



SHIV MARTIN CONSULTING
*RESOLVE CONFLICT. BUILD TRUST.
STRENGTHEN TEAMS.*

INTRODUCTION TO CONCILIATION



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"It's not just about resolving disputes. Conciliation can build trust and accountability across global frontiers."



INTRODUCTION

The purpose of this eBook is to provide a snapshot of conciliation essentials giving you a clear understanding of the why, what, and how of conciliation. It is designed to equip you with the foundational knowledge needed to understand the purpose and value of conciliation, how it differs from other dispute resolution models, and the key steps involved in conducting an effective conciliation process. Whether you are new to conciliation or looking to refine your existing skills, this guide will help you grasp the essential principles and practical strategies needed to navigate conciliation confidently and effectively.

ABOUT SHIV MARTIN



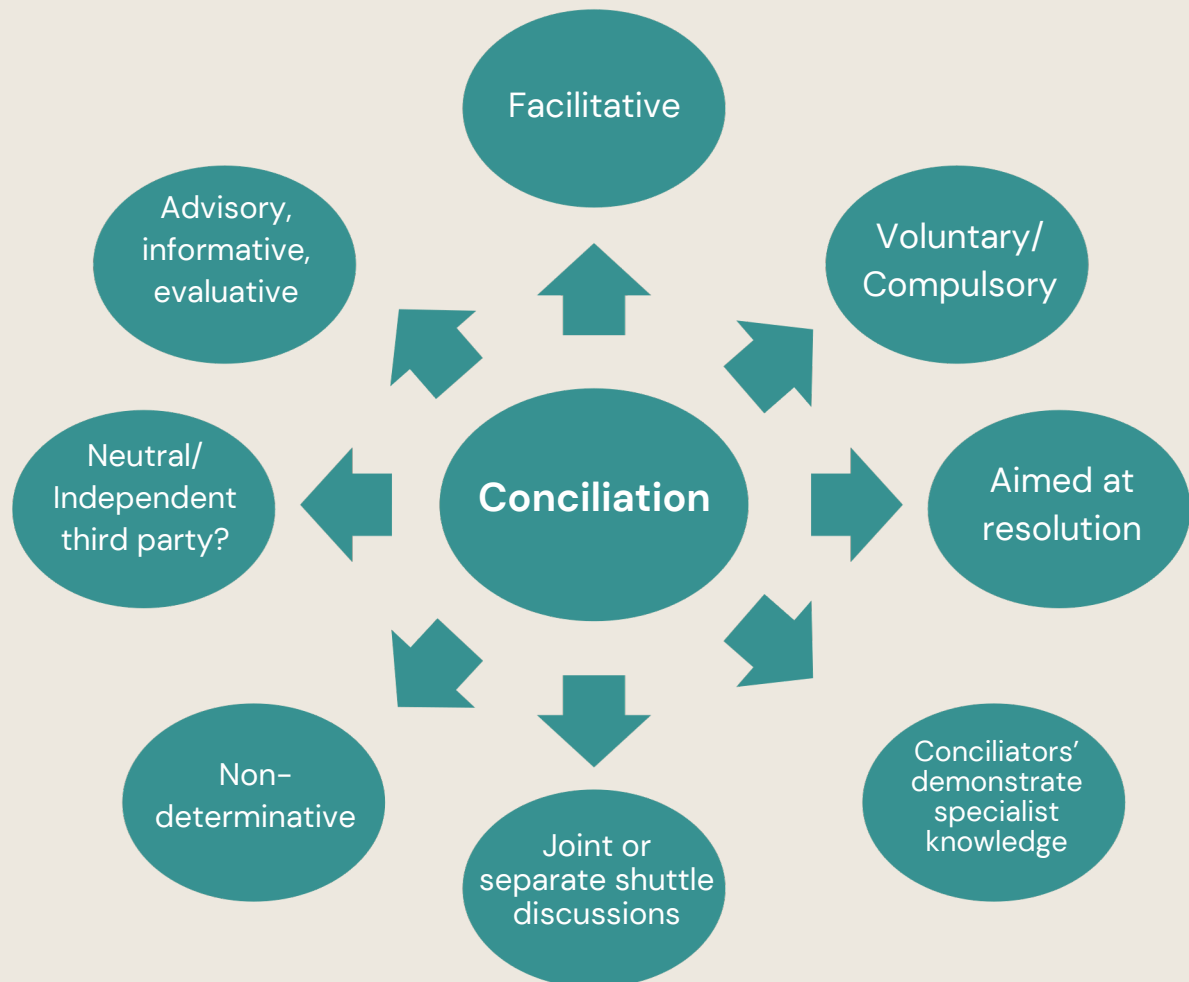
Shiv Martin is a highly experienced conciliation practitioner, consultant, and trainer with extensive expertise in dispute resolution across Australia and New Zealand. She has worked with a wide range of conciliation bodies, including government agencies, tribunals, ombudsman offices, and industry regulators, helping to design and deliver conciliation processes that are legally compliant, fair, and effective.

