



Conciliation Attendance Guidelines

These are guidelines about when the Tribunal would ordinarily require persons to attend a conciliation conference and are issued pursuant to subsection 28(7) of the Superannuation (Resolution of Complaints) Act 1993 (the Complaints Act).

Purpose of the guidelines

These guidelines are published to assist in understanding the Tribunal's role in trying to resolve complaints through the conciliation process. The Tribunal is required by its governing legislation to formulate guidelines indicating the kind of circumstances in which it would ordinarily require persons to attend a conciliation conference. Attendance at a conference may, at the Tribunal's discretion be by telephone, in person or by any other means of communication.

Conciliation by its very nature entails a consensual arrangement by the parties with the aim of reaching an agreement for resolution of the complaint. The Tribunal's conciliation process is a facilitative process. This means the Tribunal provides the forum for the parties to the complaint to engage in open discussion about the complaint with the aim of reaching an agreement.

The Tribunal cannot compel the parties to reach agreement. The Tribunal's role is one of hosting the conference and providing assistance and information to the parties to arrive at an amicable settlement of the complaint or in narrowing the range of issues in the complaint.

Matters for the Tribunal to consider on the holding of a conciliation conference

Where a complaint has been made to the Tribunal, provided the Tribunal has the power to deal with that complaint and it is not withdrawn, the Tribunal is required to try and settle the complaint through conciliation.

The Tribunal may require the parties to the complaint or others whose presence is likely to be of assistance in settling the complaint to attend a conciliation conference. This will be done by written notice.

The Tribunal is also required to have regard to the objectives in section 11 of the Complaints Act, which requires establishing mechanisms for the conciliation of complaints "that are fair, economical, informal and quick."

Typical circumstances requiring attendance at a conciliation conference

Death benefit distribution

If a person makes a complaint to the Tribunal about a decision of a trustee of a regulated superannuation fund to distribute a death benefit in a particular way, the Tribunal would make inquiries and obtain relevant information from the trustee and any other party involved in the matter. The Tribunal would normally proceed with a conciliation conference.

Disability benefits

In a complaint relating to a claim for a disability benefit that is declined on its merits, the Tribunal would normally schedule a conciliation conference. With a technical or complex matter, such as alleged entitlement to insurance cover or alleged non-disclosure of a pre-existing medical condition by the complainant, the Tribunal may make appropriate inquiry of the trustee and/or insurer with a view to proceeding to a conference for the purpose of narrowing the disputed issue(s) and/or clarification of the evidentiary matters.



Administrative actions, disclosure issues etc.

Decisions by trustees and other decision makers comprising administrative action, account balance advice, benefit calculation, rollover request, account interest crediting and disclosure issues relating to the provision of information and advice (just to mention some), are matters ordinarily regarded as appropriate to the conciliation process.

What procedures does the Tribunal follow relating to conciliation conferences?

The following steps will be taken:

1. The parties will be notified of the proposed conciliation conference in writing.
2. In the event of a party expressing disagreement with proceeding to a conference, then the Tribunal will consider the reasons offered before deciding whether or not to proceed with the conference.
3. Because of the varied locations of the parties, the conferences will, unless otherwise decided by the Tribunal, be conducted by telephone.
4. Documents as to factual events and medical reports where relevant to a matter, may be provided by the Tribunal to the parties prior to the holding of a conference.
5. When a conference results in resolution of the complaint or an undertaking being given by one of the parties to conduct further enquiry or obtain further reports, the Tribunal will confirm the outcome in writing to all parties.
6. There is a presumption against representation contained in section 23 of the Complaints Act, except where the complainant has a disability (as defined in the Disability Discrimination Act 1992) or where the Tribunal "considers it necessary in all the circumstances". Where the Tribunal has, prior to the holding of a conference, exercised its discretion to allow an individual to be represented by an agent (which term extends to include legal representation), then the individual may be represented by that agent. Where no application to the Tribunal has been made for representation, then a person wishing to be represented at a conference must either seek the Trustee's agreement in advance, or at least have the arrangement agreed in advance with all of the other parties to the conference. Where the Tribunal has refused representation by an agent then the person must participate directly.

*For more information
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[Note: For those parties who have been given leave by the Tribunal to be legally represented, the Tribunal has no power to award costs, i.e. any party who has legal representation at a conference before the Tribunal must to bear their own legal costs.]

Failure to attend a conference

If a complainant fails to attend the conference, the Tribunal may treat the complaint as if it had been withdrawn by the complainant under section 21 of the Complaints Act.

A person other than a complainant commits an offence if they fail to attend the conference when required to do so. The penalty is 30 penalty units or imprisonment for six months.