



**Investigation and Conciliation Service
Australian Human Rights Commission**

Statutory Conciliator Competency Assessment Form¹

Name of Candidate:

Name of Assessor:

Date of Assessment:

¹ Aspects of the original 2017 version of this document were drawn from the Resolution Institute's Mediator Competency Assessment Form for Accreditation as a Mediator Under National Mediator Accreditation System (NMAS), 2016

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Feedback on demonstration of knowledge, process and skills

This part of the form is intended to offer feedback to candidates on their current skills and guidance for practice development. The feedback offered on this part of the form may inform the outcome of the assessment.

A candidate not demonstrating, or demonstrating a little, a skill may be entirely appropriate under some circumstances. For example, a candidate may opt to provide detailed information on confidentiality in a preliminary meeting and not do so in the conciliator's opening statement. Likewise, a candidate may not demonstrate skills in reality-testing in circumstances where this was not required to progress negotiations.

Preparation for the conference

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Accurate assessment of suitability for conciliation (including assessment at law)			
Chosen format for the conference is appropriate, having regard to party needs, subject matter of the complaint, etc. (e.g. face-to-face, audio only, video optional or video only)			
Appropriate participant attendance and participation (including consideration of fairness, party needs, multiple respondents/complainants and authority to settle)			
Agenda and other relevant information provided to parties			

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Appropriate preparatory discussions with participants			
Appropriate set up of rooms/facilities or virtual conferencing arrangements			

Comments:

Preconference meetings with complainant/s and respondent/s

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Establishes rapport			
Responds appropriately to needs identified by participants			
Confirms proposed process			
Ensures understanding of possible outcomes and potential next steps			
Ensures understanding of confidentiality as it applies in conciliation in relation to the conciliator/the Commission, parties and conciliation agreements			
Ensures understanding of how relevant law may apply to the complaint, as appropriate			
Reviews preparation for opening statements, issue exploration and negotiation, as appropriate			
Invites and appropriately responds to questions and concerns			

Comments:

Conciliator's opening address

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Facilitates introductions and confirms participant preferences about forms of address			
Outlines logistical issues such as timing of conference, available facilities, arrangements in case of emergency and/or technological issues, as appropriate			
Clarifies authority to preside over the conference with reference to relevant law			
Outlines purpose, context and possible outcomes of the conference			
Outlines conciliator's role			
Confirms statutory confidentiality requirements and participants' agreement to keep conciliation discussions confidential, including any agreed exceptions			
Confirms proposed process			
Clarifies Commission expectations with respect to participant conduct and communication, as appropriate			

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Invites and responds appropriately to participant questions and concerns			
Content, form, tone and length of statement is appropriate to the context			

Comments:

Party opening remarks

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Manages transition from conciliator's opening address to party opening remarks appropriately			
Sets the tone for constructive communication			
Ensures parties are provided with sufficient uninterrupted time			
Maintains appropriate eye contact and body language with each participant			
Responds appropriately to any arising issues, for example, unhelpful interruptions			
Any summaries of party opening remarks are accurate (reflecting content and feelings) and impartial			
Allows time for additions and/or clarifications from participants			

Comments:

Agenda-setting and issue exploration

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Identifies topics for discussion based on party opening remarks, participant views, information before the Commission, relevant law and what may aid resolution			
Frames topics for discussion in language that is neutral (i.e. impartial and unbiased) and mutual (i.e. of relevance to all participants)			
Facilitates exploration of each of the agenda topics			
Maintains appropriate body language and eye contact with participants			
Facilitates direct communication between participants, as appropriate			
Facilitates a shift from a focus on the past to a focus on the present and the future, as appropriate			
Ensures interaction between participants is balanced			
Constructively facilitates effective and appropriate management of emotions, interactions and interruptions with a view to making the process as fair as possible			

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Responds appropriately, and displays a constructive approach, to polarised positions			
Summarises appropriately			
Acknowledges progress made by participants			
Ensures all agenda topics are sufficiently explored before transitioning to private sessions, as appropriate			
Transitions appropriately to private sessions			

Comments:

Private/Caucus sessions with complainant/s and respondent/s

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Confirms confidentiality of private sessions			
Invites participant feedback on the process so far			
Facilitates, and appropriately responds to, identification of any issues not raised by participants in joint session			
Appropriately responds to issues arising from the joint session			
Appropriately facilitates transition to negotiation phase			
Facilitates generation of resolution options with reference to the interests and needs of the parties			
Reality-tests appropriately			
Confirms information/proposal to be conveyed to the other participant/s (in shuttle negotiation)			
Helps parties prepare for discussion and negotiation of resolution options (in joint negotiation)			

Comments:

Facilitated negotiation

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Conducts negotiation in the most appropriate format (i.e. face-to-face/in joint session or shuttle)			
Assists parties to generate, explore and test resolution options (including outcomes with systemic implications)			
Assists parties appropriately package and present resolution proposals			
Uses a range of skills and strategies to progress negotiations and promote compromise			
Accurately and appropriately conveys information and proposals in any shuttle process			
Confirms and maintains the confidentiality of any private sessions			
Ensures parties have enough time/advice to make informed decisions			
Assists parties reflect on progress and maintain resolution momentum			

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Responds appropriately to issues that may have a negative impact on fairness (e.g. threats or unfair bargaining tactics)			
Helps parties explore the alternatives to a negotiated agreement			
Provides information and offers options for resolution in an appropriate and unbiased manner with regard to fairness and participant control			

