



## Conciliation Process Model

### *Definition*

Conciliation is defined by the Tribunal as:

A process in which the parties to a dispute, with the assistance of a Tribunal member, officer of the Tribunal or another person appointed by the Tribunal (the conciliator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The conciliator has no determinative role on the content of the dispute or the outcome of its resolution, but may advise on or determine the process of conciliation whereby resolution is attempted, may make suggestions for terms of settlement and may actively encourage the participants to reach an agreement which accords with the requirements of the statute.

## The Conciliation Process

The process has five stages. It is intended to be flexible and informal. The conciliator may:

- give advice on the case management processes or the practice of the AAT;
  - offer opinions as to the issues of factual or legal dispute between the parties;
  - give advice about the costs implications and other non legal consequences; and
  - ask parties to explain any decision making constraints.
- Referral to conciliation will usually take place following a conference.

### **1. PREPARATION AND CONCILIATOR'S OPENING STATEMENT**

The opening statement includes a brief description of the role of the conciliator and participants, the conciliation process and any ground rules.

### **2. PARTIES' STATEMENTS**

Each party or their representative provides a statement about the dispute from their perspective.

Emerging interests, needs and options for resolution are acknowledged for use later in the conciliation.

### **3. JOINT EXPLORATORY SESSION AND DISCUSSION**

The conciliator will take an active role, summarising views and options and may also discuss with the parties the strength and weaknesses of their case.

The conciliator encourages parties to communicate directly with each other. The parties' interests are further clarified.

This provides the basis for joint problem solving, raising options for agreement and may be followed by further joint sessions where necessary.

During this stage, the parties may take a break from joint session to give lawyers instructions and consider offers or advice.

### **4. PRIVATE MEETINGS**

The conciliator may hold private meetings with each of the parties. The conciliator may reality test alternatives and options and comment about potential outcomes and the strengths and weaknesses of each party's case.

### **5. CONCLUDING JOINT SESSION**

There may be a need for additional joint sessions. The conciliator will assist the parties to narrow the issues in dispute.

The conciliator facilitates final negotiations and fine-tuning of the agreement. Alternatively, the conciliation may need to be adjourned or terminated.

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If the matter has not resolved, the conciliator will discuss with the parties the next steps to be taken, including the need to obtain any further material. If appropriate, directions may be issued by the Tribunal.

In all ADR processes, the parties must act in good faith (section 34A).