



AUSTRALIAN  
INDUSTRIAL  
RELATIONS  
COMMISSION



# Unfair & Unlawful Dismissal The Conciliation Process

2008 Edition

## Introduction

This booklet explains the role of conciliation conferences in unfair and unlawful dismissal cases before the Australian Industrial Relations Commission (AIRC).

It should be read in conjunction with the DVD of the same name, *Unfair & Unlawful Dismissal—The Conciliation Process*. Both the DVD and this booklet are designed to assist employees and employers unfamiliar with the workings of the AIRC.

After reading the booklet, you should have an understanding of the conciliator's role, as well as what happens in and how to prepare for a conciliation conference.

Further information and copies of the DVD can be obtained by contacting the AIRC Information Line on **1300 799 675**. The video featured on the DVD can also be viewed on the AIRC website at **[www.airc.gov.au](http://www.airc.gov.au)**. Look in the section Dismissals—unfair & unlawful.

**Please note:** While AIRC staff can provide you with information, they cannot provide advice on the merits of an application, assist either party in the preparation of their case or recommend a representative.

## What is conciliation?

Conciliation is an informal and private process where a conciliator, who is usually an AIRC member, assists employees and employers to reach a resolution by agreement.

As required under the *Workplace Relations Act 1996*, the AIRC uses conciliation as a first step in dealing with unfair and unlawful dismissal cases. Most of these cases are resolved during this process and do not proceed on to a formal hearing.

If conciliation fails, the employee may choose to proceed to arbitration in the AIRC, or to the Federal Court or Federal Magistrates Court in certain circumstances. In an arbitration in the AIRC, a member of the AIRC hears all the evidence in one or more public hearings and then makes a decision, which is binding on both parties (subject to appeal rights).

The main difference between the two processes is that in conciliation you own the outcome whereas in arbitration the outcome is imposed upon you.

Other points to remember:

- The conciliator helps develop options and may make recommendations, but makes no decision. You do not have to agree to any proposed settlement.
- The conference is not a trial or mini-trial—no formal evidence is taken and no witnesses are heard.
- Unlike a hearing, which can be attended by any member of the public, the conference is private and only those who are involved can attend.
- The conciliation process, including the terms of any agreement, is generally confidential.

## Who is the conciliator?

Conciliation conferences are usually chaired by members of the AIRC who are skilled in conciliation techniques and understand the complexities of employment relations.

The conciliator's role is to act as an **independent, third party** who:

- ensures each side has their say;
- helps develop possible solutions, based on the views of the parties and material presented;
- assists in developing an agreed settlement.

The conciliator does not take sides, but works to bring the parties to an agreed resolution. The conciliator who initially handles a case will not be the person who ultimately hears and determines the application should it proceed to arbitration.

## When and where is a conciliation conference held?

A conference is held as soon as possible after an application is lodged. Generally this occurs within about a month, but the time can vary depending on factors such as caseload in the AIRC or the location of the conference.

It is possible the conference may be delayed because the employer has made a formal objection, which needs to be dealt with by the AIRC either by written submissions or a public hearing. In such a case the AIRC rules on whether the application should be allowed to proceed. There are two main types of objections:

1. The application has been lodged outside the 21-day time limit.
2. The employee is excluded from making an application under the *Workplace Relations Act 1996*.

(For further information phone the AIRC Information Line or refer to the information provided separately to employers and employees in unfair and unlawful dismissal cases.)

Conferences are mostly held at the AIRC's premises in each capital city, but are also held in regional centres and occasionally by telephone or video conference.

## Who attends the conference?

The employee and the employer are required to attend. In the case of the employer, this may be an appropriate person from senior management who has authority to agree to a settlement.

There is no requirement for a legal representative. If you wish to be represented by a lawyer, industrial consultant or a representative of a union or employer organisation, the AIRC generally allows such representation. If you are unrepresented in the conference, the conciliator will assist you with advice about procedures. The conciliator cannot, however, assist you in preparing or running your case.

You may also want to bring along a friend, relative or community representative for support. There is generally no objection to you doing so.

