

OPC Conciliation Case Conference Preparation Toolkit

This Conciliation Preparation Toolkit is designed to assist parties prepare for case conferences and conciliation at the Office of the Privacy Commissioner (OPC). The toolkit has been developed for lawyers and advocates to discuss with their clients and for complainants and respondents who are self-represented. The toolkit is not required to be completed, provided to the other party, or lodged with the OPC.¹

Preparation- readiness

Conciliation is a concerted effort to resolve a matter without a need for the OPC to come to a final view or for the parties to continue to the Human Rights Review Tribunal (HRRT). It is essential that the parties have the necessary 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 in a final view and agree to a timetable to progress the matter. The investigator who has been working on your complaint or one of their senior colleagues will be the conciliator for the day.

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

- The right people will be in the room;
- The attendees will have authority to settle the matter;
- You have considered the full scope and quantum of the complaint;
- You have sought advice on prospects, risks, costs and settlement options;
- Relevant information has been or will be exchanged at least two weeks prior wherever possible; and
- You have a negotiation plan anticipating a range of potential offers and counter-offers.

Some key questions you will need to prepare for include:

- What are the three main things I want the other party and the conciliator to understand about my perspective on this dispute?
- What are the main strengths and weaknesses of my position?
- What are the main strengths and weaknesses of the other party's position?

¹ Many thanks to the Australian Administrative Appeals Tribunal and Justin Toohey for their work in preparing this material and sharing it with OPC.

- What do I think both parties agree on?
- What do I think the parties disagree on?
- What is the risk that the OPC (or the HRRT) might not agree with my position?
- What is the likely cost of not settling, or of proceeding to the HRRT?
 - Monetary cost (legal fees, witness expenses, travel, other); and
 - Non-monetary cost (time, effort, reputation, goodwill, other).

Considering options

In preparing for a conciliation conference, you should seek advice regarding possible settlement options. Conciliation is an opportunity to explore all possible options in a confidential and without-prejudice setting. The options you discuss can be broader than just the legal and factual questions that are before OPC or the HRRT. 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 realistically likely to put forward? How will I respond to those proposals?
- What proposals can I reasonably 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 those needs?
- What else is important to me? What options would meet those needs?
- What are you willing to accept or change about what you want as an outcome, in order to come to an agreement?
- Are there some facts or issues we could reach agreement on that would assist the OPC to progress an investigation if we are unable to reach a settlement on the day?

Preparing for effective communication

Conciliation is 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.

If you have any questions or concerns, your investigator is here to help you.

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 message	What the other party might hear	Is there another way to put it?
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