

*Telephone or Face-to-Face?
Women's Experience of Conciliation Conferences*

Author: Bridget Partridge
Industrial Officer
Working Women's Centre SA
Ph: (08) 8410 6499
bridget@wwc.org.au

Introduction

The purpose of this paper is to provide an account of how clients of the Working Women's Centres' have experienced telephone conferences for unfair dismissal applications. In contrast, consideration has also been given to the experiences of women who have had face-to-face conferences to see if there were any significant differences or similarities between the practices of either face-to-face or telephone conciliation conferences.

The paper also provides an account of the process of conciliations conducted through Fair Work Australia and the role of an Industrial Officer from the Working Women's Centre in this process.

The paper does not propose to make any recommendations on what is a better practice for women nor is it an academic paper. It does not include any review of literature, theories related to this topic or any other qualitative or quantitative data. The information provided is purely taken from the conversations had with the participants. The Working Women's Centres are in a unique position to report on women's industrial and employment issues. The information provided is taken from the actual experiences of women and we believe it is important that these experiences are shared.

The changes that took place

July 2009 saw Fair Work Australia make significant changes to unfair dismissal laws and its associated administration. A major change, as well as its increased accessibility, was that unfair dismissal conciliation conferences would, for the most part, be conducted as telephone conferences. This practice is different from the previous system where face-to-face conferences to conciliate unfair dismissal claims were normally held in the Chambers of a Commissioner of the Australian Industrial Relations Commission.

Not only would unfair dismissals now be conciliated by phone, but also experienced Conciliators would conciliate these matters. Commissioners would no longer be conciliating the initial conference as was generally done in the past.

The General Protections provisions within the *Fair Work Act 2009 (Cth)* were also expanded. All workers are able to lodge applications to deal with issues of workplace rights and discrimination, among others. These disputes may involve a dismissal and

are generally conciliated by a Member of Fair Work Australia. They are generally conducted as a face-to-face conference.

Conciliations – A WWC (SA) Perspective

The conference itself begins with the Conciliator outlining their role; how the conference is to be conducted and what the next steps are if a settlement can or cannot be reached. The advocate for the applicant is then invited to give a brief summary as to why the application has been lodged and the reasons why they believe the termination has been harsh, unjust and/or unreasonable. Or, in the case of a general protection dispute or dismissal, a summary of why they believe the employer has acted in a way that is in breach of the *Fair Work Act 2009*. In these opening statements it is the typical practice of WWC SA, to also put forward a settlement proposal as a means to resolve the application.

The employer, or their representative, is then invited to give a response as to why they believe they have acted lawfully and in line with current industrial legislation.. Both parties are afforded the opportunity to present their statements free of interruption or comments from the other.

Once the parties have concluded their representations, the Conciliator may ask some clarifying questions of either side. The Conciliator will then open the floor for general discussions between the parties, with the Conciliator acting as facilitator about the key issues of the application.

The Conciliator then ensures that the relevant issues have been raised. It is usual at this time, for the parties to be separated where the Conciliator will talk to each party. It is at this point that the Conciliator discusses the settlement proposal and the merits of the case.

The Conciliator then goes back and forth between the parties assisting them to come to a negotiated outcome.

If a settlement is reached the Conciliator may call the parties back together to confirm the terms of any agreement reached. It is usual that a settlement agreement is signed by both parties, and upon the receipt of the agreed terms, a Notice of Discontinuance is lodged with Fair Work Australia and that is the end of the matter.

The whole conciliation process may take up to two hours. In some instances the Conciliator may allow the parties more time to reach settlement outside of the conciliation conference.

If the matter cannot be resolved by way of conciliation, the applicant may then initiate further proceedings in the appropriate jurisdiction, depending on the nature of the dispute, for an arbitrated outcome.

The role of the Working Women's Centres in conciliation

The primary role of an Industrial Officer at the Working Women's Centre is to act as an advocate for women who have been unfairly dismissed or discriminated against. We will initially listen to the woman's grievance and discuss with her how her matter may fit into the scope of the legislation, assess jurisdiction and then assist the woman to fill in the application and lodge the form.

Not only is it our role to advocate for the woman in the conciliation conference, but to also take on an informative role about the processes and proceedings of the conference and what choices the applicant has if there is no settlement. We also provide advice to women on the merits of their application to ensure that they have realistic expectations on the possible outcomes arising out of the conciliation process.

Once the conciliation conference has been concluded, we also assist with the drafting or reviewing of any settlement agreement reached. In cases of where no settlement was reached, we can also assist in the next stage by making appropriate referrals for legal advice to our clients.

