



Conciliation Preparation Toolkit

This Conciliation Preparation Toolkit has been developed by the Administrative Appeals Tribunal (AAT) to assist parties to better prepare for conciliation at the AAT. The toolkit is designed for representatives to discuss with their clients or for applicants who are self-represented. The toolkit aims to distil a number of good practices in preparing for conciliation. The toolkit is not required to be completed, provided to the other party, or lodged with the AAT.

Readiness

Conciliation is a concerted final effort at resolving a matter without a hearing. It is essential that the parties have all of the information, authority and instructions to effectively negotiate during conciliation. If full agreement cannot be reached, the parties will be expected to narrow the issues that need to be considered at hearing and finalise a timetable to progress the matter to hearing.

When you receive a listing notice for conciliation you need to confirm the following:

- The client or instructing officer will have authority to settle the matter.
- The full scope and quantum of the decision under review is known.
- Advice has been sought on prospects, risks, costs and settlement options.
- All information has been or will be exchanged at least two weeks prior.
- A negotiation plan is in place anticipating a range of potential offers and counter-offers.

Some key questions you will need to prepare for include:

What are the main strengths and weaknesses of my position?

Strengths: _____

Weaknesses: _____

What are the main strengths and weaknesses of the other party's position?

Strengths: _____

Weaknesses: _____

What is the risk that a decision-maker might not agree with my position?

- Very Low Low Medium High Very High

What is the likely cost of proceeding to a hearing?

<i>Monetary costs</i>	<i>Non-monetary costs</i>
Solicitor fees:	Time:
Counsel fees:	Effort:
Witnesses expenses:	Reputation:
Travel:	Goodwill:
Transcript:	Other:
Other:	
Total:	

Options

In preparing for conciliation, you should always seek legal advice regarding possible settlement options. Conciliation is an opportunity to explore all possible options in a confidential and without-prejudice setting. Options that can be discussed can be broader than just the legal and factual questions that are before the tribunal. Parties should consider the needs and interests of both parties and options that might meet these needs. For example, a party might feel aggrieved about being treated disrespectfully. Discussion of these concerns during conciliation could lead to options such as an apology and assist future relations between the parties.

Some key questions that can assist to develop a range of options include:

What proposals is the other party likely to put forward? How will I respond to these proposals?

What proposals can I put forward? How is the other party likely to respond?

Are there some possible points of compromise between these proposals?

What else is important to the other party? What options would meet these needs?

What else is important to me? What options would meet these needs?

Are there some facts or issues that could be agreed to reduce the cost of going to a hearing?

Communication

Conciliation is also a key forum for effective communication between the parties. Prior to conciliation, parties have often not had a detailed face-to-face discussion regarding the opportunities to address the issues they agree and disagree about. Communicating well during a dispute can be very difficult. The language in legislation is designed for accuracy and it is easy for lawyers to overlook the ways in which the use of this language can present barriers to effective communication. The conciliator is experienced in facilitating constructive discussions and can assist parties with framing their communications in a positive manner. Parties can prepare by anticipating key points that could be challenging to communicate and considering ways in which these topics can be broached with sensitivity and respect.

List some of the key messages that need to be communicated during negotiations, how the other party is likely to react, and how the messages can be reframed to avoid a negative response.

Your key messages	What the other party might hear	Is there another way to put it?
1.		
2.		
3.		

What are some of the key points that the other party may need to make that could cause you to react strongly? What strategies can you use to respond in a constructive manner?

Other party's points	Ways to manage these well
1.	
2.	
3.	