



# Dispute a decision

Explains how we work collaboratively with taxpayers to resolve issues quickly and efficiently.

## In-house facilitation



Ask for a facilitator to guide a discussion between you and your case officer with the aim to resolve your dispute.

## Small business independent review



If you disagree with your small business' audit position, you may be able to request an independent review.

## Large market independent review



If you disagree with your large business' audit position, you may be able to request an independent review.

## The independent review process



How small business and large market independent reviews are conducted.

## Our service principles



What you can expect of us, and what we expect of you, when

QC 44429

## In-house facilitation

Ask for a facilitator to guide a discussion between you and your case officer with the aim to resolve your dispute.

**Last updated** 14 October 2024

### On this page

[What is in-house facilitation?](#)

[How to request facilitation](#)

[How the facilitation process works](#)

[If you're not satisfied with the facilitation](#)

## What is in-house facilitation?

In-house facilitation is a good way to resolve less complex disputes. You can request it at any stage of a dispute.

We'll appoint an accredited and impartial ATO facilitator to guide the discussion between you and your case officer. They're professionally trained in mediation, and will not have previous involvement in your matter. They don't establish facts, take sides, give advice or decide who's right or wrong. They aim to keep communication open.

The facilitator will meet with you and your case officer to:

- identify the issues in the dispute
- develop options and consider alternatives
- attempt to reach a resolution.

Facilitation is a voluntary process, so both you and your case officer need to agree to participate.

Not all cases are suitable for in-house facilitation. If it's not appropriate for your case, we'll let you know why. We may offer you another option.

You can find more information about our approach in [Law Administration Practice Statement PS LA 2013/3](#) *Alternative Dispute Resolution (ADR) in ATO disputes*.

Media:Example: Using facilitation to quickly resolve a dispute  
<http://tv.ato.gov.au/ato-tv/media?v=bi9or7odadr8xa>

### **Example: Using facilitation to quickly resolve a dispute**

A company undertaking research and development (R&D) activities made a significant claim for the R&D incentive tax offset. The refund was a large amount of money, so we held onto it while we investigated to make sure the company was entitled to receive the offset.

The case officer's manager was concerned that the refund delay would impact the company's cash flow. The manager suggested in-house facilitation between the case officer, the company and their tax agent.

The case officer explained his concerns and view of the relevant R&D law, and the company provided additional information to the case officer. The discussion allowed them to see that the company was entitled to half of the refund.

We were able to process the refund, the dispute was resolved quickly, and the company and tax agent gained a better understanding of the R&D law.

## How to request facilitation

You or your representative can ask for facilitation by completing the [Request for in-house facilitation form](#), or we may offer it to you.

If your case is suitable, a facilitator will contact you and your case officer separately. They will:

- arrange a pre-facilitation meeting to outline the process and answer questions
- schedule the earliest date and time that's convenient for both parties
- let you know how the facilitation will be conducted (for example, video conferencing, phone, teleconferencing or face to face).

## How the facilitation process works

### Before the facilitation

The facilitator will provide all parties with a statement of expectations. This outlines what is expected of participants, what they can expect from the process, and the confidentiality requirements.

### On the day

On the day, the facilitator will:


- outline the structure and explain the expectations and aims for the session
- invite you and your case officer to give your views at the start of the facilitation
- help both parties identify the issues in dispute and options for resolution
- help both parties evaluate the options and attempt to reach a resolution.

## Concluding the facilitation

When concluding the facilitation, if:


- a resolution is agreed by both parties, the facilitator can help record the outcomes of the facilitation
- no resolution is decided
  - the audit or objection will continue as normal
  - other options, including your review and appeal rights, will be discussed with you
- the facilitation doesn't resolve the dispute, your review and appeal rights are not affected in any way.

## If you're not satisfied with the facilitation

If you have concerns at any stage, you should raise them with the facilitator or email us at [facilitation@ato.gov.au](mailto:facilitation@ato.gov.au) .

You can withdraw from the process at any time by advising the facilitator and other participants.