Reflections on how the practice of teleconferencing could differ from face-to-face conciliations

Prior to the implementation date for telephone conferences to commence, the Industrial Officers of the WWC SA, had many discussions relating to the legislative changes to be expected, including telephone conferences. There was interest and to some degree concern, shared by many others in the Industrial community about the effectiveness of this new practice. More specifically from our point of view, we wondered how women would feel about the experience. We had discussions based on our own perceptions, the closure that a face-to-face conference gave; how the formality of a face-to-face conference offered the applicant their 'day in court' and the advantages of being able to see and read the body language of all participants.

There was concern that a telephone conference would not allow for these opportunities and whether or not it would impact not only on resolution but also on whether it would make for a satisfactory process for the applicant.

Obviously an advocates experience and opinion of a satisfactory conciliation conference will differ to that of an applicant. The Working Women's Centre is well placed to comment about the positives and negatives of teleconferencing compared to face-to-face. More importantly, as is the focus of this paper, we are interested in the experiences of clients of the Working Women's Centres and as stated, believe there is value in sharing these with a wider group of stakeholders.

The 'Information Gathering' process

Clients of the Working Women Centre's in Northern Territory and South Australia and the Queensland Working Women's Service who had experienced either an unfair dismissal conference or a general protections dispute conference in the past 18 months were invited to participate in this research. From the invited field, six women who had had telephone conferences were interviewed, as well as four women who had participated in a face-to-face conference.

It was decided that although there are some fundamental differences between an unfair dismissal application and a general protections application, the conciliation processes used in both forums were the same. In light of that similarity it was decided to include women who had lodged either type of application. Our focus was on the actual experience had by these women; either a face-to-face or teleconference conciliation in Fair Work Australia.

A basic interview questionnaire was developed, which was used as a basis for discussions. These discussion/interview questions sought to explore issues such as:

- how comfortable the applicant felt in the surroundings;
- the benefits they saw in seeing or not seeing their former employers;
- what lasting impressions the conference had on them;
- what extent they felt the role of the Conciliator and advocate had in assisting them through the process; and
- what influence, if any, did the Conciliator have on assisting them to reach a settlement?

None of the women interviewed were selected for their age, race, occupation, industry, education background or socio-economic status. It was simply a random group who had agreed to participate.

The information collected is qualitative information – there was no intention to provide statistical data and the information sought is in no way sufficient to draw conclusion about what practice works better, nor does it suggest that this is how women on the whole feel about the differing practices.

So what did women experience?

Comfort: physical environment and level of formality – was it as the participants had imagined?

A discussion focused around the physical environment where the conference took place. We were interested in this from a comparison point of view, and whether or not a familiar place assisted with the level of comfort that the woman may or may not have experienced. All telephone participants had their conferences at the office of the Working Women's Centre. These women rated their level of comfort from 'fairly comfortable' to 'very comfortable'. These women may have felt comfortable because the office was a place that they had already been in. The women participants in the face-to-face conferences could not report, that on the whole, they shared this same level of comfort as their telephone counterparts. One woman described the environment as 'stuffy'. Another described it as a 'bit daunting and too much like a courtroom'. Two women, however, in the face-to-face conference stated that they did feel comfortable.

All participants felt that the level of formality was what they had expected it to be. It is wondered if this is because all women had advocates who had explained to them what they could expect. Interestingly one face-to-face participant felt that the level of formality meant that she should have got more dressed up for the occasion!

Most of the telephone participants stated that the experience was how they imagined it was going to be. One woman specifically said it was because her advocate had prepared her exactly for this. Only one telephone participant said she wasn't sure what to expect and another said that she was not expecting that her advocate would have had to 'work so hard for her'. Another woman said 'it was a lot less stressful'.

For women who had had a face-to-face conference, when asked if the experience was what they had imagined, replied that they were not sure what to expect or that it wasn't what they imagined. One woman said that she did not expect it to be 'quite so draining'. This is interesting, as the advocate would have given these women the same information as their telephone conciliation counterparts. Perhaps it is easier to imagine how something is going to be when you have familiarity of where it will be taking place.

How did the participants feel about having to or not having to face the employer?

All telephone participants were 'relieved' and 'happy' that they did not have to face their employers. One woman stated that not having to see her employer, made the 'whole process much easier'.

All women who had conciliated by telephone reported that the best thing about not seeing their employer was that it would have been much more stressful than if they did have to see them. One woman said that by not seeing her employer 'it felt less confrontational'. One woman said it was much 'less intimidating' not having to see him, as she was concerned that she may have been 'vibed out badly' by his presence. Interestingly one telephone participant reported that she was glad that her employer didn't get to see her. She said that she felt nervous enough and didn't want her employer to have the satisfaction of seeing her feel this way. Another woman said it was bad enough just to listen to her employer let alone having to see him.