Shiv combines her background as a lawyer, mediator, and trainer to provide practical guidance and tailored training for conciliators, ensuring they have the skills and confidence to navigate complex disputes. Her deep understanding of both the legal and human dimensions of conciliation makes her a trusted advisor and leader in the field.

1. WHAT IS CONCILIATION?

A structured but flexible dispute resolution process where a neutral third party (the conciliator) assists parties in resolving disputes by:

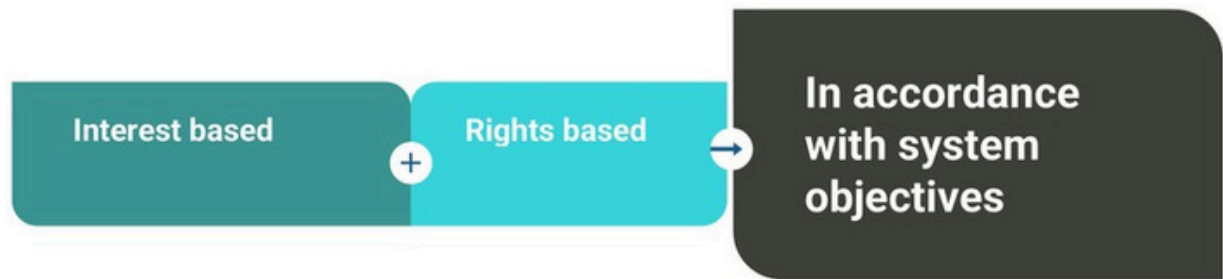
- ✓ **Facilitating communication**
- ✓ **Providing expert information**
- ✓ **Offering solutions aligned with legal and policy requirements**
- ✓ **Supporting parties to reach a voluntary agreement**



"A facilitative dispute resolution process in which the disputing parties are brought together and, with the assistance of the conciliator, have discussions (jointly or separately) about key issues for the purpose of resolving their dispute. The process is conducted under and in accordance with legislation or other binding rules which place obligations on the conciliator and the disputing parties to comply with the norms and standards required by that context. Conciliations are non-determinative if resolution is not reached, the matter typically proceeds to a determinative process." Australian Dispute Resolution Advisory Council.

This definition reflects the hybrid nature of conciliation, combining elements of facilitation, evaluation, & advisory roles while working within a specific legal or policy framework.

Conciliation – A Simple Definition?



I define conciliation as a hybrid dispute resolution process, that focuses on the interests and rights of the parties, to arrive at a consensual outcome that accords with the goals of an overarching system.

System objectives: *compliance, regulation, safeguarding, public interest, efficient resource management*

Conciliation is any process by which a dispute resolution organisation (Court, Tribunal, Regulatory Body, Complaints Management Agency) seeks to resolve conflict without a final determination by a third party.

In some cases, this may be identified as an **evaluative mediation** or **conferencing process** by the agency.