If the facilitation doesn't resolve the dispute, your review or appeal rights will not be affected. You may still be able to:

- lodge an objection
- seek a review through the [Administrative Review Tribunal](#) 
- appeal our decision to the [Federal Court](#).

You'll be asked to give feedback after the facilitation. We welcome your views of the process so we can make it better and ensure it remains a valuable service in resolving disputes.

QC 26665

## Small business independent review

If you disagree with your small business' audit position, you may be able to request an independent review.

**Last updated** 24 June 2024

### **On this page**

[What is an independent review?](#)

[How to request an independent review](#)

[Eligibility for an independent review](#)

[Situations where a review is not available](#)

## **What is an independent review?**

When your audit case officer sends you (or your representative) our final audit position, it may include a written offer to have an independent review. If you disagree with our audit position, you can ask to take up this offer.

In an independent review, a tax officer with no previous involvement in your matter will review the supporting documents, facts and technical merits of your position and the audit position. This is done before we issue any assessment or amended assessment. You can still use [other dispute resolution options](#) after an independent review. For example, you can still lodge an objection if you disagree with the outcome of the audit after the independent review is complete.

To find out how an independent review is conducted, see [The independent review process](#).

Media:When we may not offer a review

<http://tv.ato.gov.au/ato-tv/media?v=bi9or7oda4e9bo>

## **How to request an independent review**

If you're eligible for an independent review, you will receive an offer from us. Request a review by emailing us within 14 days of the date of offer.

In your request you'll need to specify each area of your disagreement with our audit position.

We'll consider the grounds for your disagreement and confirm that your case qualifies for an independent review. If we decline your request, we'll tell you the reasons why and your audit will be finalised according to our audit position.

Your audit case officer may ask you to complete a consent form to extend the amendment period. This will allow the reviewer to complete the review before the period of review for the relevant assessment ends.

## **Eligibility for an independent review**

You'll be eligible for a small business independent review if you:

- are a small business with a turnover less than \$10 million
- have a dispute related to income tax, GST, excise, luxury car tax, wine equalisation tax or fuel tax credits

- are not excluded for other reasons – see [Situations where a review is not available](#).

## Expansion pilot starting 1 July 2024

From 1 July 2024, there is a trial expansion of the small business independent review to include small businesses with a turnover less than \$50 million.

## Situations where a review is not available

Disputes related to super, fringe benefits tax, fraud and evasion findings and interest are not eligible for independent review. In addition, you are **not** eligible for an independent review if:

- when requested, you don't complete a consent form to extend the amendment period to allow the review to take place
- the relevant notice of assessment or amended assessment has already issued
- an objection or related party objection has been lodged about the matter on hand
- you or a related party have already had an independent review on the matter
- we have serious concerns that you don't intend to comply with the payment of any potential assessments following the outcome of the independent review
- your business is part of a larger group of related entities with a total annual turnover of more than \$10 million (or more than \$50 million from 1 July 2024 as part of the expansion pilot)
- your business is being audited for tax evasion (including offshore tax evasion), tax fraud, illegal phoenix activity or other tax crime
- your business is subject to a status-of-worker audit initiated from an employee notification, or there is a potential sham contract or contrived arrangement
- your business is subject to a super guarantee audit.

You also won't be eligible if you disengaged with us during the audit process. We consider you may have disengaged if you didn't:



- respond to attempts of contact from the audit team – for example, you failed to return phone calls or reply to correspondence
- attend meetings with the audit team
- provide requested information or documents, causing us to use our formal information gathering powers
- communicate your position during the audit process
- respond to the audit team's interim position paper.

Your case will not be eligible if:

- it has or will be considered by the General Anti-Avoidance Rules Panel, regardless of the extent of consideration of the substantive provisions
- it relates to valuation or transfer pricing issues, with the exception of cases where recommendations can be made as to which party has the better view without considering the underlying economic analysis
- recommendations can only be made by deciding between matters of conflicting expert opinion
- we consider it may be appropriate to clarify through the courts.

