

Appendix 1: Workshop Questions

1. What could be the value in the underlying legislation defining the form and nature of the conciliation process?
2. To what extent do the purposes of the legislative framework, or the self-determination of the parties, influence the conciliation process?
3. To what extent does the legislative regime restrict the matters that can be conciliated, and if so, how?
4. Could you talk about powers/rights/interests?
5. What are the purposes of conciliation?
6. What are the assumptions of conciliation?
7. What are the roles of the conciliator and participants?
8. What is the basis of your appointment?
9. Could you talk about the role of compromise?
10. What would cause the end of a conciliation conference?
11. SWOT: What are the strengths, weaknesses, opportunities and threats of and to conciliation?
12. What training materials do you have, and can you provide them to ADRAC?
13. What can we do for you?
14. What did you think we'd ask?

Appendix 2: Websites with Substantive Information

The following websites of conciliation bodies were reviewed by ADRAC Board members;

1. ACT Human Rights Commission
2. Administrative Appeals Tribunal
3. Anti-Discrimination Board of NSW
4. Anti-Discrimination Commission (NT)
5. Anti-Discrimination Commission (QLD)
6. Architects Board of WA
7. Australian Human Rights Commission
8. Australian Communications and Media Authority
9. Building Commissioner of WA
10. Children's Court of Victoria
11. Commissioner for Consumer Protection for WA
12. Commissioner for Privacy and Data Protection (VIC)
13. Disability Services Commissioner (VIC)
14. Education Registrar (TAS)
15. Environment, Resources and Development Court (SA)
16. Equal Opportunity Commission (SA)
17. Equal Opportunity Commissioner (WA)
18. Fair Work Commission (Fed.)
19. Family Court (Fed.)
20. Family Court of Western Australia
21. Federal Circuit Court
22. Financial Ombudsman Service
23. Health and Community Services Complaints Commissioner (SA)
24. Health and Disability Services Complaints Office (WA)
25. Health Care Complaints Commission (NSW)
26. Health Complaints Commissioner (TAS)
27. Health Complaints Commissioner (VIC)
28. Industrial Relations Commission (QLD)
29. Information Commissioner (Cth)
30. Land and Environment Court (NSW)
31. Law Enforcement Conduct Commission (NSW)
32. NSW Civil and Administrative Tribunal – Consumer and Commercial Division
33. Queensland Industrial Relations Commission
34. Residential Tenancies Authority (QLD)
35. Superannuation Complaints Tribunal
36. Tasmanian Industrial Commission
37. Telecommunications Industry Ombudsman (Cth)
38. Western Australian Industrial Relations Commission

Appendix 3: 19 Website Analysis Questions

The following questions were used as a guide to extract information about conciliation during the Website Review.

1. Is conciliation a large (L) or small (S) part of the body's operations?
2. Is conciliation voluntary (V) or compulsory (C)?
3. If conciliation is compulsory, is the compulsion a consequence of legislation stipulation (L) or the making of an order or direction (O/D)?
4. Is legal representation generally allowed (Y/N)?
5. If legal representation is allowed, is this as a matter of right (R) or only with leave (L)?
6. Are conciliations conducted by a third party (TP) or inter-parties only (IP)?
7. Is a conciliator chosen by the parties (C) or appointed by the body (A)?
8. Is the conciliator a member of staff (S) or an outsourced provider (OP)?
9. Is the conciliation directed to dispute resolution (DR) or case management (CM)?
10. Does the body's website contain an informative explanation of the conciliation process (Y/N)?
11. Is the subject-matter of the conciliation predominantly rights-based (R) or interests-based (I)?
12. Is the conciliation process best described as (a) facilitative (F); (b) evaluative (E); (c) directive (D); (d) adjudicative (A); (e) other (O); or (f) unknown (U) ?
13. Is the role of the conciliator best described as (a) neutral (N); (b) independent of the parties and the body (IP+B); (c) independent of the parties but not of the body (IPNB)?
14. Are the disputants likely to know one another (Y/N or U (unknown))?
15. Are the disputants likely to have an ongoing relationship another (Y/N or U (unknown))?
16. Are respondents mainly individuals (I), bodies corporate (BC) or a mix (M)?
17. If respondents are mainly bodies corporate, are they mainly private (P) or public sector (PS)?
18. Are conciliation outcomes mainly past focussed (P) or forward looking (F)?
19. If the conciliation does not resolve the dispute, is it referred to another body (B) and/or does your agency continue to deal with it by a different process (A)?

Appendix 4: 35 Online Survey Questions

1. Are your conciliation procedures prescribed by rules or written procedures, or are they flexible?
2. Apart from conciliation, which of the following ADR processes are also used by your entity?
3. Please estimate the usual length of a conciliation conducted by or within your entity.
4. The result of a conciliation is regarded by your entity as being: confidential OR public information OR other (please specify).
5. Within your entity, the process of conciliation is: conducted privately OR open to public view OR other (please specify).
6. Is the confidentiality of conciliation in your entity protected by statute?
7. True/False: conciliators acting within your entity are required to discourage resolution or settlement that may not be consistent with the principles of the legislation governing your entity?
8. Please enter an approximate number of matters per annum that might be referred to conciliation in your entity in a recent year.
9. Please identify the proportion of matters received or dealt with by your entity that are referred to conciliation.
10. Please identify the proportion of conciliations in any recent year which result in complete or substantial resolution.
11. Please identify whether ADRAAC can have access to statistics about conciliation or other dispute resolution conducted in the course of the work of your entity.
12. Please enter the approximate number of conciliators engaged within one recent year to conciliate matters received by your entity.
13. What proportion of conciliators engaged by your entity within a year are part time?
14. Please identify the proportion of conciliators utilised by your entity who also perform duties for your entity other than conciliation.
15. Are conciliators engaged within your entity required to have training or qualifications in (tick all that apply): Conciliation, Mediation, Other forms of ADR.
16. Does your entity provide CPD to conciliators engage in your entity OR require, allow or arrange for conciliators it utilises to use external CPD providers?
17. Does your entity require conciliators to engage in structured compulsory professional development (CPD)?
18. Is conciliation a large or small part of your entity's operations?
19. Within your entity, conciliation is: voluntary OR compulsory?
20. If conciliation is compulsory, is the compulsion a consequence of legislative stipulation, or the making of an order or direction?
21. Is legal representation generally allowed for the purposes of conciliations within your entity?
22. If legal representation is allowed, is this a matter of right, or only with leave?
23. Within your entity, are conciliations conducted by a third party or inter-parties only?
24. Within your entity, is a conciliator chosen by the parties or appointed by your entity?
25. Within your entity, is the conciliator a member of staff or an outsourced provider?
26. Within your entity, conciliation is directed towards: dispute resolution OR case management?
27. Within your entity, the subject matter of conciliation is predominantly: rights-based OR interests-based?