The conciliation process is run in accordance with the following objectives:

- 1) *Encouraging understanding and respect between parties*
- 2) *Improving communication*
- 3) *Rebuilding trust*
- 4) *Educating and encouraging voluntary compliance with regulatory frameworks*
- 5) *Using agency resources efficiently*
- 6) *Public interest check on outcomes*



2. GOALS OF CONCILIATION

1. Achieve a mutually acceptable resolution
2. Narrow the issues in dispute
3. Manage expectations
4. Provide legal and procedural education
5. Facilitate unilateral withdrawal or informed decision-making



While the primary goal of conciliation is to achieve a mutually acceptable resolution, successful resolution is not the only valuable outcome. Even when a full agreement is not reached, conciliation can provide other meaningful benefits. It can help narrow the issues in dispute, making any subsequent legal or administrative process more focused and efficient. Conciliation also plays a key role in managing expectations by helping parties better understand the strengths and limitations of their positions, the legal framework, and the likely outcomes.

Additionally, conciliation provides an opportunity for education parties often leave the process with a clearer understanding of their rights, obligations, and the broader context of the dispute. In some cases, conciliation may lead to the unilateral withdrawal of one party, not as a failure but as an informed decision after gaining a better understanding of the legal or practical challenges involved. These secondary outcomes contribute to improved communication, reduced conflict, and greater clarity, even when full resolution isn't achieved.

3. KEY CHARACTERISTICS OF CONCILIATION

FEATURE	DESCRIPTION
Facilitative and Advisory	The conciliator facilitates discussion while offering advice and suggestions.
Rights and Interests-Based	Balances parties' interests with legal rights and obligations.
Non-Determinative	The conciliator does not impose a decision but guides parties toward resolution.
Legally or Procedurally Anchored	Outcomes must align with legal or policy frameworks.
Expert Input	The conciliator may provide technical or legal information on behalf of the third party agency. It is different to legal advice provided for the benefit of one party.

Snapshot of Conciliation in Australia since 2020

- 23,000+ conciliations conducted annually
- Over 150 government and regulatory agencies conduct conciliation
- 103+ pieces of legislation reference conciliation
- No single definition or accreditation standard for conciliators
- First mentioned in the Constitution.



“Peace is not the absence of conflict but the presence of creative alternatives for responding to conflict.”

– Dorothy Thompson

4. CONCILIATION VS. MEDIATION

Unlike mediation, conciliation allows the conciliator to take a more active role in guiding the discussion by providing expert advice, identifying key issues, and helping parties explore potential solutions within a legal or regulatory framework.

Read about the differences between mediation and conciliation here: [**What is the difference between Mediation and Conciliation?**](#)



While mediation and conciliation share similarities, they differ in the degree of involvement and guidance provided by the third party:

FEATURE	MEDIATION	CONCILIATION
Role of the third party	Facilitator – guides communication but does not provide advice or opinions.	Advisor – facilitates communication but also offers guidance and solutions.
Process outcome	Voluntary, party-driven agreement.	Voluntary, party-driven agreement that aligns with legal and policy requirements.
Legal framework	Typically informal and outside of legal structures.	Often conducted within legal or regulatory frameworks.
Decision-making power	Parties retain full control over the outcome.	Parties retain control, but the conciliator may suggest or evaluate solutions.
Expert Input	Limited – mediator avoids expressing opinions or offering advice.	Active – conciliator can provide guidance based on legal or technical expertise.

5. IDEAL CONCILIATION PROCESS STEP-BY-STEP GUIDE

1. Pre-Conciliation Preparation

- ✓ Gather relevant information about the dispute, including parties' positions, any legal or policy frameworks, and prior communication.
- ✓ Establish the scope of the dispute and clarify any jurisdictional issues.
- ✓ Identify potential power imbalances or sensitive issues that may require adjustments to the process.
- ✓ Communicate with the parties beforehand to outline the process and set expectations.

2. Opening the Session

- ✓ Welcome the parties and introduce the conciliator's role.
- ✓ Explain the conciliation process, including confidentiality, voluntary participation, and the goal of reaching a mutually agreeable solution.
- ✓ Set ground rules (e.g., respectful communication, no interruptions).
- ✓ Allow each party to present their opening statements without interruption.

