



Australian Human Rights Commission •
Investigation and Conciliation Service

Information for advocates and lawyers participating in conciliation

The Commission values the positive role that advocates and lawyers can play in conciliation. Advocates and lawyers can provide important support to parties, assist parties understand and articulate how they see the law applies to a complaint and advise parties on possible options to resolve the complaint.

Conciliators at the Commission decide whether it is appropriate for an advocate or lawyer to participate in conciliation and the role that an advocate or lawyer will play. These decisions are made on a case by case basis, in consultation with the parties and with a view to ensuring a fair process that is consistent with the underlying principles of Alternative Dispute Resolution.

The Commission has certain expectations of advocates and lawyers when they participate in a conciliation process and these are explained in this document.

Before conciliation

In preparation for a conciliation process the Commission expects advocates and lawyers to:

- be available to discuss the complaint and their client's views with the conciliator;
- make all reasonable efforts to attend conciliation conferences on the scheduled date and provide adequate notice and reasons if unable to attend;
- provide any information requested by the conciliator in a timely manner;
- help their client understand the benefits of conciliation;
- understand and advise their client about the law and the apparent strengths and weaknesses of the complaint;
- advise their client about what may happen if the complaint is not resolved, including helping the client understand the potential risks and/or benefits of pursuing or defending a complaint in court; and
- assist their client proactively consider a range of options to resolve the complaint, prioritise these options and explore areas for compromise.

During conciliation

During a conciliation process the Commission expects advocates and lawyers to:

- genuinely participate with the aim of trying to resolve the complaint and encourage their client to do likewise;
- cooperate with the conciliator;
- encourage their client to directly participate in the conciliation process, where appropriate;
- communicate in a conciliatory manner including listening to the other party's views and treating all participants with respect and courtesy;
- respect the difference between conciliation and an adversarial court process and refrain from actions such as cross-examination or seeking determination of legal issues;
- ensure their client understands what is required in relation to confidentiality;
- actively assist their client explore all possible options for resolution; and
- be prepared to assist in negotiations regarding the preferred form and content of any conciliation agreement.

After conciliation

Following the conclusion of a conciliation process the Commission expects that advocates and lawyers will:

- complete any tasks agreed to at conciliation, such as drafting an agreement in a timely manner; and
- cooperate with the Commission in relation to any other action necessary to finalise the complaint.

More information

If you would like to understand more about how you can positively participate in the Commission's conciliation process, please contact the officer responsible for your client's complaint.

Additional information about federal discrimination law and conciliation is available on the Commission's website. This includes:

- a video on the Commission's conciliation process
www.humanrights.gov.au/complaints_information/pathways_to_resolution/index.html
- information sheets about understanding and preparing for conciliation
www.humanrights.gov.au/complaints_information/UPC/index.html

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- a Conciliation Register which provides de-identified summaries of complaints and information about how these complaints were resolved
www.humanrights.gov.au/complaints_information/register/index.html
- a publication which provides a comprehensive overview of case law decided under Australia's federal discrimination law
www.humanrights.gov.au/legal/FDL/index.html

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