



A guide to conciliation proceedings before the Building and Energy division

Conciliation is a process whereby parties, with the help of a conciliator, meet to identify issues, develop solutions to the problem and explore ways to reach an agreement. Building and Energy will appoint a conciliator and actively encourage parties to reach an agreement.

You and the respondent may choose to opt for conciliation or else parties may be required to attend a conciliation proceeding.

A conciliator may:

- communicate with the parties;
- arrange and facilitate proceedings about the complaint; and
- give advice and make recommendations to assist in reaching an agreement.

If the parties can agree to an outcome, the Building Commissioner can make an order to give effect to the agreement. If the parties do not agree to an outcome, your complaint will be referred back to the Building Commissioner for further consideration.

Why conciliate?

A conciliation proceeding is an opportunity for you to settle or reduce the size of your dispute by agreement. The focus is not upon who is right or wrong but on what each party would do to put an end to or reduce the size of the dispute. You should consider many factors before you decide not to settle your dispute with the other party. A few of these are:

The power to choose: If you do not negotiate a reasonable settlement with the other party, the decision will be taken out of your hands. Experience has shown that it is extremely rare for both parties to be satisfied with a resolution by a third party such as the Building Commissioner or the State Administrative Tribunal (SAT).

Time: In settling your dispute by agreement, you control how long it takes. If not, your dispute will be resolved in accordance with a timeframe not of your choosing. Your dispute will be subject to the priorities and workloads of people and agencies outside of your control. Resource restrictions will limit the speed with which your complaint can be dealt with. Settlement enables you to bring your complaint to an end in the shortest possible time.

Cost: The financial cost of continuing a dispute should not be overlooked, even in a low cost jurisdiction like Building and Energy or SAT where you can represent yourself. Obtaining legal or technical advice and engaging experts to give evidence are expensive. Even if you are successful and are awarded costs, such costs usually only cover a portion of the amount you will have expended.

Stress: Disputes have a personal cost. Often disputes must be managed while either or both parties are employed full-time and have family responsibilities, all of which suffer while you are involved in your dispute. While a settlement might not seem to be satisfactory, the sooner a settlement is achieved, the sooner the stress begins to dissipate and life can return to normal.

Do I have to conciliate?

Yes. If you have received a Conciliation Notice, you are required to attend the conciliation proceeding in person.

The *Building Services (Complaint Resolution and Administration) Act 2011* contains penalties of up to \$5,000 for an individual and \$25,000 for a company for failing to attend a conciliation proceeding without a reasonable excuse.

What happens at a conciliation proceeding?

The conciliator will meet around a table with the parties together and also with the parties separately. The conciliator will allow each party in turn to outline their position and will give them the opportunity to respond to the other party. The complainant usually goes first because it is to the complainant's issues to which the respondent needs to respond.

The conciliator may meet with each party separately to explore the issues and may outline the strengths and weaknesses of the party's case and present options for settlement. The conciliator may 'workshop' or 'reality test' each party's position to ensure they are aware of the likely consequences of failing to settle.

Can what I say in a conciliation proceeding be repeated in other proceedings if the complaint does not settle?

No. The Act provides that anything lawfully said in a conciliation proceeding cannot be used in other proceedings.

Practically, this means the parties can negotiate openly in a conciliation proceeding. They might make offers for the purpose of trying to settle the dispute that they would not make when the matter is to be determined by a third party. Any such offer cannot be used against the offering party in another proceeding. For example, Party A might offer to settle the dispute for half of what he/she was asking. In other proceedings, Party B could not use Party A's offer as evidence that he/she would settle for 50 per cent less.

What should I do to prepare for a conciliation proceeding?

If you are a complainant, you should make sure your fully completed complaint form includes all of the items in dispute with the respondent. If you intend to complain about items that were not in your original complaint, you should ensure that you have sent copies of the additional items, properly completed and in the correct format, to the respondent and Building and Energy well in advance of the conciliation proceeding. Items sought to be added to the complaint at a conciliation proceeding

may be excluded from the proceedings and may need to be the subject of a new complaint.

You should consider obtaining legal or technical advice so that you are aware of the strengths and weaknesses of your position.

You should take the time to properly assess all the costs of maintaining your complaint so that you can evaluate any offers made by the respondent and in turn make realistic offers or counter offers.

You should know which items matter the most to you and which you might be prepared to let go.

You should set aside plenty of time for the conciliation and have arrangements in place for things such as child minding. Despite the period scheduled for the proceeding, if a matter has the potential to settle it should not be adjourned due to family or work commitments.

What should I bring to the conciliation proceeding?

You should bring:

- the conciliation notice;
- your copy of the fully completed complaint form and all attachments and other relevant documents;
- technical reports that are not attached to your complaint; and
- any other information you think would assist to explain or support your case.

Building and Energy cannot provide copies of documents or technical equipment. If you need a device to show photos or video such as a computer then you should bring one with you including everything you need to run it, for example, a short extension cord or double adaptor.

Every effort will be made not to schedule conciliation proceedings at meal times. In the event that a meal break is necessary, there are limited options for obtaining food at or near Building and Energy. You should consider bringing a snack with you in case the proceeding is adjourned and you want to eat.

Representation is not permitted in a conciliation proceeding unless you have been granted permission by the Building Commissioner.

Please note: Tea, coffee and child-minding facilities are **not** available at Building and Energy.