28. Within your entity, the conciliation process is best described as: facilitative OR evaluative OR directive OR adjudicative OR other OR don't know.
29. Within your entity, the role of the conciliator is best described as: neutral OR independent of the parties and your entity OR independent of the parties but not your entity.
30. In conciliations within your entity, are the disputants likely to know one another?
31. In conciliations within your entity, are the disputants likely to have an ongoing relationship with one another?
32. In conciliations within your entity, respondents are mainly: individuals OR bodies corporate OR a mixture of individual and bodies corporate.
33. If respondents are mainly bodies corporate, are they mainly private or public sector?
34. Within your entity, conciliation outcomes are mainly: past-focussed OR forward-looking?
35. If the conciliation does not resolve the dispute, is it referred to another body, and/or does your entity continue to deal with it by a different process? Tick all that apply: referred to another body AND/OR my entity continues to deal with the dispute.

Appendix 5: Focus Group Questions

The nine questions raised in the focus groups were as follows;

Conciliation

1. How do you explain conciliation to your clients/participants?
2. What do you think is the most effective aspect of conciliation?

Training and education

3. If there is to be training/education, what kinds of training/education have you found/would be effective?

Learning

4. To what extent is conciliation a set of skills that can be learned by experience?
5. Information, opinion and advice regarding possible outcomes
6. To what extent is conciliators' provision of information, opinion and advice about possible outcomes important for effective conciliation?

Conciliation and mediation

7. In what ways do you think of conciliation as differing from mediation?

Applicable legislation

8. How do you proceed toward resolution by parties when the resolution is inconsistent with the intent of applicable legislation?

Professionalism

9. What are your thoughts regarding conciliators having a professional identity, collegiality and structure?
10. What changes would you recommend?

Appendix 6: Focus Group Results

QUESTION	CITY	QUOTATION
Q1 How do you explain conciliation to your clients and participants?	Sydney	<p>P4 "...a without prejudice discussion in an attempt to resolve a complaint..."</p> <p>P5 identifying the truth or an agreed fact pattern is not the purpose of conciliation "...it's not the purpose of the conference to determine whether discrimination took place. The main purpose of the conference is resolution of the complaint if that's possible and we're probably going to have to agree to disagree on the version of events.."</p>
	Brisbane	<p>P2 "We don't really explain because some people don't really know what a conciliator is. We get called many other names, a consultatory or sometimes I say I'm a mediator because they understand that better."</p>
	Adelaide	<p>P2 helpful comment re conciliation in family law "...conciliation provides the parties with input from the conciliator who can assist the parties as a neutral third party to identify the prominent issues in dispute, develop the options that suit the parties or as required by law, in particular with family law issues, and to consider reasonable alternatives and encourage the parties to reach an agreement where previous attempts have failed."</p>
	Perth	<p>P2 "conciliation is often seen as a 'tick the box' scenario so that they can get on to bigger and better things, and I would love to be able to change that so that it is actually involvement by participants to reach an agreement so that are not using resources unnecessarily...I would like to be able to move away from 'tick the box' and just really emphasise active participation."</p> <p>Adaptable skillset p2 "...tailor the conciliation to suit their needs is something that I found to be quite helpful and as a starting point, I learned from the legislation...and then once people get an idea of what I can do at it and the purpose of conciliation, I tend to fine they sort of relax a little bit and breathe a sigh of relief and then you are starting to build rapport."</p>
Q2 What do you think is the most effective aspect of conciliation?	Sydney	<p>P8 "Every bad conciliation I've ever seen, in the years I've been training conciliators, as been when they've gone too quickly into open session."</p> <p>P9 "A valuable aspect of conciliation in my view is the creativeness, the open mindedness, coming up with creative solutions to intractable problems. Because if the parties can solve those problems themselves they wouldn't need conciliation, they wouldn't come to this point in the process...it's more dealing with them individually rather than necessarily getting them to hear each other, because that's more mediation than conciliation."</p> <p>P10 "I see a conciliator as an enabler of someone making decisions."</p>