3. Identifying Issues & Interests

- ✓ Clarify the issues at the centre of the dispute.
- ✓ Ask open-ended questions to explore the parties' underlying interests and motivations (e.g., "Why is this outcome important to you?").
- ✓ Summarise key issues and interests to confirm understanding.
- ✓ Ensure both parties feel heard and understood.

4. Facilitating Dialogue

- ✓ Encourage parties to generate a range of possible solutions.
- ✓ Use a combination of joint discussions (to promote direct communication) and private (shuttle) conversations (to manage power imbalances, reality testing or sensitive issues).
- ✓ Provide expert input when necessary to guide parties toward realistic options that align with legal or policy frameworks.
- ✓ Reality test proposed solutions by asking questions such as:
 - "How practical is this solution?"
 - "What are the risks involved?"
 - "Would this comply with legal or policy requirements?"
- ✓ Offer evaluative guidance if negotiations stall, without imposing a decision.

5. Reaching Agreement

- ✓ Help the parties refine and agree on a mutually acceptable solution.
- ✓ Ensure the agreement reflects both the parties' interests and any legal or organisational requirements.
- ✓ Clarify any areas of ambiguity or uncertainty.

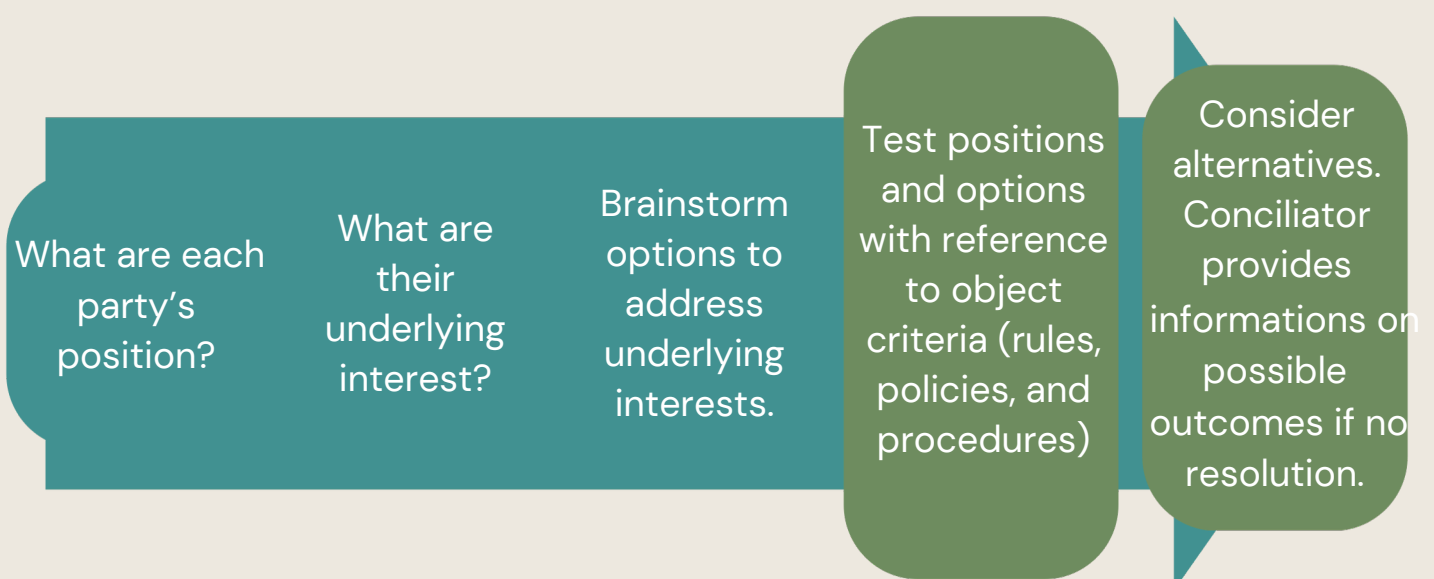
6. Documenting the Outcome

- ✓ Draft a written agreement outlining the terms of the resolution.
- ✓ Ensure both parties understand and agree to the terms.
- ✓ Include details of any follow-up actions or responsibilities.
- ✓ Obtain signatures or formal acknowledgment from both parties if required.

