



ADMINISTRATIVE APPEALS TRIBUNAL

ALTERNATIVE DISPUTE RESOLUTION (ADR) GUIDELINES

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Legislative Framework

Administrative Appeals Tribunal Act 1975, Section 2A: *In carrying out its functions the tribunal must pursue the objective of providing a mechanism for review that is 'fair just economical informal and quick.'*

ADR processes are defined in section 3(1) of the AAT Act as:

“procedures and services for the resolution of disputes, and includes:

- (a) conferencing; and
- (b) mediation; and
- (c) neutral evaluation; and
- (d) case appraisal; and
- (e) conciliation; and
- (f) procedures or services specified in the regulations;

but does not include:

- (g) arbitration; or
- (h) court procedures or services.

Paragraphs (b) to (f) of this definition do not limit paragraph (a) of this definition.”

Definitions and process models for the various forms of ADR processes are annexed to these guidelines.

Objectives of ADR Processes

There are a number of identified objectives that should inform the Tribunal's use of ADR processes. ADR processes should:

- resolve or limit the issues in dispute;
- be accessible;
- use resources efficiently;
- resolve disputes as early as possible;
- produce outcomes that are lawful, effective and acceptable to the parties and the Tribunal;
- enhance the satisfaction of the parties.

As a general principle, all disputes are potentially suitable for referral to ADR.

Objective of ADR Referral Guidelines

These guidelines aim to:

- give effect to the Tribunal's legislative objectives through the utilisation of a range of ADR processes to respond to and meet the differing needs of the parties in each application;
- ensure consistency in ADR referrals made by Tribunal members and officers.
- educate parties in the expectations and procedures of the Tribunal in ADR referral.

Who will make a referral to an ADR process?

On receipt of an application, Registry staff will refer all applications to Conferencing unless the District Registrar forms the view there are compelling reasons to deviate from this practice. Thereafter, any Member or Conference Registrar may refer an application to an ADR process.

Most referrals to an ADR process will be made by the Conference Registrar after consultation with the parties at the first Conference.

General principles to consider when referring to an ADR process.

When deciding if an ADR process will assist in the resolution of the application, the Member or Conference Registrar must consider:

- Capacity of the parties to participate effectively
- Whether the parties are represented
- Context of the application including the history of past applications by the applicant
- Any identified need for urgency
- Number of parties involved in the application
- Complexity of the issues in dispute
- Bona fides of the parties
- Cultural factors
- The safety of the parties
- The likelihood of an agreed outcome or reduced issues in dispute
- Relative cost to the parties of an ADR process and a determination
- Case management requirements of the Tribunal
- Whether an ADR process might offer a more flexible solution than a determination
- Whether public interest issues require a determination.

Specific Considerations

When deciding which ADR process would be most appropriate the Member or Conference Registrar should exercise sound judgment and discretion, taking into account the following considerations:

- Attitudes of the parties
- Benefits of involving other persons in the ADR process
- Cost of each ADR process to the parties
- Stage of preparation of the application
- Progress of other applications which may impact on any decision
- Nature of the issues in dispute; ie: law, expert evidence, credit
- Impediments to settlement
- Any previous ADR attempts
- Availability of participants with authority to settle.

Selecting the most appropriate ADR process

Factors favouring Conferencing

It is standard practice to refer all matters to a Conference. If the matter remains unresolved, indicators for subsequent Conferences may be:

- further information or investigation is needed
- either party needs to take advice/instructions and reconsider the application in light of the discussion
- the parties are waiting for a decision to be made in an unrelated but relevant matter
- further applications need to be joined with the current application.

Factors Favouring Mediation

- The matter is complex or likely to be lengthy
- The matter involves more than two parties
- Desire of parties to keep the dispute confidential
- Commercial considerations are important
- There will be an ongoing relationship and future disputes could be limited by an exploration of the issues or explanation of the system
- An apology, concession or explanation from the Agency could assist resolution
- Flexible options need to be explored

Factors Favouring Conciliation

- Commercial considerations are important
- Desire of the parties to keep the dispute confidential
- The parties would benefit from advice on possible settlement options
- There is a conflict in expert opinion or evidence

Factors Favouring Neutral Evaluation

- Identification of a legal and/or factual issue that is decisive
- Agreement about the nature and impact of the issue
- Willingness to have application or identified issue evaluated
- Most investigations and gathering of evidence has been completed
- Convenience of evaluating on the papers without the need for parties to be present.

Factors Favouring Case Appraisal

- There is a dispute in relation to an evidentiary or factual issue
- The hearing is likely to be lengthy
- Parties willing to give proper consideration to appraisal of evidential arguments and prediction of outcome
- Additional independent investigation may assist in resolution
- Availability of an expert opinion may further negotiations
- Convenience of evaluating on the papers without the need for parties to be present.

Who is to conduct the ADR process?

In recommending to the State or Territory Coordinator a suitable person to conduct the ADR process, the Member or Conference Registrar making the referral will consider:

- relevant skills and knowledge
- expertise in the area of the dispute
- views of the parties
- any previous involvement in the dispute

Costs of the ADR Process

Where there is a direction to attend an ADR process and it will be conducted by a Tribunal Member or Officer, there will be no charge to the parties. However, they will be responsible for bearing their own costs of participating in the ADR process.

Where the parties request an external ADR Practitioner, they will be responsible for any associated costs.