	Brisbane	P5 “reality-testing is a powerful part of conciliation as long as it’s done correctly.”
	Adelaide	<p>P7 “You’re not restricted to talking about only the things that could be talked about if the matter went to a hearing for example. So conciliation provides the opportunity to talk about everything and all of the parties needs without being constrained by the legislation in a sense...”</p> <p>P8 “...one of the keys for me is it provides an avenue or opportunity for people to see and hear each other’s perspectives in a safe kind of environment I suppose, a non-adversarial sort of environment and working as we do in the complaints context, I mean usually, not always, something has gone wrong, someone feels aggrieved, someone lodges their complaint and the power of an apology, for example, from a service provider to complainant it that’s, you know, right in the circumstance.”</p> <p>P8 “...the dispute resolution process in the construction industry in Au has really become a commercial decision at the end of a project...”</p>
	Perth	<p>P3 a lot of prep prior to the actual conciliation “...identifying the issues of the complaint and the outcomes of the complaints they are hoping to achieve and then work with the service provider to see whether it’s an explanation, apology, due procedure, those kind of things. If they can be agreed to at Conciliation – so we do ten to do a lot of work before the meeting.”</p> <p>Establishing trust p4 “...at that moment of giving information, empowering the parties and dragging them away from their legal representation, you’ve got to establish trust in a short timeframe and if you can establish a trust, that is the basis of the conciliation and you can move forward...If you can’t get that traction, that pause because the solicitors are too involved, then that opportunity can be lost but I think that the most effective aspect is to grab the moment, give the information and to establish trust.”</p> <p>Power of conciliation p5 “I think it just adds that human element too, I mean, you know, if you get a written complaint from somebody, you know, you tend to – it can be misinterpreted and I think it’s quite cathartic – that human element where people get the opportunity to have their say and feel like they’ve been heard, so to me that’s the power of conciliation.”</p>
Q3 If there is to be training/education, what kinds of training/edu have you found would be effective?	Sydney	P12 training “The best conciliation training I’ve had is with other conciliators.”
	Brisbane	P16 accredited mediators “A lot of us are accredited mediators and the skills for us to renew are covered by what we do every day, we don’t have to go anywhere else to make sure we meet those skills.”

		P17 training “It would be nice if all the statutory bodies could arrange for conciliators within those bodies to go and sit in because it’s completely different sitting and listening in as to hearing it explained afterwards and you would pick up so much more and learn so much more.”
	Adelaide	<p>P8 “there might be legislation specific training, legal knowledge, there might be psychosocial training so that people understand the kind of group that they’re dealing with. There might be cultural training depending on I think the context in which you were conciliating. There might need to be additional knowledge and understanding that they require to work effectively in that area <u>but I would say that would be on top of basic mediation training.</u>”</p> <p>Subject matter expertise p10 “Mediators don’t necessarily need subject matter knowledge to effectively facilitate or mediate a dispute...With conciliators, especially in some jurisdictions, I think subject matter knowledge and legal training is actually important. Sometimes you can come across some really complex jurisdictional issues or legal issues in conciliation that someone without legal knowledge could just completely miss and would be hard for them to get their heads around.”</p>
	Perth	<p>Innate skillset p6 “Do people go into Conciliation/Mediation/ADR generally because they enjoy the outcomes, they’re good at it, they that there’s an innate skill within.... I don’t know if that [any type of official training body etc] can ever work unless there’s a true ability somewhere within the person.”</p> <p>P7 “I also think that there’s a real education tool in observing conciliations.”</p>
Q4 To what extent is conciliation a set of skills that can be learned by experience?	Brisbane	P19 expertise “we are subject matter experts of the legislation. So you might take over 100 calls a day where people are asking specific questions.” (a nice corporate analogy here to SMEs)
	Melbourne	“Most people came to conciliation from advocacy or litigation, so in fact they didn’t have to grapple with that problem of a small time to get them in the middle. But they acknowledge. I mean, how do you have any authority in the room if the lawyers think you’re an idiot that doesn’t know the laws.”
Q5 To what extent is conciliators’ provision of information, opinion and advice about possible outcomes important for effective conciliation?	Brisbane	<p>P11 settlement and giving advice “So our opinions and the information we can provide does have a strong impact on the resolution rate in taking out a much more impartial role, if you were to sit back and not offer those opinions, and your general learnings about outcomes at Tribunals, and how matters have proceeded beforehand, it would significantly impact the resolution rate we achieve.”</p> <p>P14 “The risk is there is a disempowered party, and the risk of the conciliator can impress on that party in that particular one thing and then, you know, conveniently not mention other things to the other side. There is that risk with conciliating in that it’s open to manipulation.”</p>

		<p>P14 “I’ll zip it right up and some of them I’ll just go ‘off you go I’ll let the adjudicator deal with that’ because it’s big time Charlie stuff. Some of them can be thousands of dollars, and it’s like, don’t put me into...I feel like I’m pressured into being a solicitor sometimes.”</p> <p>Skills p24 “The ability to provide information without it being advice is something that is conciliation. That’s not part of a mediation. It’s content you have to provide.”</p> <p>P24 expertise “You’re using subject expertise, you’re not actually giving an opinion.”</p>
	Melbourne	<p>On playing an advisory role “I think the information leads into an advice and it’s so close together, very close together when you’re in the power position in the room it gives some information that you can, it depends on the perception.”</p> <p>“What we’re looking at in conciliation is...you’re controlling the room and you’re setting the pace, you’re modelling the behaviour, you’re asking the questions. You’re obviously conducting when can you speak or don’t speak...I don’t know that you could do a conciliation if you’re too loose, and same with the resolution, I don’t think you can have resolutions that are inconsistent with the applicable legislation, it’s not possible. You have to overthink the jurisdiction.”</p>
	Adelaide	<p>P11 resource imbalance dynamic “...a lot of those disputes particularly involve parties who have vastly different resources and to me this is one of the significant features of conciliation.”</p> <p>P16 evaluative vs facilitative mediation “...there was an objection to the development of evaluative mediation, you know it’s said to be more robust than facilitative mediation; it’s that people would say well I’m facilitative in the morning but if it’s not working then I’m evaluative in the afternoon.”</p> <p>P18 “...we want to be modelling the sort of behaviour that we want the parties to exhibit...that trust aspect is really important...”</p>
	Perth	<p>Impartiality/advisory p12 “I think it is essential because you may be the first truly impartial person this person has spoken to throughout this process because friends, family told them things that they think they’d want to hear, their solicitor may have then encouraged them to push forward with this thing...”</p> <p>Extent of prep p27 “The more information that you have about a topic, the more confident you are to facilitate that conciliation and almost by rights the more successful that conciliation will be.”</p>
Q6 In what ways do you think of conciliation as differing from mediation?	Brisbane	<p>P9 “the beauty of conciliation is that you are actually skilling them up” [re disputants’ role in the process].</p> <p>P23 “Conciliation is mediation apart from the legal aspect...mediation with a tick.”</p>