## **When we may not offer a review**

We have the discretion to not offer an independent review. For example, we may not offer an independent review if:

- we have announced that tackling the main issues in dispute is among our highest priorities (which might be the case if a Taxpayer Alert is clearly relevant)
- the case has significant systemic impacts
- your case has already been escalated for in-depth scrutiny and review by independent senior officers.

# Large market independent review

If you disagree with your large business' audit position, you may be able to request an independent review.

Last updated 8 May 2025

## On this page

[What is an independent review?](#)

[How to request an independent review](#)

[Eligibility for an independent review](#)

[Situations where a review is not available](#)

## What is an independent review?

When your audit case officer sends you (or your representative) our final audit position, it may include a written offer to have an independent review. If you disagree with our audit position, you can ask to take up this offer.

In an independent review, a tax officer with no previous involvement in your matter will review the supporting documents, facts and technical merits of your position and the audit position. This is done before we issue any assessment or amended assessment.

We offer an independent review if there is demonstrated value for you and us to provide a streamlined and timely pre-assessment review of the audit position.

You can still use [other dispute resolution options](#) after an independent review. For example, you can still lodge an objection if you disagree with the outcome of the audit after the independent review is complete.

To find out how an independent review is conducted, see [The independent review process](#).

## How to request an independent review

If you're eligible for an independent review, you will receive an offer from us. Request a review by emailing us within 14 days of the date of offer.

In your request you'll need to specify each area of your disagreement with our audit position.

We'll consider the grounds for your disagreement and confirm that your case qualifies for an independent review. If we decline your request, we'll tell you the reasons why and your audit will be finalised according to our audit position.

Your audit case officer may ask you to complete a consent form to extend the amendment period. This will allow the reviewer to complete the review before the period of review for the relevant assessment ends.

## **Eligibility for an independent review**

You'll be eligible for a large market independent review if you:

- are a taxpayer with an income or turnover of \$250 million or more on lodged tax returns
- are not excluded for other reasons – see [Situations where a review is not available](#).

We offer independent review for most large market disputes. We will only offer it for transfer pricing matters if certain conditions are met, and it'll most likely be restricted in scope. Contact us so we can look at other ways to resolve transfer pricing issues.

## **Situations where a review is not available**

You are not eligible for an independent review if:

- we receive your request for a review more than 14 days (or the otherwise agreed period) after we issue the final audit position
- your request for review doesn't clearly specify each area of disagreement
- your review would require more than 60 business days to consider due to the issues and information provided (however, we may offer an independent review on selected issues)

- the 60 business days allowed for an independent review would cause the audit end date to go beyond the period of review, and you don't agree to extend the relevant period of review.

Your case will not be eligible if:

- it has or will be considered by the General Anti-Avoidance Rules Panel, regardless of the extent of consideration of the substantive provisions
- the specific areas of your disagreement were already subject to an independent evaluative resolution process, such as an early neutral evaluation or case appraisal
- you have very similar issues that have previously been considered or are currently being considered in another independent review or objection (this does not exclude independent review where there are material differences in the facts or law)
- it relates to transfer pricing issues, with the exception of cases where the audit position includes legal questions clearly capable of determining the case and
  - recommendations can be made as to which party has the better view and
  - recommendations can be made without considering the underlying economic analysis
- recommendations can only be made by deciding between matters of conflicting expert opinion
- it relates to the application of shortfall penalties (as the penalty paper is not issued until after the review is completed)
- it is about the process or procedure, and doesn't affect who has the better view of the ultimate tax issue.

## **When we may not offer a review**

We have the discretion to not offer an independent review. For example, we may not offer an independent review if:

- we have announced that tackling the main issues in dispute is among our highest priorities (which might be the case if a Taxpayer Alert is clearly relevant)

- the case has significant systemic impacts
- you haven't cooperated effectively with the audit, for example, you haven't provided requested material information
- your case has already been escalated for in-depth scrutiny and review by independent senior officers.

QC 102522

## The independent review process

How small business and large market independent reviews are conducted.