There was one telephone participant who did say she wished she could have seen her employer as her employer was a 'strong headed woman' and she would have liked to see how she handled the situation. This participant also said that she felt it was important for the employer to see how negatively the dismissal had impacted on her and how much she was distressed by it. She felt that if the employer had seen her distress it might influence how she treats her other employees in future. One telephone conference participant also reported that she felt her employer's behaviour on the phone 'in-formalised' the whole process. She felt he was able to 'get away with it' as the Conciliator could not see him.

Although, on the whole, the telephone conference participants were pleased that they did not have to face their employer, some women expressed a regret that they would have liked to see their employers' faces when they felt the Conciliator and advocate pointed out flaws or the weakness of procedures they followed during the dismissal. Another woman said although she was glad not to see her employer, 'she would liked to have had the opportunity to see the employer squirm'. Overall, the preference was still not to have seen the employer.

Alternatively the face-to-face women reported different views. One woman said that she did not like having to see her employer, that it was 'really difficult to look at them'; simply put she just 'didn't want to see him'. Another woman shared this sentiment stating it was 'really, really intimidating and nerve-wracking' having to see her employer. This woman did say though, that she felt much stronger for having gone through it and it helped her appreciate her own strength. She did not feel that she would have felt that same 'power' if the conference had been done by telephone. This woman also described the satisfaction she felt after the conference when the employers walked away without the 'high jovial spirit' they had when they entered the conference. One face-to-face participant also said that she felt it was important for her own sense of closure to be able to see her former employer's face – she did not think that same sort of closure would have been felt if she had not seen them. Also another face-to-face woman reported that she was glad the employer had to see her again. She felt that her employer thought she was 'out of their lives' and that they had 'gotten away with it'. She felt her employer was not happy about seeing her and this gave her a sense of satisfaction.

Comments on the Conciliator's role in providing information and assisting with resolution.

Through discussion it appeared that all participants felt the Conciliator positively impacted on the conference. Comments were made about the Conciliator being able to direct the discussion, keep the parties focused and offer useful information and guidance with regards to reaching a settlement. One telephone participant voluntarily reported that she did not feel that there was any disadvantage in not having the Conciliator present. Another woman reported that the Conciliator's knowledge over the telephone gave him a sense of authority that was just as 'powerful' as if he was physically present. One face-to-face participant said she felt that if there were no Conciliator present there would have been 'arguments' between the parties.

One face-to-face participant did say however that she felt that by reading the body language of the respondent, the Conciliator could see that the respondent may not have been entirely truthful in their account of what had happened. She felt that this helped the Conciliator to encourage the respondent to come to an agreement, thus impacting on the outcome.

Interestingly though, all telephone participants felt that the Conciliators provided clear information to them about the proceedings. This is different to that of the face-to-face participants. These women had stated that their Conciliators did not provide initial information about the proceedings. Two women said it was the advocate who gave the information about the procedures to her and one of these women suggested that she preferred getting the information from the advocate as she felt the advocate was able to describe it to her in a more understandable way.

With regard to providing information to the applicants about options for resolution, all participants were satisfied that they had been given enough information by the Conciliators. Only one telephone participant felt that the Conciliator did not give enough information about options for an outcome – but she then went on to say, although it wasn't explained to her –she felt that the conversation regarding this was

sufficient between the advocate and the Conciliator. The advocate was able to convey the discussion back to her.

Was the conference structured and long enough for participants to have their ‘story’ heard and did they feel comfortable in asking questions?

All telephone participants felt that there was enough time allocated to the conference. These women reported that the conferences went between one and a half to two and a half hours. They all felt that in this time frame they were able to have their story adequately heard. One woman reported that she was determined they heard all of her story, relevant or not, as to how she felt defamed, mistreated and hurt.

All telephone participants also felt that if they had wanted to they could have asked questions. One telephone participant said that she didn’t need to ask any questions as her advocate was doing this for her.

Interestingly all the face-to-face participants, except one, felt that although there was enough time to get to a resolution, the conference did not offer enough time for them to have their stories heard. All women said that they wanted to talk more about what had happened.

The face-to-face participants also had a different experience with regard to being able to ask questions than the telephone participants. One woman did say she felt that she could ask questions but was too emotional to do so. This woman wished that she were strong enough to have asked, as she walked away from the conference without having an answer as to why she was dismissed. One woman said that she didn’t want to ask questions, as she didn’t know the right words to use, another felt that the level of formality stopped her from asking. There was only one face-to-face participant who was comfortable enough to ask questions.

Did having an advocate assist with the process and would the participants do it again without an advocate?

