

Conciliation

This fact sheet explains the conciliation process used by NCAT to resolve Consumer and Commercial Division disputes.

What is conciliation?

Conciliation is an alternative dispute resolution process where the people in dispute talk about their issues in an informal, private meeting with the aim of reaching an agreement.

In NCAT's Consumer and Commercial Division, the conciliation process is closely linked to the hearing process, rather than as a separate step of dispute resolution. Parties are asked to attempt conciliation before the hearing can take place.

Conciliation allows you to have control over the outcome of your dispute and is more likely to result in an agreement you both find acceptable.

What happens in conciliation?

During the conciliation you would:

- Tell the other person what your issues are
- Show each other your evidence
- Try to understand and respect each other's different points of view
- Negotiate differences, discuss possible solutions and try to reach an agreement.

NCAT provides information at all Consumer and Commercial Division hearing venues to assist you during your conciliation discussions.

If you reach an agreement during conciliation, the terms of the agreement will be made into an NCAT order. Write down your agreement on the form provided and take it back to the Tribunal Member in the hearing room. The agreement is then made into a legally binding NCAT order.

If conciliation is unsuccessful, the hearing will go ahead. Negotiations discussed during conciliation cannot be repeated in the hearing room unless both parties agree.

Conciliators

NCAT provides Conciliators at major hearing venues to assist parties during their conciliation discussions. In some regional areas the Tribunal Member will act as both Conciliator and Member with the consent of the parties.

The Conciliator's role in assisting parties come to an agreement is to:

- Facilitate open and honest discussions between the people in dispute
- Help to identify the issues in dispute
- Assist both parties to come up with options and possible solutions
- Help write down any agreement reached.

Conciliators do not provide legal advice or make decisions. They will however check that the parties understand the agreement and that it is made with their consent.

**A Conciliator is not an advisor
and will not make decisions
for you**

Conciliation ten top tips

The below ten top tips can help you prepare for and get the most out of the conciliation process.

1. Think about what you want

Think carefully about your issues and the outcome you want to achieve. Write a summary of these issues.

2. Work out how you will negotiate

Be open-minded and flexible. Think about the other person's issues and how they will respond to your



views. Negotiation may involve some compromise to reach a solution you both find acceptable.

3. Tell your side of the story

Briefly explain your side of the story and show your evidence to the other person. Explain how you would like to resolve the dispute. Focus on solutions. Try not to argue about who is right or wrong, or why.

4. Listen to the other person

Listen carefully to the other person and look at their evidence. You might want to take notes. Allow them to talk and don't interrupt. Try to consider their point of view even if you don't agree.

5. Focus on the issues, not the emotions

Stay focussed on the issues, not on your emotions or the behaviour of the other person.

6. Start negotiating

Start coming up with possible solutions. Make offers and counter-offers. A successful conciliation happens when both parties agree on a solution.

7. Only agree to what you think is acceptable

Be sure you only agree to an outcome you find acceptable. Keep in mind there has to be some give and take by both parties when coming to an agreement.

8. Ask for help if you're having problems

If you're having problems, ask the Conciliator, Tribunal Member or a Registry officer for help. If you feel threatened by the other person, let the Conciliator or security officer know immediately.

9. If you reach an agreement

Write down your agreement on the form provided. If a Conciliator is available they can help you write it down. Before your agreement is made into a legally binding order, you will be asked if you understand the agreement, and confirm you made it voluntarily.

10. If you don't reach an agreement

If you can't reach agreement, the hearing will go ahead on the same day or at a later date. Think about whether your issues are important enough to

come back on another day which may increase the time, cost and inconvenience to you.

Common questions

Do I have to attempt conciliation?

Yes. Although conciliation is a voluntary process, NCAT is required by law to encourage parties to reach agreement through a resolution process, such as conciliation, before the hearing can take place.

Who is involved in the conciliation?

Generally only the people involved in the dispute attend the conciliation. An agent, advocate or interpreter may also be present. At larger hearing venues a Tribunal Conciliator may be available to help with conciliation discussions.

Can my support person come with me?

Yes, however you will need to seek permission from the other person. If they do not give permission, your support person cannot be present during the conciliation session.

Why can't the Conciliator stay during the entire conciliation process?

Where a Conciliator is available, their role is to assist a number of conciliating parties at the same time. It is not possible for them to spend all their time in one conciliation session.

What happens if I'm not happy with the conciliated agreement?

If you are not happy with the conciliated agreement, let the Tribunal Member know before it is made into a legally binding order. Tell them that you have reconsidered the settlement agreement and want to proceed to hearing.

Can a consent order be changed afterwards?

No. Once a conciliated agreement is confirmed by a Tribunal Member it becomes a legally binding order.

Contact NCAT

1300 006 228 | www.ncat.nsw.gov.au

For more information and assistance visit the NCAT website www.ncat.nsw.gov.au or contact NCAT on **1300 006 228**.