



Conciliation

What is conciliation?

Conciliation is a process that provides an opportunity for the parties to a health care complaint to discuss the complaint and agree on ways to resolve it. Conciliation promotes open and honest communication with the aim of achieving a better understanding between the parties and negotiating a mutually acceptable outcome.

There is usually a formal conciliation meeting but by agreement some cases can be negotiated without a meeting or through a series of meetings between the Conciliator and the individual parties. The parties can withdraw from conciliation at any time.

What complaints are suitable for conciliation?

- where there has been a breakdown in communication
- where explanations are required and the parties want to understand or explain what happened and why
- where the complainant is seeking an improvement in the quality of the particular health service
- where there is a claim for damages, compensation or remedial treatment.

Why agree to conciliation?

Conciliation allows the parties to a complaint to state their point of view, listen to each other, discuss concerns or issues and attempt to resolve them in a way that is acceptable to both parties. Conciliation is:

- free and confidential
- informal and non-adversarial
- a process that can assist in restoring relationships
- an alternative to legal action without the need for legal representation.

What are some possible outcomes?

Explanation

A detailed explanation can help the complainant understand what happened and why. This can often resolve a dispute.

Changes in policy or procedure

Through listening to the complainant and discussing the complaint, a provider may recognise problems with their processes or policies and undertake to correct them. This can prevent the same thing happening to someone else, as well as improve the quality of the health service.

Apology

Conciliation can encourage a provider to acknowledge deficiencies in their practice and apologise to the complainant for any adverse consequences.

Financial settlement

Payment of compensation can be explored and negotiated in conciliation but the outcome must be agreed by both parties. The conciliator cannot decide or award compensation.

Frequently asked questions

How long does conciliation take?

This depends on the complexity of the complaint and the willingness of the parties to resolve the issues.

Can I still take legal action if conciliation is unsuccessful?

Yes. If the complaint is not resolved in conciliation, you retain your right (subject to limitation periods) to take action through the Courts. The parties to conciliation need to remember that information provided in conciliation cannot be used as evidence in a subsequent legal action.

Are conciliation records subject to the Right to Information Act 2009?

The Right to Information Act 2009 does not apply to information in the possession of the Health Complaints Commissioner unless the information relates to the administration of the Commissioner's Office (such as supervision of staff).

Do I have to come to Hobart to conciliate?

No. The conciliation can be held at a convenient location and in some cases can be conducted by telephone, mail or email.

The role of the conciliator

The conciliator is independent and neutral and does not advocate on behalf of either party. The conciliator's role is to facilitate communication between the parties. The conciliator helps the parties clarify their concerns; talk with each other about those concerns and assists them in trying to reach agreement on ways to resolve them.

The conciliator does not decide who is right or wrong, or decide how a complaint should be resolved. The conciliator has no power to make decisions or findings about what occurred or make a determination about compensation.

Involvement of lawyers and other parties

If you are claiming compensation you should get legal advice about what is an appropriate amount to seek. You should also get legal advice about the time limits that apply for bringing a legal action if conciliation is unsuccessful. Providers are also encouraged to seek legal advice.

Lawyers do not usually attend conciliation unless the Commissioner considers it would help to resolve the complaint. Parties are free to seek advice and support from family members, friends or colleagues, although they cannot actively participate in the conciliation.

Confidential and privileged

All parties must keep information provided in conciliation confidential. Anything said in conciliation and any information given during conciliation cannot be used as evidence in a court or tribunal, and the Commissioner cannot use anything said in conciliation as the basis for an investigation.

The conciliation process

The conciliation process is flexible and will be designed in consultation with both parties. Where the dispute is about a health service provider's liability for negligence or personal injuries, the conciliator may arrange for an independent expert opinion to be obtained. The opinion is then used as the basis for further negotiations.

Financial settlements

If a complaint is resolved with a payment of compensation both parties sign an agreement or deed of release that no future legal action can be taken in respect of the complaint. Where a financial settlement involves a child it will be necessary for the settlement to be approved by the Supreme Court. Where a financial settlement involves a person with mental incapacity the settlement will need to be approved by the person's administrator or a person acting under an enduring power of attorney.

Repayment of monies

A financial settlement can result in monies having to be repaid to Medicare, private health funds, Centrelink and other agencies. A settlement may also give rise to preclusion periods during which you may not be eligible to receive social security payments. Parties should seek independent advice about how a settlement might affect them.

Public interest issues

All issues discussed during conciliation are confidential. If the complaint raises matters of public safety or public interest, the Commissioner may investigate those issues before, during or after the complaint is settled. The parties will be notified if an issue of public interest arises.

Do you need more information?

Please contact us on 1800 001 170 or email health.complaints@ombudsman.tas.gov.au.