## What happens in the conference?

The style of each conciliator may vary but, in general, a conference takes about one-and-a-half hours and will include the following steps:

- The conciliator explains their role and the manner in which the conference is to be run.
- Each side briefly outlines their story including what happened and the relevant facts.
- The conciliator may allow or ask questions.
- The circumstances, and any issues arising, are discussed. The conciliator may talk separately to the parties.
- The conciliator assists the parties to reach agreement by identifying common ground, suggesting possible options and sometimes by making recommendations and assisting the parties in drafting an agreement in writing.
- If no agreement is reached, the conciliator provides the parties with an assessment of the application's merits and advice about further processes. In some cases the conciliator may recommend a way of resolving the matter.

## What should I say?

This is an informal process so you will have some freedom to put your case. In general, the types of things you should include are:

### **Employee**

- What happened and any other relevant facts.
- Why you think the termination was unfair or unlawful.
- How the dismissal was carried out. Were you given warnings and a chance to put your side?
- The outcome you are seeking through your application.

### **Employer**

- What happened and any other relevant facts.
- The reason for dismissal.
- How the dismissal was carried out. Were any warnings given?
- What you would consider to be an acceptable outcome.

## How do I prepare for the conference?

It will help to be well prepared. Here are some suggestions to consider.

- **Know your case:** Review what happened and be clear about what you want. Perhaps prepare a summary of the key events and dates.
- **Documents:** Ensure you bring any relevant documents such as medical certificates, warnings or material which sets out the terms of your employment.
- **Support:** Consider bringing a support person and/or representative.
- **Advice:** If you do not want to be represented in the conference, for cost or other reasons, consider seeking advice from a union, employer organisation, legal representative or industrial consultant before the conference.
- **Legislation:** You may want to look at the relevant provisions of the *Workplace Relations Act 1996* and associated regulations. The Act can be accessed through the AIRC website, which also features other information related to unfair and unlawful dismissal cases. The address is: [www.airc.gov.au](http://www.airc.gov.au).
- **Attending the conference:** While conferences are informal they are conducted in a proper, courteous manner. There is no required dress, but most people attending the AIRC dress neatly.

## Interpreters

If English is not your first language you can bring along someone with appropriate language skills to assist you or request an interpreter.

Seeking such assistance is important if you do not feel confident that you can present your case well in English.

## What are the likely outcomes?

The conference may end with an agreed resolution, which should be in writing to avoid misunderstanding.

Alternatively, the employee may choose to discontinue their application.

If there is no agreement at the end of the conference, some of the options include:

- The conciliation may, in limited circumstances, be adjourned to a later date.
- The conciliator may allow a short period for parties to consider offers.
- The AIRC issues a certificate, which includes an assessment of the application and states that conciliation has failed. If the employee wants to proceed to arbitration, they must sign and lodge the *Election to Proceed to Arbitration* form (R33) generally not later than 7 days after the certificate was issued. In limited circumstances the employee has 28 days to lodge the *Election to Proceed to Arbitration* form.

## What does it cost?

Employees are required to pay a filing fee of about \$60.00 (altered slightly annually) to lodge an application. This fee may be waived in cases of hardship. Inquiries about the fee or its waiver should be directed to the AIRC in your capital city.

There are no further AIRC charges.

In general, parties bear their own costs. However, costs may be awarded against one of the parties in certain circumstances, such as an unreasonable failure to settle.

## Further Information

### **Call the AIRC Information Line**

1300 799 675

### **Call the AIRC in your capital city**

Melbourne	(03) 8661 7777
Sydney	(02) 8374 6666
Brisbane	(07) 3000 0399
Adelaide	(08) 8308 9863
Perth	(08) 9464 5172
Hobart	(03) 6214 0200
Canberra	(02) 6209 2400
Darwin	(08) 8936 2800

**Look at our website:**

[www.airc.gov.au](http://www.airc.gov.au)

In particular, view the Dismissals—unfair & unlawful section.

**View our DVD:**

*Unfair & Unlawful Dismissals—The Conciliation Process.*

## Other organisations

A number of organisations offer information and advice on unfair and unlawful dismissal matters. They include:

- employment relations departments at both federal and state government levels;
- unions;
- employer organisations;
- law firms;
- community legal centres;
- industrial consultants.

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