

CONCILIATION

The Health Complaints Commissioner (HCC) resolves complaints about healthcare and the handling of health information in Victoria. Conciliation is one way we may seek to resolve a complaint.

Conciliation is a process of negotiation between the parties in which the Commissioner proposes options for the resolution of issues and proposes terms for agreement. It is a voluntary process that requires agreement from both parties to proceed. It is an alternative to legal proceedings and does not involve formal hearings or the making of findings or rulings.

The Commissioner does not advocate for either party, take sides or discipline health service providers. The Commissioner will encourage both parties to listen to and consider each other's perspectives.

WHAT HAPPENS IN CONCILIATION?

Conciliation involves a series of documented steps with the goal of resolution. In most cases we will work with the complainant to identify the desired outcomes. The Commissioner may then seek relevant supporting documentation and expert advice. In general, outcomes sought through conciliation fall into three categories:

- An explanation as to what happened and why, which may also include an apology or an acknowledgement of what has been experienced.
- A change in systems, policies or protocols.
- A claim for refund of fees, compensation or remedial treatment.

If agreement is reached in conciliation, we will make a written record of the agreement and provide a copy to each party. Where a financial remedy is agreed to, the provider will usually prepare a settlement document.

If agreement is not reached at conciliation the Commissioner may decide to take no further action, or if circumstances warrant, may conduct an investigation into the complaint.

On completion of the conciliation the Commissioner will advise the parties in writing of the date the conciliation ceased and the outcome.

DO I NEED A LAWYER?

Neither party needs a lawyer to participate in conciliation, however, parties may seek legal advice at any time, including in conciliation.

Where there is a claim for a refund of fees or compensation, providers usually seek advice from their medical insurer or lawyer. Complainants may also wish to seek legal advice about how much to claim. For those who wish to seek legal advice, the Law Institute of Victoria offers a referral service to accredited specialists, visit liv.asn.au.

CONFIDENTIALITY

By law, conciliation is a confidential process. Anything said or done in conciliation, or any agreement reached in conciliation, must not be disclosed by the parties. The only exception is where the party to whom the information relates consents to its disclosure.

Evidence of anything said or done in conciliation is not admissible in any hearing or proceeding in a court or tribunal. This encourages open and frank discussion of the issues in the complaint. It is an offence to disclose anything said or done in conciliation outside the process. Information gained in the course of conciliation cannot be used by the Commissioner in an investigation.

WHAT DO I NEED TO DO?

You will need to be active in the process. This includes:

- Making yourself available to discuss the complaint with our impartial Resolution Officer and cooperating to produce any required documents.
- Being clear on what the desired outcomes are to resolve the complaint.
- Remaining open to alternative ways of resolving the complaint.

THE COMMISSIONER'S POWERS IN CONCILIATION

The Health Complaints Commissioner has a number of powers in conciliation under the *Health Complaints Act 2016*. The Commissioner:

- May require the health service provider to give a written response to each issue raised in the complaint. The health service provider must comply with the requirements of the notice within a given time. It is an offence not to comply with the notice.
- Must make a written record of any agreement reached.
- Must give a written record of the agreement to each party.
- Must make a written record of any undertaking, to be signed by the provider.
- May, by written notice, require the provider to produce any document or other evidence they hold relating to:
 - their policies or protocols, or
 - an investigation into the subject matter of the complaint, or
 - the health information of the person who received or sought the health service.
 - The service provider must comply with this notice within the time frame specified. It is an offence not to comply with the notice.
- May extend the time a provider has to comply with a written notice.
- If no resolution is reached, the Commissioner may decide to take no further action and must give written notice of the reasons for this decision.
- If no resolution is reached, the Commissioner may conduct an investigation into the complaint.

For more information on conciliation speak to the Resolution Officer handling your case, visit hcc.vic.gov.au or call **1300 582 113** between 9am and 5pm, Monday to Friday.