**Published** 24 June 2024

### On this page

[Overview](#)

[The purpose of the case conference](#)

[Who attends the case conference](#)

[How the case conference is conducted](#)

[After the case conference](#)

[Escalating your issue](#)

## Overview

If your request for a [small business independent review](#) or [large market independent review](#) is approved, a tax officer from the independent review area, who hasn't had any previous involvement in the audit, will be assigned to review your case. They will:

- bring a fresh perspective to your case
- consider the documents setting out your position and the final audit position from the audit team

- facilitate a case conference
- make a written recommendation as to which position is the better position.

## **The purpose of the case conference**

The case conference is an essential part of the independent review process – without it we can't complete your independent review. The case conference is a discussion that enables the reviewer to better understand your position and the audit position, based on the facts, arguments, information and evidence previously provided to the audit team.

Generally, the reviewer won't consider new facts, material evidence or arguments, and may discontinue your review if you raise new points. They'll consider what's fair to both you and the audit team, and if it will delay or complicate the process. If they decide to request new information, you will have 14 days to provide it.

The case conference isn't an opportunity to consider and discuss potential dispute resolution options, such as in-house facilitation. You can discuss these with your audit case officer.

The independent review process is not intended to limit opportunities for you to discuss settlement or potential dispute resolution options. However, if settlement negotiations begin during an independent review, we may put the review on hold pending the outcome of those discussions.

## **Who attends the case conference**

It's important that the people attending have a thorough knowledge of the facts and understanding of the issues, and have been directly involved in the audit.

Only you, your representative or adviser, and the ATO officers who have been directly involved in the audit should attend the case conference. Senior representatives or advisers who can't demonstrate a significant role during the audit, and external legal counsel, aren't usually permitted to attend.

[Our service principles](#) explain what you can expect of us, and what we expect of you, during the process.

## How the case conference is conducted

There's normally only one case conference during an independent review, and it will be tailored to your individual circumstances.

Case conferences for:

- small business independent reviews will generally be within 3 weeks of your request being allocated
- large market independent reviews will generally be within 8 weeks of your request being allocated.

You can expect to receive an agenda around one week before the case conference. The agenda will identify any issues that the reviewer would like to specifically discuss or clarify during the conference.

The case conference will normally take 1–2 hours for small business, or up to 3 hours for large market, depending on the issues in dispute.

As the conversation is intended to be informal, it may not follow the agenda order. However, you can expect that all topics identified in the agenda will be covered. There will also be an opportunity for you to raise any issues that are not listed.

The reviewer will facilitate the case conference, engaging with you and the audit team to better understand each party's position and clarify issues and areas of disagreement you have raised. This includes the relevance of any factual conclusions that had been reached previously.

The reviewer won't provide you with any minutes, notes, observations, recommendations or preliminary conclusions from the case conference, but you are welcome to take your own notes.

## After the case conference

The reviewer will consider each party's position and prepare written recommendations on each issue in the dispute, including:

- what the reviewer considers is the better view of the facts
- the application of the law to those facts.

In some circumstances, the reviewer may consult other ATO staff (who are independent to the audit team) to help them form their recommendations.

The reviewer will communicate their recommendations to you and the audit team. The audit team is expected to finalise your audit according to the recommendations.

### **Example: Requesting a small business independent review**

Caitlin runs a café business and is subject to an audit. She receives our final audit position and doesn't agree that her business income was incorrectly reported and that an administrative penalty should apply.

Caitlin's audit officer advises her that she is eligible for an independent review of the audit position. She requests a review and tells us why she disagrees.

An impartial tax officer, with no previous involvement in the matter, conducts the review. He considers the documents setting out Caitlin's position and our audit position. He schedules a case conference with Caitlin, her representatives and the audit team.

During the case conference, the reviewer discusses the issues with Caitlin and the audit team. He clarifies the issues and areas of disagreement.

Following the case conference, the reviewer considers both parties' positions and prepares written recommendations on each issue in dispute.

He communicates the recommendations to Caitlin and the audit team, and the audit team finalises the audit according to the recommendations. Caitlin can still object if she disagrees with the outcome.

