

# INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

## 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 Level 10, 10 Smith Street, Parramatta; 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, or may, subject to the leave of the Commission, be represented by a friend, family member, 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 by the Commission to do so.

**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.**

Usually the Commission member will ask each party to give:

1. a brief overview of the events surrounding the discipline action, including the reasons for the action taken;
2. their view about a possible resolution and,
3. 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.

### **DON'T DELAY - PREPARE FOR YOUR CONCILIATION NOW.**

### **What happens if the Conciliation fails:**

At the conclusion of an unsuccessful conciliation conference the following will generally occur in order to prepare the appeal for hearing:

1. The member of the Commission who conducted the conciliation will make the "usual directions" unless the member considers that the "usual directions" should be modified or alternative directions made.
2. The member should obtain the following information from the parties:
  - (i) the anticipated length of hearing
  - (ii) the number of witnesses
  - (iii) represented or not, and if represented, details of who is acting
  - (iv) special requirements such as interpreters, difficulty with access etc.

- 3 A Directions Sheet will be completed by the Commissioner.
4. Parties should ensure before they leave the Commission that they understand the **directions** that have been made and the **timetable** they must follow. The following documents are available from the Registry or the Commission's website:
  - (i) Guide to Preparing for Hearing of Public Sector Disciplinary Appeals
  - (ii) Notes to Assist Parties - Preparing Statements for public sector appeal matters to be heard before the Industrial Relations Commission