Comments:

Agreement drafting and testing

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Assists parties to clearly articulate terms of agreement			
Facilitates participants' consideration of terms of agreement for clarity of responsibility, timeframes, next steps, process for resolution of future disputes, etc.			
Assists parties test terms of agreement			
Ensures parties have a common understanding of the terms of agreement			
Has regard to the need to ensure that any agreement reflects a recognition of human rights and the need to protect those rights			
Assists parties to document the agreement, as appropriate			
Responds appropriately to any issues that may negatively impact on fairness (e.g. punitive clauses)			

Comments:

Finalisation and follow-up

Knowledge, Skill or Process to be demonstrated	Demonstrated not at all to a little	Demonstrated moderately to significantly	Not applicable
Facilitates appropriate closure of the conciliation process			
Ensure parties are aware of the next steps in the complaint process and any associated timeframes			
Appropriately responds to any outstanding issues			
Appropriately documents the outcome of the conciliation process (e.g. email to participants, post-conference file note, etc.)			

Comments:

Assessment of competency as a statutory conciliator

1. **Conciliation conference:** Candidates must conduct a conciliation conference under the supervision of an assessor, who must be a senior and experienced conciliator and preferably an accredited mediator under the National Mediator Accreditation System. The conciliation conference must last for at least two hours and involve one or more joint sessions. Candidates must be assessed as competent in the knowledge; skills and ethical principles listed below. If the assessment occurs during a telephone or virtual conciliation conference, a conciliator can be deemed competent to preside over conciliation conferences without supervision on the basis that a conciliator experienced in conducting face-to-face conferences will observe the candidate on their first face-to-face conference to provide support and feedback on knowledge, skills and processes specific to this format of conciliation.
2. **Self-assessment:** After the conciliation conference, candidates may have a debriefing discussion with the assessor. This provides candidates an opportunity to reflect on their performance as conciliators and to note competencies, which they believe they did not demonstrate effectively and to comment on what they would do differently next time. The self-assessment provides assessors with valuable information additional to that provided in the conciliation conference.
3. **Supplementary assessment:** If most of the required competencies are demonstrated, the assessor may provide supplementary work to candidates to enable them to demonstrate the competencies they have not yet met, if possible.

Area of competency	Specific competency	Did not demonstrate competency	Demonstrated competency
Conduct and management of the conciliation process	Establishes and maintains the role of the conciliator as an impartial facilitator who ensures the process is as fair as possible, provides information but not advice and does not make a determination		

Area of competency	Specific competency	Did not demonstrate competency	Demonstrated competency
	Appropriately explains the conciliation process to participants		
	Establishes and maintains confidentiality		
	Facilitates a series of phases, interventions or conversations that encourage progress towards resolution of the complaint		
	Uses joint and private sessions effectively		
	Effectively manages transitions from one stage of the process to the next		
	Facilitates balanced communication with and between participants		
	Ensures the process is as fair as possible		
Use of appropriate communication skills	Is attentive to the needs of the participants and the process		
	Listens actively		
	Uses appropriate micro-skills ('Conciliator's Toolbox'), such as reframing, summarising, mutualising, etc.		
	Uses different types of questions appropriately throughout the process		

Area of competency	Specific competency	Did not demonstrate competency	Demonstrated competency
	Establishes and maintains actual and perceived impartiality, including by using balanced language and using impartiality skills (e.g. questions before statements, bringing the other into the room, etc.)		
	Displays appropriate body language		
Facilitation of negotiation	Facilitates exploration of issues appropriately with a view to identifying needs and interests and maximising the prospect resolution		
	Assists participants in private sessions to reflect on progress and prepare for negotiation and compromise		
	Assists participants to evaluate alternatives to a negotiated agreement through appropriate use of reality testing		
	Assists participants to generate options that may help to resolve the complaint, including options with a systemic impact		
	Assists participants to evaluate options and combinations of options with reference to criteria such as participant needs and interests, likelihood of implementation and objective standards		

Area of competency	Specific competency	Did not demonstrate competency	Demonstrated competency
Documentation of conciliation outcomes	Assists participants to articulate terms of agreement clearly and accurately		
	Assists participants to review terms of agreement, taking into consideration practicality, clarity of responsibility, timeframes, potential issues associated with implementation of agreement, etc.		
	Has regard to the need to ensure that any agreement reflects a recognition of human rights and the need to protect those rights		
	Appropriately documents outcomes of the conciliation process and ensures parties are aware of next steps		
Management of difficulties, high emotion and power imbalances	Ensures the process is as fair as possible through management of the process, appropriate communication, provision of information and appropriate use of micro-skills		
Number of criteria on which assessed as competent		/23	

Please Note: To be assessed as competent to preside over conciliation processes without supervision, the candidate must be assessed as having demonstrated competency on each of the above criteria. If a candidate was assessed while conducting an audio-only conference and was therefore unable to demonstrate appropriate body language, the candidate can be deemed as competent to preside over conciliation conferences without supervision on the basis that a conciliator experienced in

conducting face-to-face conferences observe the candidate on their first face-to-face conference to provide support and feedback on knowledge, skills and processes specific to this conference format.

This candidate **has/has not yet** demonstrated the competence required to be able to preside over conciliation processes without supervision.

Commentary on main competencies that were demonstrated

Commentary on competencies that were not yet demonstrated

Recommended further action/learning

	Assessor	Candidate	Candidate's Manager
Signature			
Date			