## **Escalating your issue**

We may escalate your issue to an appropriate officer in the Office of the Chief Tax Counsel (including the Chief Tax Counsel or Deputy Chief Tax Counsel if appropriate) for their consideration before making a final decision. This is to support consistent decision-making. You will be informed if this happens.



## Our service principles

What you can expect of us, and what we expect of you, when you dispute or object to a decision we've made.

**Last updated** 24 June 2024

### On this page

[Our core service principles](#)

[Our expectations](#)

## Our core service principles

When you dispute or object to a decision we've made, it is passed to an officer who specialises in tax law and wasn't involved in the original decision. We're here to work with you to get the right result, resolve any issues and help you understand the reasons for any decisions we make.

Our service principles operate alongside the [ATO Charter](#).

### Client focused

We treat you with courtesy, consideration and respect, and listen to your circumstances and concerns. We want to resolve disputes in a timely manner.

### Fair and reasonable

We believe in your right to have an impartial review of our decisions. We are clear about our processes. We treat you as being honest unless we have a reason to think otherwise, and provide the opportunity for you to respond to any concerns we may have.

## **Accountable**

We understand the importance of an objection for you and treat your contentions seriously. We let you know what to expect, deliver what we say we will, and support you to feel safe while working with us.

## **Professional**

We value integrity and set a high professional standard for ourselves and others.

## **Our expectations**

### **Timely engagement**

We expect you to be committed to timely engagement, recognising that getting the right outcome can sometimes take more time and persistence than originally expected. You will provide information in a timely manner so disputes can be resolved as quickly and efficiently as possible.

### **Openness, transparency and accountability**

We expect open communication and for you to raise concerns so we can see if we can address them. We are accountable for what we tell each other. Having mutual respect and fostering cooperation will ensure our decisions produce the right outcome.

### **Preparedness**

We value each other's time and effort. We expect you to take reasonable steps to be prepared ahead of time. You can expect us to respond efficiently when presented with required information. We encourage you to engage early if you are uncertain or need more information at any point during the process.

# Summary of dispute resolution options

A brief introduction to 6 of our main dispute resolution options.

Last updated 4 May 2023

## On this page

[In-house facilitation](#)

[Independent review service](#)

[Alternative Dispute Resolution](#)

[Early assessment and resolution](#)

[Dispute Assist](#)

[Settlement and litigation](#)

## In-house facilitation

Our [in-house facilitation](#) service is ideal for less complex disputes and can be used at any stage from audit up to litigation.

## Independent review service

Our independent review service focuses on the early resolution of disputes where taxpayers disagree with the audit position.

### Independent review service for large business taxpayers

You can request an independent review if your [turnover or income is greater than \\$250 million](#) and you have received a Statement of Audit Position regarding your income tax, excise, goods and services tax, or other forms of tax.

### Independent review service for small business taxpayers

Our independent review service is available as an additional dispute resolution option for eligible [small businesses with a turnover less than \\$10 million](#). It allows you to achieve an early and fair resolution of your dispute, where you disagree with the audit position on most income tax and indirect tax obligations.

## Alternative Dispute Resolution

Used appropriately, [Alternative Dispute Resolution](#) (ADR) is a cost-effective, informal, consensual and speedy way to resolve disputes.

## Early assessment and resolution

An [early assessment and resolution](#) process is applied to all tax dispute cases. It focuses on early engagement with the taxpayer (preferably in person), to listen, discuss and accept evidence of events where appropriate.

## Dispute Assist

[Dispute Assist](#) is a free service to help unrepresented individuals and small businesses with the dispute process.

## Settlement and litigation

### Settlement policy

In a dispute about a tax or superannuation liability or debt, or an ATO decision, we may consider agreeing to a settlement with the taxpayer, consistent with the [code of settlement](#).