		<p>P30 “[with regards to mediation] there’s no guidance attached to it...the outcome is completely yours...Whereas because there is an aspect of, and I have found the same thing with family dispute resolution, because you’re providing a level of expertise and content I think it’s a little bit harder to walk away from an outcome if you’re not happy with it...”</p>
	Perth	<p>P8 “I almost see mediation as slightly more passive than Conciliation.”</p> <p>P9 “I think that mediation is a softening conciliation to some extent.”</p> <p>P9 “One of the distinctions for me is that I think there’s some assumed subject matter knowledge in conciliation. I think you can mediate on almost any dispute, regardless of your level of subject matter knowledge.”</p>
	Melbourne	<p>“The value over mediation that conciliation offers is that we can provide some context and outlooks without prejudicing our objectivity...it’s a slightly better format for people who don’t have a genuine discussion and when they say ‘What do you think?’ well I’ll say, ‘I can’t tell you what I think but these are the issues’ and you present it back to them in a way that is perhaps more hopeful than they might get in a strict mediation format.”</p> <p>“Conciliation does have a directive component which may actually go to the extent of making formal directions, orders or whatever or may not, but its still got that directive component which in my mind mediation doesn’t count.”</p> <p>“In mediation, the focus is between the parties. I think conciliation it’s more of a triangle, with the conciliator doing that more of an intervention thing and to me that’s the key difference between needing a mediator and a conciliator.”</p> <p>“You’re working in the shadow of the law but you can bring in your own considerations to what something that you can live with as an agreement. So it’s also trying to expand the nature of that way but at the same time, unlike mediation, it’s much more direct in terms of saying we need to stay focused on what the legal principles are and at some point reaching an agreement but the courts don’t have much time...”</p>
Q7 How do you proceed toward resolution by parties when the resolution is inconsistent with the intent of applicable legislation?	Sydney	<p>P15 expertise and perception of the parties “They come thinking you’re a specialist organisation that’s going to know about the law.”</p> <p>P19 advice-giving “...the vast majority of times when they ask for an opinion is ‘should I accept the other side’s proposal?’”</p> <p>P30 on coming to a resolution/agreement “...the process should not disadvantage a complainant or a respondent, so we actually have specifically in our law, if I am concerned for example that a complainant or a respondent is agreeing to something under pressure, that they are agreeing to something because they’re tired, because they don’t really understand, I might not allow them to agree.”</p>

	Brisbane	P9 [multi-statute jurisdiction] “doesn’t mean you’re less likely to have subject matter expertise in that particular piece of legislation if it’s one that’s less common that’s coming before the Tribunal...but we’re still not seeing our role there as to be advisory. Most of the matters that are going to conciliation, where we’re selecting those case groups because they go through to multi-day hearings, so our conferencing process will sort out 80 to 90% of that.”
	Perth	Degree of intervention p16 “I think your gut will tell you when information needs to be provided or you need to involve yourself in some way on that level.” (relates more to Q5)
Q8 What are your thoughts regarding conciliators having a professional identity, collegiality and structure?	Brisbane	P28 [on the value of debriefing after a conciliation session] “debriefing process is paramount for conciliation and without it you just explode.”
	Perth	P19 “It’s very similar to mediation that is has that professional identity so a conciliation needs the same.”
	Melbourne	<p>“It’s wrong to say that it all starts with this mediation sort of circle and then everything becomes a bit more specialised after that because, you know, having done ADR for many years, it started off perhaps with a lot of conciliation, even right there with the legislation course maybe. The mediation kind of grew out as well from that. I think it’s wrong to say that there’s one particular form that everything kind of develops from, I think it’s much more complex than that and I think the problem for conciliation if it’s seen that way because where does it leave experienced conciliators?”</p> <p>Training “I did a Masters in Mediation and Conflict Resolution and I thought that was a fabulous course but conciliation was barely discovered.”</p> <p>“At our organisation we require people to be accredited mediators, send them off on the five-day course and they come back saying, ‘Well that’s not actually relevant to what we do.’ And while there are core sets of skills that are general, you have to unlearn that in order to be a conciliator.”</p> <p>Mentoring “I’m really grateful of the value of mentoring in its context...it’s really invaluable and the ability to observe, to sit in, to observe, to have people observe you, peer review, peer observation...”</p>
Q9 What changes would you recommend?	Perth (“what else would you have liked us to ask you?)	<p>Often it’s the first time parties have seen each other face to face, and some conciliators see that as an issue p23 “I think because once you entrench people that it’s very difficult to move those positions.”</p> <p>Formal-esque setting p26 “For some people sitting around a table like this, in a formal conciliation, is very intimidating and people will not speak – so you have to spend time and make sure first that the</p>

		environment is neutral and partial, but also too, you need to address those power imbalances as a conciliator.”
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Appendix 7: Legislation Establishing Statutory Dispute Management, Including Conciliation

Note: this list does not include legislation that incorporates international treaties that create conciliation obligations between contracting parties.