7. Post-Conciliation Follow-Up

- ✓ Provide both parties with a copy of the agreement.
- ✓ Confirm that any agreed actions are being implemented.
- ✓ Address any issues that may arise during implementation.
- ✓ Offer further support if required or suggest other processes if resolution is incomplete.

This structured approach ensures that conciliation is fair, consistent, and effective while allowing for flexibility to adapt to the needs of the parties involved.



6. WHY FOCUS ON CONCILIATION?

Conciliation is a vital area of dispute resolution because it bridges the gap between facilitative and determinative processes, offering parties a structured yet collaborative pathway to resolution. Unlike mediation, conciliation allows the conciliator to play an advisory and evaluative role, providing expert guidance while still encouraging voluntary agreement. It is widely used in regulatory and legal contexts where compliance with laws and organisational policies is essential.

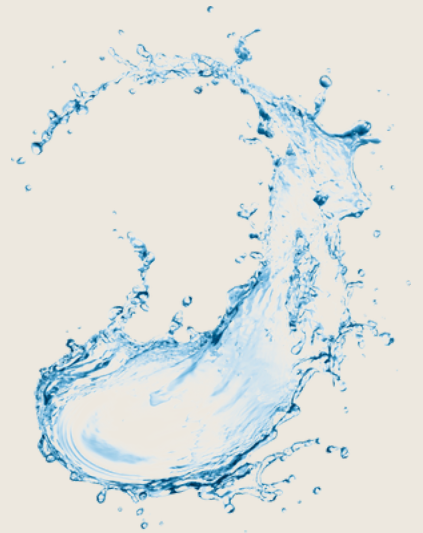
Conciliation is particularly effective in addressing disputes involving complex legal or procedural requirements, such as employment, human rights, and consumer issues, because it allows parties to reach outcomes that are not only legally sound but also practical and mutually acceptable. Its ability to combine interest-based negotiation with legal and policy-based advice makes conciliation a flexible and powerful tool for resolving conflict in both public and private sector settings.

Why Conciliation Works:

- Balances legal and personal interests
- Preserves relationships
- Cost-effective and efficient
- Encourages creative, practical solutions
- Flexible process adaptable to different disputes

The Adaptability of Conciliation

One of the key strengths of conciliation is its adaptability, which makes it highly responsive to the needs of different statutory and regulatory bodies. Unlike other dispute resolution processes that may follow rigid formats, conciliation allows for a tailored approach depending on the nature of the dispute and the legal or organisational context. For example, a conciliation conducted by a Fair Work Commission conciliator will differ significantly from a conciliation conducted by a human rights commission or an ombudsman.



The conciliator can adjust the process to suit the statutory framework, the complexity of the issues, and the power dynamics between the parties. This adaptability allows conciliators to respond effectively to the specific requirements of the dispute, whether that involves exploring creative solutions within a regulatory framework, guiding parties through compliance obligations, or facilitating open dialogue in sensitive matters. This flexibility is what makes conciliation a preferred tool for resolving complex disputes in diverse settings.

TOP 5 TIPS

FOR EFFECTIVE CONCILIATION

1 Balance empathy with efficiency

2 Maintain a future focus

3 Use private sessions wisely

4 Manage expectations early

5 Stay neutral, but offer direction



7. WHERE IS CONCILIATION USED?

- Employment & Industrial Relations – Fair Work Commission
- Human Rights and Discrimination – Human Rights Commission
- Consumer Disputes – Ombudsman Services
- Administrative Disputes – Civil and Administrative Tribunals (VCAT, QCAT)
- Workplace Injury & Compensation – Workers' Compensation Tribunals



How Conciliation Works in Different Tribunals

Conciliation is widely used across Australian tribunals and regulatory bodies to resolve a broad range of disputes, including employment, human rights, consumer issues, and industry-specific conflicts. Here's how conciliation is applied in different settings:

1. Employment and Industrial Relations (Fair Work Commission)

- The Fair Work Commission (FWC) conducts conciliation to resolve disputes over unfair dismissal, enterprise agreements, and industrial action.
- The process is guided by workplace laws and regulations.
- The conciliator may propose solutions that align with employment law while encouraging parties to explore options that work for both sides.