### Litigation policy

Litigation is appropriate where:

- there is a contentious or uncertain point of law that requires clarification and it is in the public interest to seek law clarification through litigation
- the behaviour involved is such that we need to send a strong message to the community
- there is a longstanding unresolvable debt

- the dispute is intractable, alternative means of resolving the dispute have been attempted but have not produced an acceptable outcome.

#### Find out about

- [Litigation – our policies](#)
- [Test Case Litigation Program](#)
- [Test case funding](#)

#### See also

- [ATO plain English guide to alternative dispute resolution](#)
- [Disputes policy](#)
- [Panel discussion on dispute resolution](#)
- [Our commitment to you in resolving your dispute](#)

QC 72438

## ATO plain English guide to alternative dispute resolution

Outlines, in simple language, dispute resolution, ADR and types of ADR processes used in tax and super disputes.

Last updated 14 October 2024

### On this page

[What is dispute resolution?](#)


[What is ADR?](#)

[ADR processes](#)

## What is dispute resolution?

Dispute resolution is an inclusive term for all processes where parties attempt to resolve the issues between them, and includes:

- negotiating with another party directly
- asking a court or tribunal to make a decision.

For more detailed information about ADR, you can read [Your Guide to Dispute Resolution \(PDF 357KB\)](#) , produced in 2012 by the National Alternative Dispute Resolution Advisory Council (NADRAC).

## What is ADR?

ADR is an inclusive term for all processes, **other than judicial or tribunal determination**, in which an impartial person assists those in dispute to resolve or narrow the issues between them. Examples include:

- mediation and in-house facilitation
- conciliation
- early neutral evaluation.

## ADR processes

ADR processes have the following features:

- In **facilitative processes** an ADR practitioner assists the parties to identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement about some issues or the whole of the dispute.
- In **advisory processes** an ADR practitioner considers and appraises the dispute and provides advice on some or all of the facts of the dispute, the law, and possible or desirable outcomes.
- In **determinative processes** an ADR practitioner evaluates the dispute and makes a determination. Determinative processes, such as arbitration, are not generally appropriate for ATO disputes and, accordingly, are not addressed further.
- In **blended dispute resolution** processes, the ADR practitioner plays multiple roles – for example, in conciliation and conferencing, the ADR practitioner may facilitate discussions as well as provide advice on the merits of the dispute.

## Facilitative processes

### Mediation

Mediation is a process where the participants negotiate with the assistance of an ADR practitioner, who helps the parties identify disputed issues, develop options, consider alternatives and attempt to reach an agreement.

Mediators do not normally give advice, unless the parties have requested an advisory/evaluative mediation or conciliation.

Mediation is usually voluntary, but can be ordered by a court or tribunal. Where mediation is voluntary, the parties usually split any costs.

#### **Example of mediation:**

The ATO issues a position paper to a taxpayer company forecasting amended assessments are to be issued, raising additional activity statement liability and administrative penalty. The additional activity statement liability is based on a reconciliation of stock purchases and sales documents supplied to the ATO auditor by the company.

Upon receipt of the position paper, the company's tax agent writes to the ATO and advises that the company disagrees with the position paper and requests the parties meet to discuss the methodology for the reconciliation. Because the relationship between the representatives of the company and the ATO auditor has broken down, mediation is suggested. An ex-judge is engaged to act as mediator in the dispute.

At mediation, the mediator guides the parties in their discussions and ensures both parties have their say. The ATO auditor explains the methodology adopted for the stock reconciliation. The company agrees with the methodology adopted, but raises issues in relation to discrepancies in the reconciliation. Following discussion and review of the reconciliation, the parties agree that the company has not provided the ATO with all relevant documentation. The company then provides further documentation.

Following mediation the ATO auditor revises the reconciliation resulting in a reduction of the additional activity statement liability. The administrative penalty is also reduced. Amended assessments are issued reflecting the reduced liability.

The company does not lodge an objection to the amended assessments and pays the liability by the due date.

## **In-house facilitation**

In-house facilitation is the ATO's version of mediation where a trained independent ATO officer assists participants to negotiate their dispute. The in-house facilitator helps the parties identify disputed issues, develop options, consider alternatives, and attempt to reach an agreement.