Note: this list only includes principal legislation

Commonwealth

1. *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 s 33*
2. *Aboriginal Land Rights (Northern Territory) Act 1976 s 25*
3. *Administrative Appeals Tribunal Act 1975 s 34H*
4. *Australian Federal Police Act 1979 s 40TH*
5. *Australian Human Rights Commission Act 1986 s 11*
 - *Age Discrimination Act 2004*
 - *Disability Discrimination Act 1992*
 - *Racial Discrimination Act 1975*
 - *Sex Discrimination Act 1984*
6. *Crimes Act 1914 s 85ZZ*
7. *Defence Reserve Service (Protection) Act 2001 s 72J*
8. *Fair Work Act 2009 s 595*
9. *Family Law Act 1975 s 123*
10. *Federal Circuit Court of Australia Act 1999 s 26*
11. *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006 s 40TH*
12. *My Health Records Act 2012 s 73*
13. *National Cancer Screening Register Act 2016 s 22B*
14. *National Disability Insurance Scheme Act 2013 s 181G*
15. *Privacy Act 1988 s 40A*
16. *Radiocommunications Act 1992 Part 4.3*
17. *Student Identifiers Act 2014 s 24*
18. *Superannuation (Resolution of Complaints) Act 1993 s 28*
19. *Work Health and Safety Act 2011 s 142*

Victoria

20. *Accident Compensation Act 1985* s 104
21. *Australian Consumer Law and Fair Trading Act 2012* ss 1e, 114
22. *Children, Youth and Families Act 2005* Part 4.7
23. *Disability Act 2006* s 116
24. *Domestic Building Contracts Act 1995* Part 4
25. *Freedom of Information Act 1982* Div 2,
26. *Health Complaints Act 2016* s 32
27. *Health Records Act 2001* s 51
28. *Independent Broad-based Anti-corruption Commission Act 2011* s 64,
29. *Mental Health Act 2014* s 228, Part 10 Div 3
30. *Owners Corporations Act 2006* s 161
31. *Privacy and Data Protection Act 2014* s 67
32. *Professional Standards Act 2003* Sch 1, cl 6
33. *Victoria Police Act 2013* s 170
34. *Victorian Civil and Administrative Tribunal Act 1998* ss 111, 12B, 23, 66AE
35. *Workplace Injury Rehabilitation and Compensation Act 2013* Parts 6, 12

New South Wales

36. *Aboriginal Land Rights Act 1983* s 239A
37. *Anti-Discrimination Act 1977* s 91A
38. *Apprenticeship and Traineeship Act 2001* s 40
39. *Building Professionals Act 2005* s 24
40. *Community Land Management Act 1989* s 109C
41. *Community Services (Complaints, Reviews and Monitoring) Act 1993* s 24
42. *Employment Protection Act 1982* s 13
43. *Entertainment Industry Act 2013* s 20
44. *Essential Services Act 1988* s 15
45. *Government Information (Information Commissioner) Act 2009* s 19
46. *Health Care Complaints Act 1993* ss 13, 24, Div 8
47. *Health Practitioner Regulation (Adoption of National Law) Act 2009* ss 145B, 145C

48. *Health Records and Information Privacy Act 2002* s 46
49. *Industrial Relations Act 1996* ss 3, 86, 100E, 109, 133, 134, 348, 371
50. *Land and Environment Court Act 1979* s 34
51. *Law Enforcement Conduct Commission Act 2016* s 48
52. *Local Court Act 2007* s 36
53. *Ombudsman Act 1974* s 13A
54. *Police Act 1990* s 176
55. *Privacy and Personal Information Protection Act 1998* s 49
56. *Professional Standards Act 1994* Sch 1, cl 6
57. *Strata Schemes Development Act 2015* s 181
58. *Work Health and Safety Act 2011* s 142
59. *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* ss 16, 30
60. *Workplace Injury Management and Workers Compensation Act 1998* s 4

Queensland

61. *Anti-Discrimination Act 1991* Div 3
62. *Body Corporate and Community Management Act 1997* Ch 6
63. *Health Ombudsman Act 2013* Part 11
64. *Industrial Relations Act 2016* ss 175, 176, 194, 262, 312, 318, 470, 481
65. *Land Access Ombudsman Act 2017* s 41
66. *Magistrates Courts Act 1921* s 42F
67. *Maintenance Act 1965* s 130
68. *Mineral and Energy Resources (Common Provisions) Act 2014* s 88
69. *Professional Standards Act 2004* Sch 1, s 5
70. *Public Guardian Act 2014* s 12
71. *Residential Tenancies and Rooming Accommodation Act 2008* ss 397, 398
72. *Work Health and Safety Act 2011* ss 102C, 142

Australian Capital Territory

73. *Domestic Relationships Act 1994* s 7

74. *Human Rights Commission Act 2005* s 51, Div 4.3
75. *Work Health and Safety Act 2011* s 142
76. *Workers Compensation Act 1951* s 195

South Australia

77. *Anangu Ptijantjtjara Yanknytjatjara Land Rights Act 1981* Part 4
78. *District Court Act 1991* s 32
79. *Electricity Act 1996* s 55F(8)(f)
80. *Environment, Resources and Development Court Act 1993* s 95
81. *Equal Opportunity Act 1984*
82. *Fair Trading Act 1987* s 8
83. *Fair Work Act 1994* s 23
84. *Gaming Machines Act 1992* s 7
85. *Health and Community Services Complaints Act 2004* Part 5
86. *Landlord and Tenant Act 1936* s 68
87. *Legal Practitioners Act 1981* Part 6, subdivision 5
88. *Liquor Licensing Act 1997* s 17
89. *Local Government Act 1999* s 271
90. *Magistrates Court Act 1991* s 27
91. *Maralinga Tjarutja Land Rights Act 1984* s 21(11)
92. *Maritime Services (Access) Act 2000* s 16
93. *Ombudsman Act 1972* s 17A
94. *Police Complaints and Discipline Act 2016* s 18
95. *Professional Standards Act 2004* Sch 1, s 6
96. *Public Sector Act 2009* s 60
97. *Railways (Operations and Access) Act 1997* s 9
98. *Residential Tenancies Act 1995* s 107
99. *Retail and Commercial Leases Act 1995* s 20H
100. *Return to Work Act 2014* s 4
101. *Second-hand Vehicle Dealers Act 1995* s 24