2. Human Rights and Discrimination (Human Rights Commission)

- The Australian Human Rights Commission (AHRC) uses conciliation to resolve complaints of discrimination, harassment, and vilification. The process involves
- exploring both the legal rights and personal experiences of the parties. The conciliator helps parties understand the broader implications of the complaint and
- seeks to reach a resolution that reflects both legal standards and emotional or psychological needs.

3. Consumer Disputes (Ombudsman Services)

- Industry Ombudsman bodies (e.g., Energy and Water Ombudsman, Telecommunications Ombudsman) use conciliation to handle customer complaints.
- The conciliator evaluates the issue based on consumer protection laws and industry standards.
- Resolutions often involve compensation, service adjustments, or revised contracts.

4. Civil and Administrative Tribunals (VCAT, QCAT, NCAT)

- Tribunals like the Victorian Civil and Administrative Tribunal (VCAT) and the Queensland Civil and Administrative Tribunal (QCAT) use conciliation to resolve tenancy disputes, building disputes, and neighbourhood conflicts. The conciliator facilitates communication but also references legal obligations and practical considerations. If conciliation fails, the matter can proceed to a tribunal hearing.
-

5. Workplace Injury and Compensation (Workers' Compensation Tribunals)

- Conciliation is commonly used to resolve disputes over workers' compensation claims. The conciliator helps parties understand their entitlements under compensation schemes and facilitates agreement on medical treatments, return-to-work plans, and financial settlements.



Best Practices for Conciliation in Tribunals

To improve the effectiveness of conciliation, tribunals and regulatory bodies should:

- ✓ **Train Conciliators Effectively** – Conciliators need a deep understanding of both legal frameworks and interest-based negotiation.
- ✓ **Ensure Procedural Fairness** – Clear rules about confidentiality, neutrality, and participation are essential to building trust.
- ✓ **Provide Expert Support** – Conciliators should have access to legal advisors or subject matter experts when needed.
- ✓ **Use Hybrid Models** – Combining facilitation and evaluation helps ensure that both the legal and emotional dimensions of the dispute are addressed.

Benefits of Conciliation

Conciliation offers several advantages over other dispute resolution methods:

- ✓ **Cost-Effective** – Resolving disputes through conciliation is usually faster and cheaper than proceeding to a formal hearing or court.
- ✓ **Preserves Relationships** – The collaborative and problem-solving nature of conciliation helps maintain or rebuild working relationships.
- ✓ **Legal and Practical Clarity** – Conciliation ensures that outcomes comply with legal requirements while addressing underlying interests.
- ✓ **Flexible and Tailored** – The process can be adapted to the nature of the dispute and the needs of the parties involved.



Challenges of Conciliation

Despite its benefits, conciliation presents some challenges:

- ◆ **Power Imbalances** – When there's a significant power imbalance between parties, one party may feel pressured to accept an unfair outcome.
- ◆ **Legal Complexity** – When legal issues are highly complex, the conciliator's ability to provide advice may be limited.
- ◆ **Emotional Sensitivity** – Disputes involving discrimination, harassment, or trauma require careful handling to avoid re-traumatisation.
- ◆ **Non-Binding Nature** – Since conciliation outcomes are voluntary, there's a risk that one party may withdraw or refuse to comply with the agreement. There are ways to take post-conciliation steps to introduce binding outcomes, e.g. consent orders or Member Directions.



CONCLUSION

Conciliation is a powerful dispute resolution model that balances legal compliance with interest-based problem-solving. Its flexibility allows it to address complex disputes while preserving relationships and promoting voluntary agreement. Tribunals and regulatory bodies across Australia continue to rely on conciliation as a preferred mechanism for resolving disputes efficiently and fairly.

[LEARN MORE ON MY BLOG](#)



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FAQ'S

1

What is conciliation, and how does it differ from mediation in the context of tribunals?

