throughout the conciliation process, which means that they won’t take sides. However, this doesn’t mean that they won’t give their opinion on the strengths and weaknesses of both parties’ cases, based on the information the parties provide.

I was very impressed with how the whole thing was handled. I thought we might be treated as the "horrible, nasty bosses" but this was not the case at all. I thought everyone was treated fairly.

Party in a general protections dismissal dispute, 30 August 2016, General Protections Survey

What is the process leading up to a conference?

Step 1 The Commission receives an application (Form F8 – General protections application involving dismissal).

Step 2 The Commission sends a copy of the application to the employer.

Step 3 The Commission sends the parties a written notice with the date and time of their conference.

Step 4 The employer is asked to complete and file a response (Form F8A – Employer response to general protections dismissal application) and also send a copy to the employee.

Step 5 A conference takes place, usually by telephone and which takes about 2 hours. The conference happens approximately 4 to 5 weeks after an application is made.
I was happy with the conference however due to me being nervous I couldn’t fully understand everything that was required of me. The conciliator was fabulous and very patient with me when I couldn’t understand the legal terms used by the Respondent.

Party in a general protections dismissal dispute, 24 September 2017, General Protections Survey

What happens in a conference?

Step 1  The staff conciliator will call each phone number confirmed by the parties.

Step 2  The staff conciliator will join all the parties and their representatives into the conference call.

Step 3  The staff conciliator will begin the conference with an opening statement that outlines the process of the conference and the ground rules.

Step 4  The staff conciliator will ask the parties to briefly summarise why the dismissal was or was not in breach of the general protections provisions.

Step 5  They may ask some clarifying questions of the parties to make sure they have an understanding of the issues as they see them.

Step 6  The staff conciliator will hold private discussions with each party to discuss ways in which the matter can be resolved. This is an opportunity to raise issues not raised in the joint session and to ask questions of the staff conciliator.

Step 7  The staff conciliator will discuss proposals for resolution, usually going back and forth between the parties.

If the parties reach an agreement, the staff conciliator can prepare a written agreement for the parties to sign.

If the parties do not reach an agreement the staff conciliator will explain the next steps in the process.

Preparing for a conference checklist

A conference works best if the parties prepare well. Use the following checklist as your guide.

Before the conference:

☐ get together documents such as the application (Form F8) and employer response (Form F8A), a payslip or final payslip and employment contract

☐ applicants should check and be clear about the general protections provision they believe has been contravened

☐ arrange a private place without interruptions to take the call

☐ use a hands-free phone or fully charged mobile phone if possible

☐ think about what you want to achieve

☐ be realistic about the likely outcome. You may want to look at the general protections benchbook for information about likely outcomes. You can view this information on our website (www.fwc.gov.au/general-protections-benchbook/outcomes).
☐ request an interpreter, if needed, and
☐ request disability assistance, if needed.

On the day of the conference:
☐ have a pen and paper ready to write down the key issues and possible solutions
☐ be flexible and prepared to negotiate
☐ listen and consider other points of view, and
☐ focus on the issues, not on the emotions.

Frequently asked questions

What if I am not available on the date of the conference?
If you are not available on the date of the conference you may request an adjournment (ie a request for a change of time or date). Adjournment requests must be made in writing to the Commission and will only be granted if the Commission considers there are substantial grounds. Any requests should be made as early as possible before the conference date and should be sent to the other party.

Requests on the basis that a particular representative is unavailable on the conference date are not usually considered sufficient grounds or reasons for an adjournment.

Do I need to be represented?
You do not need to be represented at the conference, but you may have a support person (eg a family member, friend or colleague) or a representative (including a lawyer) with you if you prefer.

If you do want to be represented by a lawyer or paid agent, the lawyer or paid agent must ask for permission from the staff conciliator at the start of the conference.

What is the likely outcome of a conference?
In most matters, the parties are able to reach a mutually satisfactory agreement which resolves the general protections dismissal dispute application. This ends the dispute.

What should I ask for or agree to?
Typical settlements can include one or more of the following:

- monetary settlement (such as lost pay or compensation)
- a statement of service (stating how long the employee worked for the employer and what they did) or a reference
- payment of owed entitlements
- an apology
- the dismissal being treated as a resignation
- a non-disparagement agreement (where neither party can bad-mouth the other)
- anything else agreed to by the parties.
Is an agreement legally binding?
Yes. The staff conciliator can provide the parties with a document that formalises any agreement reached.

What happens next if there is no agreement?
Most conferences result in agreement, but if there is no agreement the conciliator will prepare a report for a Member of the Fair Work Commission who will issue a certificate on the basis that he or she is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful. Alternatively a Member of the Fair Work Commission may convene a further conference aimed at resolving the dispute.

Where an employer raises a jurisdictional objection, (eg the application was lodged out of time) that issue may need to be determined by a Member of the Fair Work Commission before a certificate can be issued.

Once a certificate is issued the applicant can make a general protections court application in the Federal Circuit Court or the Federal Court to have the dispute resolved – such an application needs to be made within 14 days after the day the certificate is issued.

Instead of going to court the parties can also agree to have the dispute resolved by a Member of the Fair Work Commission.

Can I record the conciliation?
No. Conferences are confidential and you must not record any part of the conference. The staff conciliator will ask you to confirm that you are not recording the conference.

Legal advice
The Commission cannot provide legal advice. The Commission is only able to provide general information about the application process.

There are community legal centres in each state and territory. The National Association of Community Legal Centres Inc (NACLC) is an organisation that coordinates community legal centres nationally. The NACLC has a legal help page (www.naclc.org.au/need_legal_help.php) that can assist with finding the nearest community legal centre. Please note that the NACLC does not provide legal advice.

Further information

You can also refer to the full set of general protections guides on the Fair Work Commission’s website:
- Guide 1 – General protections overview
- Guide 2 – Making a general protections application
- Guide 3 – Responding to a general protections application
- Guide 4A – Initial conference with a staff conciliator (dismissal disputes only)
- Guide 4B – Conference before a Commission Member (all general protections disputes)
- Guide 5 – The consent arbitration process
- Guide 6 – General protections applications not resolved at the Commission
- Guide 7 – Frequently asked questions
- Guide 8 – Glossary of common terms.

The General Protections Benchbook can also assist parties lodging or responding to general protections applications (www.fwc.gov.au/resources/benchbooks/general-protections-benchbook).

If you require further information or help, please refer to the Contact us page on the Commission’s website (www.fwc.gov.au/about-us/contact-us).