- 102. *South Australian Employment Tribunal Act 2014 s 43*
- 103. *Supported Residential Facilities Act 1992 s 20*
- 104. *Supreme Court Act 1935 s 65*
- 105. *Survey Act 1992 s 35*
- 106. *Training and Skills Development Act 2008 s 66*
- 107. *Water Industry Act 2012 s 86L*
- 108. *Work Health and Safety Act 2012 s 142*

Tasmania

- 109. *Alternative Dispute Resolution Act 2001*
- 110. *Anti-Discrimination Act 1998 s 75*
- 111. *Education Act 2016 s 42*
- 112. *Health Complaints Act 1995 Part 5*
- 113. *Industrial Relations Act 1984 s 61*
- 114. *Magistrates Court Act 1987 s 15AE*
- 115. *Ombudsman Act 1978 s 22A*
- 116. *Police Service Act 2003 s 47*
- 117. *Professional Standards Act 2005 Sch 1, s 6*
- 118. *Residential Tenancy Act 1997 s 8*
- 119. *Right to Information Act 2009 s 47*
- 120. *Threatened Species Protection Act 1995 s 9*
- 121. *Work Health and Safety Act 2012 s 142*
- 122. *Workers Rehabilitation and Compensation Act 1988 Part 5 Div 2*

Northern Territory

- 123. *Anti-Discrimination Act 1992 s 78*
- 124. *Australasia Railway (Third Party Access) Act 1999 s 15*
- 125. *Building Act 1993 s 54FA*
- 126. *Business Tenancies (Fair Dealings) Act 2003 Part 11, Div 3*
- 127. *Electricity Networks (Third Party Access) Act 2000 s 38*
- 128. *Health and Community Services Complaints Act 1998 Part 6*

- 129. *Ombudsman Act 2009* Part 6, Div 3 and Part 7, Div 3
- 130. *Police Administration Act 1978* s 40B
- 131. *Professional Standards Act 2004* Sch 1, s 6
- 132. *Work Health And Safety (National Uniform Legislation) Act 2011* s 142

Western Australia

- 133. *Architects Act 2004* s 59
- 134. *Building Services (Complaint Resolution and Administration) Act 2011*
Part 2 Div 3
- 135. *Building Services (Registration) Act 2011* ss 51, 56
- 136. *Consumer Affairs Act 1971* s 16
- 137. *Disability Services Act 1993* s 39
- 138. *Equal Opportunity Act 1984* s 91
- 139. *Family Court Act 1997* s 46
- 140. *Freedom of Information Act 1992* s 71
- 141. *Health and Disability Services (Complaints) Act 1995* s 34, Part 3, Div 3
- 142. *Industrial Relations Act 1979* s 32
- 143. *Liquor Control Act 1988* s 117
- 144. *Mental Health Act 2014* s 332
- 145. *Motor Vehicle Repairers Act 2003* Part 8
- 146. *Occupational Safety and Health Act 1984* s 51J
- 147. *Owner-Drivers (Contracts and Disputes) Act 2007* s 44
- 148. *Professional Standards Act 1997* Sched 1, s 6
- 149. *Real Estate and Business Agents Act 1978* s 23C
- 150. *Residential Tenancies Act 1987* s 23
- 151. *Small Business Development Corporation Act 1983* Part 3, Div 2
- 152. *Workers' Compensation and Injury Management Act 1981* Div 3

Appendix 8: List of Statutory Bodies That Can Conduct Conciliation

Note: this list includes bodies/entities that conduct conciliation under a primary statute. It does not include general references in legislation to a conciliator, conciliating officer or occupational association, where no conciliation entity is established.

Commonwealth

1. Administrative Appeals Tribunal
2. Australian Federal Police
3. Australian Defence Force
4. Australian Communication and Media Authority
5. Australian Human Rights Commission
6. Commissioner of the NDIS Quality and Safeguards Commission
7. Fair Work Commission
8. Family Court of Australia
9. Federal Circuit Court
10. Information Commissioner
11. NT Aboriginal Land Councils – Anindilyakwa Land Council, Central Land Council, Northern Land Council, Tiwi Land Council
12. Superannuation Complaints Tribunal

Victoria

13. Accident Compensation Conciliation Service
14. Children’s Court of Victoria
15. Commissioner for Privacy and Data Protection
16. Consumer Affairs Victoria
17. Director of Consumer Affairs Victoria
18. Disability Services Commissioner
19. Domestic Building Dispute Resolution Victoria
20. Health Complaints Commissioner
21. Information Commissioner
22. Independent Broad-Based Anti-Corruption Commission
23. Mental Health Complaints Commissioner
24. Police Chief Commissioner

New South Wales

25. Anti-Discrimination Board of NSW
26. Building Professionals Board
27. Commissioner for Fair Trading, Department of Finance, Services and Innovation
28. Health Care Complaints Commission
29. Industrial Relations Commission
30. Information and Privacy Commission
31. Information Commissioner NSW
32. Land and Environment Court
33. Law Enforcement Conduct Commission
34. Local Court
35. NSW Ombudsman
36. NSW Police
37. Office of the Registrar
38. Ombudsman NSW
39. Workers Compensation Commission

Queensland

40. Anti-Discrimination Commission Queensland
41. Commissioner for Body Corporate and Community Management
42. Court in Queensland
43. Land Access Ombudsman
44. Magistrates Court
45. Office of the Health Ombudsman
46. Public Guardian
47. Queensland Industrial Relations Commission
48. Residential Tenancies Authority

Australian Capital Territory

49. Access Canberra
50. ACT Human Rights Commission

51. ACT Supreme Court

South Australia

- 52. Anangu Pitjantjatjara Yanknytjatjara panel of conciliators
- 53. Commercial Tribunal
- 54. Consumer and Business Services (Office of Consumer and Business Affairs and Office of Liquor and Gambling Commissioner)
- 55. District Court
- 56. Environment, Resources and Development Court
- 57. Equal Opportunity Commissioner
- 58. Essential Services Commission
- 59. Health and Community Services Complaints Commissioner
- 60. Institution of Surveyors
- 61. Legal Profession Conduct Commissioner
- 62. Liquor and Gambling Commissioner
- 63. Local councils
- 64. Magistrates Court
- 65. Ombudsman SA
- 66. Police Ombudsman
- 67. Public sector agencies
- 68. Small Business Commissioner
- 69. South Australian Employment Tribunal
- 70. Supreme Court
- 71. Technical Regulator

