

Stages at the Administrative Appeals Tribunal

Application for Review of Decision

Proceedings at the AAT commence when an Application for Review of the reconsideration is lodged with the Tribunal. The employee has 28 days after receiving the reconsideration to lodge the application at the Tribunal.

The Tribunal will notify the employer or licensee of the application. You will then be required to prepare for the Tribunal a set of all relevant documents, called T documents, and also give a copy of the T documents to the employee. We usually prepare the T documents on your behalf to ensure that sensitive material is not included in the T documents. You will also be required to prepare a section 37 statement (which is basically a document that summarises the outcome of the determination, reconsideration, and the plaintiff's application). We usually prepare this document and attach it to the T documents.

In some registries of the AAT, a statement of issues is also required to be prepared on behalf of the employer or licensee. The statement of issues sets out a list of issues in dispute between the parties. You will be required to provide the statement of issues to the employee (or to the employee's solicitor) for their consent. A copy is also required to be provided to the AAT. We would usually prepare the statement of issues on your behalf and provide it to the employee and the AAT prior to the first preliminary conference.

Preliminary Conference

The first preliminary conference will be held approximately 6 to 10 weeks after the Application for Review of Decision is lodged with the AAT.

An AAT Member or a Conference Registrar will conduct the preliminary conference. However, from our experience, most of the time the preliminary conference will be conducted by a Conference Registrar. The employee's solicitor and a solicitor on behalf of the employer or licensee will be in attendance. In most States, the conference will be held by telephone.

If the employee is not represented, the preliminary conference will be held in a conference room at the AAT and we will be required to attend in person. From our experience, when we have attended conferences at the AAT on matters where the employee was self-represented, the employee will usually have a support person with them.

There is no expectation for you (the employer or licensee) to attend a preliminary conference. Usually your solicitor will attend the conference on your behalf.

At the first preliminary conference, the Conference Registrar will give each party a chance to discuss the decision and the statement of issues.

The following are issues usually discussed at a preliminary conference:

- whether there is other information the parties intend to obtain to support their case, such as a medical report or witness statements;
- whether the parties might be able to agree about what the decision should be, and
- what will happen next in the review.

A preliminary conference will usually take about 15 minutes if the parties are represented by solicitors. If the employee is self-represented and the preliminary conference is held in person at a conference room at the AAT, the preliminary conference can take up to 1 hour. We have experienced some matters where the employee is self-represented and they have requested the conference be held by telephone, although it can still take up to 1 hour if the employee is self-represented.

Although the AAT says there are two conferences, usually they blow out. From our experience, the AAT will hold about 3 conferences if the parties are represented. However, we have experienced matters where the AAT has held 5 conferences where the employee is self-represented. This is usually because the employee would request the conferences because they are usually eager for an update of the matter and they want to discuss the evidence that has been served.

Directions Hearing

Directions hearings are not always held on every matter. They are usually held to deal with procedural matters eg. service of material, or clarification of issues. From our experience, the AAT will list the matter for a directions hearing when either the employee or the employer/licensee has failed to comply with the Tribunal requirements, such as late service of evidence. In these circumstances, the Tribunal will usually provide a further timetable for the service of evidence.

We have also attended directions hearings to discuss procedural issues or jurisdictional issues if the matter is more complex.

An AAT Member usually conducts the directions hearings. Directions hearings can be held in person or by telephone. There is no expectation for you (the employer or licensee) to attend a directions hearing. Usually your solicitor will attend on your behalf.

Conciliation Conferences

From our experience, the employee will usually press for the employer or licensee to participate in some form of settlement discussions. The Conference Registrars would, in most matters, list a conciliation conference when all the evidence has been served. However, from our experience in matters where they are not amenable to resolution, we have requested that the matter not be listed for a conciliation conference and proceed straight to hearing. We have requested this in the past to

save costs of attending the conference and to save the time of the Tribunal (only where the matters were not amenable to early resolution).

However, if a matter does proceed to a conciliation conference, even though it may not be amenable to resolution, in our experience, it has been a good opportunity for the parties to try to discuss the issues of the case with the help of a neutral third party (usually an AAT Member or a Conference Registrar). The AAT Member or the Conference Registrar does not decide the dispute or tell the parties what to do, but they assist the parties to reach an agreement. If the matter is not resolved at a conciliation conference, it will proceed to a hearing.

Conciliation conferences are held in person in either a hearing room or a conference room at the AAT. The employee will be present. If the employee is legally represented, the solicitor and/or counsel will also be in attendance.

It is recommended that you (the employer or licensee) attend the conciliation conference, along with your solicitor. If you are not available in person, you can attend the conference by telephone, but your solicitor will be required to attend in person.

At the commencement of the conference, the employee (or its representative if not self-represented) will give submissions. The employer's legal representative will be also given an opportunity to give submissions.

During this conference, the parties usually take a break from the joint session. These break sessions will give us an opportunity to discuss the issues with you and to seek your instructions, and consider offers or advice.

Conciliation conferences can take up to 3 hours to complete. However, from our experience, they are usually resolved in about 2 hours.

Hearings

Hearings are usually heard in a hearing room at the AAT.

They are heard before a Senior Member of the Tribunal, and sometimes another Member of the Tribunal. In most cases, a medical Member will preside at the hearing with the Senior Member.

The employer's solicitor and counsel will be in attendance. You are not expected to attend a hearing. However, in many cases, your solicitor and counsel may require instructions during the hearing so it is best that you are available by telephone, if not in person.

If the employee is represented, the employee's solicitor and counsel will be in attendance.

Any witnesses called will also be present.

Hearings are usually public hearings and open to the public to attend so it is not unusual to see some people, particularly students, attending the hearing. We have had many self-represented employee's submit an application for the hearing to be private, but the Tribunal has not granted this application. Only in special circumstances, an application can be made for hearings to be private.

At the commencement of the hearing, the parties will make opening submissions of their case. The employee will be called to give evidence. Any other witnesses will then be called to give evidence. Once all witnesses have been called, the parties give their closing submissions.

Hearings can take from 1 day to day, up to about 5 days to complete.

In most cases, the Senior Member will reserve its decision. A written decision will be handed down approximately two months after the hearing.

If you need any further information regarding the AAT process, please contact:

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