The facilitator will not establish facts, take sides, give advice, make a decision or decide who is 'right or wrong'. The facilitator merely guides the parties through the process and will assist them to ensure there are open lines of clear communication, and messages are correctly received.

There is no cost associated with in-house facilitation.

### **Example of facilitation:**

A company undertaking research and development (R&D) activities makes a significant claim for the R&D incentive tax offset. Given the refund involved is a significant amount of money, it has been held by the ATO pending investigation. The taxpayer is adamant that it is entitled to the refund and is frustrated because the refund delay is impacting the cash flow of the business. Because of time pressures, the auditor's manager suggests having a facilitation between the ATO, the director of the company, and its tax agent.

A trained ATO officer who has had no previous involvement in the dispute is allocated to facilitate the dispute. During the four-hour facilitation the ATO explains its particular concerns and its view of the relevant R&D law, and the company provides additional information to the ATO. It becomes apparent the company is entitled to only half of the refund.



The facilitation results in the ATO officers providing an undertaking to immediately process the refund that the company is entitled to; the company and the tax agent having a better understanding of the law and its R&D compliance obligations; and the tax officers complete their investigation in a shorter period of time.

## **Advisory processes**

### **Neutral evaluation**

Neutral evaluation (also called Early Neutral Evaluation or ENE) is a process where the participants to a dispute present their arguments to an ADR practitioner who gives advice on the appropriate manner of resolving the dispute. In tax and super disputes the ADR practitioner usually has substantial experience in tax law and gives advice about the decision a court or tribunal may make if the dispute proceeds to litigation. It is up to each party if they accept the advice of the evaluator and how they use that information.

Neutral evaluation can occur at any stage of a dispute, but is often of most benefit before legal proceedings have commenced.

#### **Example of neutral evaluation:**

An objection is lodged by a representative for a taxpayer. In the course of considering the objection, and based on significant discussions with the ATO, the tax representative requests the parties have a neutral evaluation before the objection decision is issued.

The taxpayer and his tax representative, together with the objections officer and his director, participate in the neutral evaluation. The ADR practitioner gives advice to the parties about the likely outcome if the matter were to proceed to the Administrative Review Tribunal (ART) or the Federal Court. On the basis of the advice, the parties decide that neither is going to be completely successful in legal proceedings – they also recognise the cost and time involved if the dispute continues. As a result, the parties negotiate an agreement based on the advice received.

## Blended processes

### Conciliation

Conciliation is a process where the participants negotiate with the assistance of an ADR practitioner who helps the parties identify the issues in dispute, develop options, consider alternatives, and attempt to reach an agreement. The conciliator often has qualifications in the area of the dispute.

Unlike in facilitative processes, a conciliator may give expert advice to the parties on possible options for resolving the dispute and actively encourage the participants to reach an agreement.

Conciliation is often used by the Administrative Review Tribunal (ART) in tax and super disputes.

#### **Example of conciliation:**

A taxpayer lodges an appeal in the ART against an objection that was disallowed by the ATO over a deduction he claimed in his income tax return. Early in the proceedings, the taxpayer and the ATO agree to a conciliation to try to resolve the dispute.

During the conciliation the ATO officer explains his views on the issue that he needs additional information to assist him to make a decision and this information has not been received, despite repeated requests. The taxpayer said she did not understand why that information could possibly be relevant and would not know where to find the information. The conciliator advises the taxpayer that the information is very important and if it can be provided in some form the dispute may resolve. The taxpayer then explains she may be able to get the information verified by a third party.






Ultimately, the taxpayer provides the information and the dispute is resolved, saving both parties valuable time and money.

## ADR processes attached to a court or tribunal




Courts and tribunals usually offer ADR as an alternative method of resolving disputes. Tax and super disputes are usually heard by either

the Administrative Review Tribunal (ART) or the Federal Court of Australia.