Tasmania

- 72. Anti-Discrimination Commissioner (Equal Opportunity Tasmania)
- 73. Commissioner of Police
- 74. Community Review Committee (Threatened Species)
- 75. Education Registrar
- 76. Health Complaints Commissioner

- 77. Magistrates Court of Tasmania
- 78. Ombudsman Tasmania
- 79. Residential Tenancy Commissioner
- 80. Tasmanian Industrial Relations Commission
- 81. Workers Rehabilitation and Compensation Tribunal

Northern Territory

- 82. Anti-Discrimination Commissioner
- 83. Australian Energy Regulator
- 84. Health and Community Services Complaints Commission
- 85. NT Consumer Affairs (Commissioner of Business Tenancies and Commissioner of Residential Building Disputes)
- 86. Ombudsman NT
- 87. Police Arbitral Tribunal
- 88. Work Health Authority

Western Australia

- 89. Architects Board of WA
- 90. Building Commissioner
- 91. Commissioner for Consumer Protection
- 92. Director of Liquor Licensing
- 93. Equal Opportunity Commission
- 94. Family Court of Western Australia
- 95. Health and Disability Services Complaints Office
- 96. Information Commissioner
- 97. Magistrates Court
- 98. Occupational Safety and Health Tribunal
- 99. Road Freight Transport Industry Tribunal
- 100. Small Business Commissioner
- 101. Western Australian Industrial Relations Commission
- 102. Workers' Compensation Conciliation Service

Appendix 9: Characteristics of Selected Legislation Establishing Statutory Dispute Management

Jurisdiction	Act	Provisions	Discussion of characteristics	
Commonwealth	Aboriginal Land Rights (Northern Territory) Act 1976	<p>(2) Where a Land Council is informed that there is, or there may arise, a dispute with respect to land in the area of the Council between persons to whom this section applies, the Land Council shall use its best endeavours by way of conciliation for the settlement or prevention, as the case may be, of that dispute.</p> <p>(3) Where proceedings are commenced before a court with respect to a dispute of a kind referred to in subsection (2), the judge or magistrate constituting the court may, if he or she thinks it appropriate, adjourn the proceedings at any time for the purpose of affording a Land Council the opportunity of undertaking conciliation with a view to the settlement of that dispute.</p>	<p>No definition of conciliation is provided. Some procedure is prescribed. The Land Council as conciliator, “shall” use its “best endeavours by way of conciliation to achieve settlement or prevention ...” of land dispute. The policy is the prevention of dispute or its settlement for persons falling within the Act including if a matter comes before a court. In such a case the court may adjourn to allow conciliation by the Land Council.</p>	<p>Commonwealth legislation both Acts and regulations make use of conciliation in much the same way. A definition is not provided and there is little by way of prescribed procedure. The result is a flexible tool in the hands of the institutions but little clarity as to how it might be deployed. There are about 15 such Commonwealth Acts, many with associated rules and regulations.</p>
	Family Law Act 1975	<p>Article 31 The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to--</p> <p>a.</p> <p>b. facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;</p> <p>Family Law Rules 2004 - Rule 12.07 Conduct of a conciliation conference</p>	<p>Another example from the Commonwealth is in the Family Law Act 1975. S. 123 empowers the judges to make Rules of Court for matters of practice and procedure. S. 123 (sg) enables Rules providing for and in relation to conciliation conferences. The Act does not define conciliation and does not use the expression in any other context except as needed in reference to an</p>	

		<p>(1) A conciliation conference must be conducted by a judicial officer.</p> <p>(2) Each party at a conciliation conference must make a genuine effort to reach agreement on the matters in issue between them.</p> <p><u>Note 1</u>: A party and a party's lawyer must attend a conciliation conference (see subrule 12.11(1)).</p> <p><u>Note 2</u>: Evidence of a communication made at a conciliation conference may be excluded (see section 131 of the Evidence Act 1995).</p>	<p>international <i>Child Protection Convention</i> (Schedule 1 Art 31).</p> <p>The Rules makes some provision for conciliation although without specifying a procedure. Conciliation under these rules in practice is a meeting of the parties in a room (sometimes a closed courtroom) conducted with a view to persuading parties to settle. In this case the conciliator is a judicial officer but will not be the same person that sits to determine the matter if the conciliation does not produce a settlement.</p>	
Northern Territory	<p><i>Business Tenancies (Fair Dealing) Act (NT)</i></p>	<p>s 92</p> <p><i>Purpose of preliminary conference</i></p> <p>(1) At a preliminary conciliation conference, the conciliator must:</p> <p>(a) give information to ensure that the parties to the application are fully aware of their rights and obligations under this Act; and</p> <p>(b) encourage full, open communication between the parties about the retail tenancy dispute on a without prejudice basis; and</p> <p>(c) encourage the parties to identify the relevant facts and propose solutions to, and resolve by agreement, the matters in dispute between the parties.</p>	<p>The <i>Business Tenancies (Fair Dealings) Act</i> does not define conciliation but it does prescribe some procedure that is designed to inform the disputants of the process they are entering. Disputants attend a preliminary conference at which settlement is to be encouraged. If no settlement results, then a conciliation 'conference' may be directed. The only information</p>	