All participants stated strongly that having an advocate present definitely assisted with the process. Women talked of the advocate being able to keep the emotions out and that the professional knowledge of the advocate made it easier. One woman from a Non English Speaking Background stated that her advocate was helpful with her language barriers as well as keeping her emotions under control. Another woman simply said her advocate put her at ease, that the advocate was ‘brilliant’ and another said her advocate was able to keep her ‘calm’. Another woman said her advocate spoke ‘common’ language, which made it easier to understand what was going on.

When asked if they would do it again on their own, all women reported that they would still want representation. Examples of the reasoning behind this was

- the support an advocate provided
- the industrial knowledge advocates have
- the advocates’ ability to keep the emotions out of it
- the advocates’ ability to highlight relevant points
- because they wouldn’t feel confident
- without an advocate they would be worried they would ‘get it wrong’.

One woman simply said 'I just would not be brave enough to do it on my own'

Overall satisfaction with the process and the outcome?

All participants expressed sentiments of satisfaction with the process ranging from 'satisfied' to 'really satisfied'. One face-to-face conference participant described the process as having 'run smoothly' because everyone, the Conciliator, advocate and employer representative, 'knew what they were doing and what they were talking about'.

Interestingly, the level of satisfaction about the outcome did not differ greatly between all participants. Whilst most telephone participants were satisfied with the financial outcome, one woman described her being less than satisfied with the fact that the employer was not held accountable for the actions and she worries that he will just do it again to someone else.

Face-to-face participants also expressed reasonable satisfaction with financial outcomes, but one woman had an issue with the employer sticking to the terms of the settlement and felt dissatisfied that the process was unable to control this. One face-to-face conference participant said although she didn't get what she wanted -which was her job back, 'at the end of the day it was resolved'.

There was no clear information given from either group that would suggest that a better process or a better outcome was achieved from a face-to-face conference or via the telephone conference.

If the participants had a choice between telephone or face-to-face what would they choose?

When the telephone participants were asked what type of conference they would choose if they had a choice, all women reported that they would do it again by telephone. One woman did say she wished she had the 'courage to do it face to face, but telephone would still be my preference'.

The face-to-face conference participants were also asked what would they choose if they had a choice between a face-to-face conference or a telephone conference, only one of the women responded 'telephone'. This woman felt that the whole thing about going into a formal setting was a 'waste of tax payers money'. The other women preferred face-to-face over the telephone. One woman felt strongly that conflict needed to be dealt with face-to-face and another woman felt that face-to-face was really the only way to know if the respondent was listening. Another woman also said that although it was hard to face your employer, it was 'well worth it' in the end.

Has the conciliation conference experience helped the participants move on?

No matter what type of conciliation conference the participants had experienced, they all agreed that it enabled them to move on. This is with the exception of one woman

felt her employer had not kept to the terms of the settlement. They all reported however, that it did give them a sense of closure. One woman said the whole process was embarrassing and tiresome, and she was glad to be able to put it behind her. Another woman said that a term of her settlement was for the employer to accept her resignation. This she felt is the reason that she can now move on. Other women described that they felt they had been listened to and that some sort of justice had happened, again contributing to a sense of closure.

It appears that the process of conciliation with a resolution, be it through face-to-face or by telephone, did provide the participants the opportunity to 'move on'. One face-to-face woman gave a beautiful account of how proud she felt of herself, as she knew that she had also stood up for others. Having this experience, she felt, also enabled her to show her children what can happen when a person stands up and exercises their rights.

Any lasting impressions?

In summarising their experiences, all participants were asked if the conference had any lasting impressions on them. None of the answers provided were related to the practice of conference they had experienced. Some women commented on the service they received from the Working Women's Centre's and how important it was to have someone to support them, whilst others made comments about the system (ie that conciliation does not provide for admission of liability). One woman's lasting impression was she felt stronger for going through it and another, a face-to face participant, said she hadn't stopped smiling!

Future evaluations

This exercise was done on a small scale with the intent of being able to share information. It is clear that a thorough evaluation needs to occur which can offer a comprehensive comparison of the two systems.

The Working Women's Centre SA plans to continue to listen to the experiences that women have in both practices of conciliation conferences; we are also interested in the findings of Fair Work Australia's own research.

Summary

According to the women interviewed for this paper, it does appear that women are finding the experiences of teleconferencing satisfactory. It is interesting that the telephone participants mostly shared the same experiences as each other, whereas the face-to-face participants had differing opinions within the group on that process.

It was however the face-to-face participants who were able to describe a sense of justice and strength that the telephone participants did not seem to share to the same degree. This could be because the process was much harder in the beginning for the face-to-face participants and because of that the sense of achievement was stronger.

It is interesting to note that *all* women would seek the assistance and support of an advocate if they were ever in that situation again.

While there were pro's and con's to both processes, it appears that having the support of an advocate was more valuable for these women than whether or not the conciliation took place as a teleconference or as a face-to-face conference.