A: Conciliation is a process where an impartial third party, called a conciliator, assists the disputing parties in reaching a voluntary agreement. Unlike mediation, the conciliator may take a more active role in suggesting solutions and may provide an opinion on the strengths and weaknesses of each party's case. In tribunals, conciliation can be a preliminary step before formal adjudication.

2

How is conciliation utilized in employment tribunals?

A: In employment tribunals, conciliation is often used to resolve disputes between employers and employees, such as claims of unfair dismissal or discrimination.

3

What role do conciliation services play in consumer and trader disputes?

A: Conciliation services in consumer and trader disputes, often facilitated by organizations such as the Consumer Ombudsman or alternative dispute resolution (ADR) schemes, help resolve complaints without resorting to litigation. They provide an informal mechanism where consumers can voice complaints, and traders can respond, often leading to a resolution that satisfies both parties without going to court.

4

Are conciliators in tribunal processes legally trained professionals?

A: While many conciliators possess legal training or expertise in the field relevant to the dispute (e.g., employment law, consumer rights), it is not a strict requirement in all tribunal processes. Additionally, conciliators are trained in negotiation and conflict resolution techniques, which is essential for facilitating productive discussions between the parties involved.

5

What are the potential outcomes of conciliation in a tribunal setting?

A: The outcomes of conciliation can vary widely, but they generally include a mutually agreed settlement between the parties, the parties agreeing to modify their positions to reach a compromise, or, if conciliation fails, the matter may proceed to formal adjudication in the tribunal. The settlement reached during conciliation can be binding if agreed upon, and it can help preserve relationships between the disputing parties.

6

Can the results of conciliation in tribunals be made public, and how does this affect confidentiality?

A: Generally, the outcomes of conciliation are confidential and cannot be disclosed to the tribunal if the matter proceeds to formal hearings unless both parties agree otherwise. This confidentiality encourages open communication during the conciliation process, as it allows the parties to discuss issues without fear that their statements will be used against them later in litigation.

SHIV'S CURE FRAMEWORK

A UNIVERSAL APPROACH TO CONFLICT MANAGEMENT

*All conciliation processes include the following
four stages.*



CONTAIN AND CLARIFY

Be clear in your explanations & expectations in order to save time and build trust.



UNDERSTAND

Build rapport and listen, to understand we need to dig a little deeper.



RESPOND

Problem solve, generate options, consider alternatives and maybe shift perspectives.



EMPOWER AND END

Reinforcing autonomy and choice.



WHAT NEXT?

Now that you have an overview of conciliation, let me know if you need more support putting your learning into practice! Conciliation requires a range of skills and process knowledge to navigate unpredictable and emotional circumstances. I can support you through training, coaching and co-mediation to get you started.

FEEDBACK FROM SHIV'S CLIENTS

Dear Shiv, I'd just like to say how useful I found the masterclasses. You have been so generous in the information and references you have provided and your enthusiasm has been a great source of motivation for me. Thanks so much for sharing your knowledge and expertise in an excellent package.

Lisa – Senior Project Officer/ Registration Delegate National Native Title Tribunal

Thank you for passing on these resources – they will be great for our ongoing refinement of process and engagement, we will be sure to keep them on file for reference. The two sessions provided by you were extremely helpful for providing context on best practice of other tribunals, and we really valued your efforts in tailoring the information to match our current needs. **Fiona – National Sports Tribunal**

I would like to express my appreciation for Shiv's contribution to the professional development program at the ACCS for Conciliation Officers. The diverse areas covered in the sessions, reinforced the broader principles of ADR and their practical application to conciliation in a legal context. Shiv's depth of knowledge across a range of areas, her collaborative style as a trainer and engaging manner was well received and ensured that our needs were met in the training and facilitation sessions, in terms of both content and process. In particular, Shiv's discussions around power and vulnerability in conflict resolution encouraged greater discussion and reflection amongst our Conciliation team. **Jack, PD Manager, Conciliator – Accident Compensation and Conciliation Service (Victoria)**



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