The ART offers a full suite of [ADR services](#) , including:



- [conferencing](#) 
- [mediation process model \(PDF, 136KB\)](#) 
- [neutral evaluation process model \(PDF, 127KB\)](#) 
- [case appraisal process model \(PDF, 127KB\)](#) 
- [conciliation](#) 

The Federal Court also offers various [ADR services](#) , including:

- [mediation](#) 
- [arbitration](#) 
- [conference of experts](#) 

#### **See also**

- [ATO Disputes Policy](#)
- [Code of Settlement Practice](#)
- [Law Administration Practice Statement PS LA 2013/3](#) *Alternative Dispute Resolution (ADR) in ATO disputes*
- [Law Administration Practice Statement PS LA 2009/9](#) *Conduct of Tax Office Litigation and Engagement of Legal Services Branch*
- [Taxpayers' Charter](#)
- [Access to Justice website](#) 
- [Administrative Review Tribunal](#) 
- [Attorney-General's Department](#) 
- [Civil Disputes Resolution Act 2011](#) 
- [Commonwealth Ombudsman](#) 
- [Federal Court of Australia](#) 
- [The Institute of Arbitrators and Mediators Australia](#) 
- [Leadr \(Association of Dispute Resolvers\)](#) 

- [Legal Services Directions 2005](#) 
- [Mediator Standards Board](#) 

QC 36022

## Alternative Dispute Resolution (ADR)

Explains how ADR, such as mediation and conciliation are used in tax and superannuation disputes.

**Last updated** 4 May 2023

Used appropriately, ADR is a cost-effective, informal, consensual and speedy way to resolve disputes.

Tax disputes arise when the taxpayer disagrees with the Commissioner's decision about a liability or entitlement. Tax disputes include:

- a formal dispute between the parties about a taxation liability or entitlement, such as an objection
- a dispute arising prior to the issue of assessments for example following a taxpayer's consideration of the ATO's position paper.

However, ADR is not only used to resolve substantive disputes. It may also be used to clarify or limit issues, streamline procedures and remove blockers created by relationship issues between the parties.

Broadly, there are three categories of ADR used by the ATO:

- in-house facilitation is the ATO's version of mediation, and is a free service where a trained independent ATO facilitator assists participants to negotiate their dispute
- in large, complex disputes the ATO may consider engaging an external practitioner to conduct ADR
- ADR can also be initiated by the courts or tribunals in litigation cases. Mediation, conciliation and early neutral evaluation are the most commonly used in tax and superannuation disputes.

## See also

- [ATO plain English guide to alternative dispute resolution](#)
- [In-house facilitation](#)

QC 40379

# Panel discussion on dispute resolution

Watch David Koch and experts share insights into dealing with tax disputes and answer questions on dispute resolution.

**Last updated** 4 May 2023

## On this page

[Panel members](#)

[Introduction to dispute resolution](#)

[Dispute resolution options](#)

[Fairness of the dispute resolution process](#)

[Your questions answered](#)

## Panel members

The panel includes:

- ATO Assistant Commissioner Debbie Hastings
- Tania Sourdin, Professor of Law and Dispute Resolution at Monash University
- Hayden Fox, respected disputes practitioner
- Ashley King, a leading tax controversy advisor and Partner at PWC.

## **Introduction to dispute resolution**

David Koch and the panel of experts share insights into dealing with tax disputes, the benefits of resolving disputes early and how the process has changed over the years.

## **Dispute resolution options**

Debbie Hastings talks through the new dispute resolution options offered by the ATO and the other panellists weigh in on the time and cost implications of disputes and how early dispute resolution can reduce those impacts.

## **Fairness of the dispute resolution process**

The expert panellists explore the importance of fairness and perceived fairness in resolving disputes. Tania Sourdin shares insights into surveys on fairness of the process.

## **Your questions answered**

The panellists answer your questions on how to get the best outcome in a tax dispute, whether the ATO is genuine about dispute resolution, whether taxpayers can engage in the process without an advisor and whether the new dispute resolution processes are quicker.

## **Our commitment to you**

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

## **Copyright notice**

© Australian Taxation Office for the Commonwealth of Australia

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).