		<p>(2) <i>If the parties do not resolve the matters in dispute, the Commissioner must determine whether:</i></p> <p>(a) <i>a conciliation conference should be held; or</i></p> <p>(b) <i>an inquiry should be held; or</i></p> <p>(c) <i>a certificate should be issued.</i></p>	about this procedure is that it will occur in the form of a conference.	
Queensland	<i>Work Health and Safety Act 2011</i>	<p>s 102C</p> <p><i>ACTION FOR SETTLING DISPUTE</i></p> <p>(1) <i>This section applies if notice of a dispute has been given under section 102B .</i></p> <p>(2) <i>The commission may deal with the dispute in any way it thinks fit, including by means of mediation, conciliation or arbitration.</i></p>	There are other provisions in the same Act that use conciliation, but it is done in the same way, without definition or prescribed procedure. Again, the result is a flexible procedure in the hands of capable conciliators but with provision of information to the disputant left to the conciliator or the employing entity.	
Australian Capital Territory	<i>Human Rights Commission Act 2005</i>	<p>s 55 <i>What is conciliation?</i></p> <p>(1) <i>For this Act, conciliation of a complaint involves the commission acting as an impartial third-party to help the parties to the conciliation to endeavour to resolve the matters raised by the complaint.</i></p> <p>(2) <i>Conciliation requires the parties' willing and informed agreement to take part in the conciliation.</i></p> <p><i>Note The commission may require a party to attend conciliation but may not require the party to take part.</i></p> <p>(3) <i>The parties to conciliation decide the outcome of the conciliation, usually with advice from the commission.</i></p> <p>s 56 <i>Delegation of commission's function of conciliation</i></p>	The <i>ACT Human Rights Commission Act 2005</i> is unusual in the degree to which it defines conciliation and prescribes procedure. It requires the provision of information. To disputants. It authorizes the provision of advice by a conciliator. It requires the consent of the disputants as it is a voluntary process. It separates the conciliation and presumably the conciliator from the later more determinative consideration.	

		<p><i>The commission may delegate the function of conciliation of a complaint to—</i></p> <p><i>(a) a commissioner other than the commissioner who is considering the complaint; or</i></p> <p><i>(b) a member of staff or a consultant engaged by the commission for this Act.</i></p> <p><i>Note 1 Consultants may be engaged for this Act under s 37.</i></p> <p><i>Note 2 For the making of delegations and the exercise of delegated functions, see the Legislation Act.</i></p> <p><i>s 61 Relationship between conciliation and consideration</i></p> <p><i>(1) Conciliation of the complaint must be separate from, and independent of, any consideration of the complaint.</i></p>		
Western Australia	<i>Architects Act 2004 (WA)</i>	<p><i>s 59 Conciliation process</i></p> <p><i>(1) The Board may refer to a committee a complaint that there is proper cause for disciplinary action in respect of a person, for conciliation of the matter.</i></p> <p><i>(2) The committee is to commence conciliation procedures within 14 days of the complaint being referred to it under subsection (1).</i></p> <p><i>(3) The function of the committee as conciliator is to encourage the settlement of the matter by —</i></p> <p><i>(a) communicating with the persons concerned, or their representatives; and</i></p> <p><i>(b) arranging discussions between the persons concerned, or their representatives, and assisting in those discussions; and</i></p> <p><i>(c) causing the persons concerned, or any of them or their representatives, either separately or together, to appear before the committee; and</i></p> <p><i>(d) giving advice and making recommendations to assist in the reaching of settlement.</i></p>	This example of Western Australian Legislation provides some procedural detail. It urges settlement as the desired outcome. It provides conciliation with confidentiality. It prescribes the procedure to be by way of discussion, appearing before the committee, which can provide advice and make recommendations that will assist settlement.	

		<p>(4) The Board may, with the consent of each of the parties to a conciliation, by order give effect to a settlement negotiated under this Division.</p> <p>(5) If the Board makes an order under subsection (4) —</p> <p>(a) the terms of the settlement reached between the parties referred to in the order are final and binding on those parties; and</p> <p>(b) the order may include any matter that might have been ordered by the State Administrative Tribunal under section 57.</p> <p>(6) It is not a function of the Board or a committee of the Board to conduct an arbitration of a dispute.</p> <p>(7) Evidence of anything lawfully said or done, or any record prepared and produced for the purpose of conciliation, by a person in the course of the conciliation process is not to be used in any subsequent consideration of the complaint by the Board nor, unless that person waives the right to object, is it admissible in evidence against that person in any subsequent civil proceedings concerning the subject matter of the complaint.</p>		
New South Wales	Building Professionals Act 2005 (NSW)	<p>s 24 Conciliation of complaints</p> <p>(1) If the Board thinks it appropriate to do so, the Board may recommend to a complainant and the accreditation holder the subject of the complaint that they undertake conciliation of the complaint (whether or not the complaint has been dismissed or is being investigated).</p> <p>(2) The Board may arrange for one of its officers to assist in conciliation of a complaint.</p> <p>(3) The Board is not prevented from investigating a complaint because the parties to the complaint agree to undertake conciliation of the complaint.</p>	In the NSW example of conciliation provisions, there is no definition of conciliation but some procedure is prescribed. The goal of the conciliation is not stated but seems to be consumer and settlement oriented. What is said in conciliation cannot be used in other proceedings. An officer of the entity can be appointed conciliator.	

		<p><i>(4) Evidence of anything said or of any admission made during the conciliation process is not admissible in any proceedings before a court, tribunal or body.</i></p> <p><i>(5) A document prepared for the purposes of, or in the course of, the conciliation process (or a copy of such a document) is not admissible in any proceedings before a court, tribunal or body.</i></p> <p><i>(6) This section does not apply to evidence or a document if the persons who attended, or were named during, the conciliation process and, in the case of a document, all persons named in the document, consent to admission of the evidence or document.</i></p> <p><i>(7) A person cannot be required (whether by subpoena or any other procedure) to produce evidence or a document that is inadmissible in evidence in proceedings before a court, tribunal or body because of this section.</i></p>		
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