Preparing for conciliation

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

What is conciliation?
Conciliation is an informal method of resolving an unfair dismissal application. An independent conciliator can help the parties explore options for a resolution without the need for a conference or hearing. Participating in conciliation is voluntary.

Most unfair dismissal cases are resolved in this way, with an agreement made between the parties at this informal stage.

Benefits of conciliation
Conciliation:

- provides an informal, quick and flexible method of resolving an unfair dismissal application
- is quicker and less costly than a conference or hearing, and parties who are able to reach a resolution of their dispute often feel more satisfied and more in control of their situation
- avoids the need for a conference or hearing before a member of the Fair Work Commission (the Commission), who will decide if the dismissal is fair or unfair if the matter does not resolve at conciliation.

Who are the conciliators?
Conciliators are Fair Work Commission staff who are trained and experienced in conciliation, workplace relations and unfair dismissal law.

What is their role?
Conciliators:

- actively help the parties to reach a resolution
- can lead discussions and provide guidance
- may explore the issues
- may challenge views expressed, explore alternatives and comment on possible outcomes
- do not represent or advocate for either employees or employers
- do not give legal advice or make decisions.
What is the process leading up to conciliation?

**Step 1** The Commission receives an application (Form F2 – Unfair Dismissal Application).

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

**Step 3** The Commission sends the employee and employer (the parties) a written notice with the date and time of their conciliation.

**Step 4** The employer is asked to complete and file a response (Form F3 – Employer response to unfair dismissal application) and also send a copy to the employee.

**Step 5** Conciliation takes place (usually by telephone) generally approximately three weeks after the application is made.

On the day of conciliation

- The conciliation is usually held by telephone and takes approximately 90 minutes.
- A conciliator will call the parties (and their representatives if represented) on a conference call.
- The conciliator will explain the process.

The conciliation process

- The conciliator will ask the parties to briefly summarise why the dismissal was unfair/fair.
- The conciliator will hold an open discussion between the parties.
- The conciliator will hold private discussions with each party to discuss ways in which the matter can be resolved.
- The conciliator will discuss proposals for resolution.
- If the parties reach an agreement, the conciliator can prepare a written agreement for the parties to sign.
- If the parties do not reach an agreement the conciliator will explain the next steps in the process.

Preparing for conciliation checklist

Conciliation works best if the parties prepare well. Use the following checklist as your guide:

- have an idea of what you want to achieve
- write down the key issues and possible solutions
- be flexible and prepared to negotiate
- listen and consider other points of view
- focus on the issues, not on the emotions
- have a pen, paper and relevant documents ready (e.g. payslips, contracts of employment)
- arrange a private place without interruptions to take the call
- use a hands-free phone or fully charged mobile phone if possible
be realistic about the likely outcome
request an interpreter beforehand, if needed
request disability assistance beforehand, if needed.

Frequently asked questions

What if I am not available on the date of the conciliation?
If you are not available on the date of the conciliation you may request an adjournment (i.e. 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 conciliation date. Requests on the basis that a particular representative is unavailable on the conciliation date are not usually considered sufficient grounds or reasons for an adjournment.

Do I need representation?
Employees or employers (the parties) do not need to be represented at conciliation, but may have a support person or a representative (including a lawyer) with them if they prefer. No formal permission from the Commission needs to be granted to be represented during the conciliation. However, if the matter does not resolve at conciliation and proceeds to a conference or hearing, formal permission to be represented by a lawyer or paid agent does need to be granted by a Commission member.

What is the likely outcome of conciliation?
In most matters, the parties are able to reach a mutually satisfactory agreement which resolves the unfair dismissal claim and the application is discontinued by agreement.

What if I change my mind? – Cooling off period
A cooling off period of three business days will be offered to all parties participating in a conciliation where at least one party is not represented by a lawyer or a paid agent. The cooling off period commences when you received the details of the agreed settlement from the conciliator after the conciliation has concluded.

The cooling off period can be waived by advising the conciliator at the end of the conciliation or anytime within the three business days after the conciliation.

The cooling off period only applies to agreements reached during the conciliation process.

What if there is no agreement?
Most conciliations result in agreement, but if there is no agreement the matter will progress to a conference or hearing. A Commission member will then conduct a conference or hearing and make a binding decision.

For information on conferences and hearings, refer to Guide 7—Preparing for a conference or hearing, available on the Dismissal, termination and redundancy page (www.fwc.gov.au/termination-of-employment/unfair-dismissal) of our website.

Legal advice
The Commission cannot provide legal advice.

As part of the unfair dismissal application process, parties may choose to obtain their own independent legal advice.

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

**Further information**


1. Overview of the unfair dismissal laws
2. Flowchart on the process
3. Making an application
4. Responding to an application
5. Objecting to an application
6. Preparing for conciliation
7. Preparing for a conference or hearing
8. Frequently asked questions
9. Glossary of common terms

The Unfair Dismissals Benchbook can also assist parties lodging or responding to unfair dismissal applications ([www.fwc.gov.au/resources/benchbooks/unfair-dismissals-benchbook](http://www.fwc.gov.au/resources/benchbooks/unfair-dismissals-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](http://www.fwc.gov.au/about-us/contact-us)).

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This guide is not intended to be comprehensive, but is designed to help employers and employees gain an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.