

ACBD

Always Consult Before Deciding, coined by Roger Fisher, stated to be the "pinnacle" principle of negotiation, method: don't ask for things, but rather first ask for advice. **ACBD** involves a "continuous process of consultation which always leaves the "final go ahead" right until the very end" (108).

AAT

Administrative Appeals Tribunal p. 159

ACAS

Advisory Conciliation and Arbitration Service

ACICA

Australian Centre of International Commercial Arbitration. 173

ACDC

Australian Commercial Dispute Centre

Who should be responsible for ADR standards in Australia?

- **Answer:** MSB – Mediation Standards Board (2010).

What role has government and government agencies played in developing standards and benchmarks for ADR processes?

Various government agencies at the Commonwealth, State and Territory levels provide a wide range of ADR services. For example, Equal Opportunity Commissions around the country provide mediation and conciliation services for disputes about unlawful discrimination. Workers compensation disputes are resolved using ADR procedures, usually conciliation, through such organisations as WorkCover in Victoria. Legal aid commissions around the country are funded by the Commonwealth Government to deliver mediation and conferencing services for family disputes. Diversionary conferencing schemes operate in each of the States and Territories. The aim of conferencing is to divert offenders from the criminal justice system by offering them the opportunity to attend a conference to discuss and resolve the offence instead of being charged and appearing in court. These schemes vary from jurisdiction to jurisdiction in terms of eligibility, agency responsibility and legislative basis. Those conducting diversionary conferencing schemes include the police, justice authorities and community organisations. Governments have established various commissions and ombudsman offices, such as the Health Services Commissioner and the Legal Ombudsman in Victoria, to deal with disputes relating to particular professional services to the community. The Federal Private Health Insurance Ombudsman negotiates settlement of private health insurance complaints. **The objectives of governments** Governments have a wider set of immediate

objectives in promoting the use of ADR, because they view ADR in the broader context of the public interest. Governments are likely to have some or all of the following objectives:

- Fulfilling the government's responsibility for providing a system to resolve disputes in a constructive manner;
- Resolving conflicts which have arisen at the earliest appropriate time;
- Preventing conflicts from becoming socially disruptive;
- Achieving efficiencies in the provision of those dispute resolution services provided by the state;
- Reducing the demand for expensive dispute resolution services; and
- Ensuring parties make use of appropriate dispute resolution services.

Amiable compositor- parties agree to deal not with law but with justice

An amiable compositor under international law refers to an unbiased third party, often a king or an emperor who suggests solution to a dispute between countries. Amiable compositor acts as a mediator in a dispute between subjects of international law. Amiable compositor is also known as amiable compositeur. The concept of amiable compositor has its historical origins in French law. An amiable compositor acts as a conciliator rather than a decision-maker in a dispute. An amiable compositor is also not bound to apply strict rules of civil procedure and substantive law. An amiable compositor is also authorized to modify the effect of certain non-mandatory legal provisions. Traditionally, amiable compositor provided equity correction to strict rules of law. But today, an amiable compositor has the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness.

Ponki Mediation

Compare and contrast Ponki mediation to the mainstream form of mediation that we practice in Australia.

Ponki mediation is a process used by an Aboriginal Group in the Tiwi Islands. The word means the word means 'welcome' in the language of the Tiwi islands. It also means 'peace' or 'it's finished', and the word is also accompanied by body language, specifically a hand gesture, waving the hand away from the body.

It is a model developed to help long serving prisoners to reintegrate back into the community and helping youth stay out of jail.

The Ponki model uses a hybrid mediation model combining traditional Tiwi and contemporary mediation. It is a structured problem solving technique used to provide an opportunity for the elders of the Tiwi Islands to come to effectively a mediation, where the parties have an opportunity to talk about, in their own language, what happened (the facts of a case) and what life outside incarceration would look like and the support the offender will need when released.

It is a similar process to the mediation we practise in Australia, in that it ***addresses and removes the causes of conflict***, thereby repairing, or at least dignifying, the damaged relationships that are at the core of all disputes.

It also seems to comprise of the fundamental stages that are outlined in the facilitated mediation and directed mediation models. These include analysing the problem in the *“here and now”* and develop and implement *“go-forward”* solutions.

The similarities between the ponki mediation model and the western model are outlined in the table below.

“here and now” analysis	“go-forward” solutions
<ol style="list-style-type: none"> 1. Identify Issues - Situation and Needs Analysis – understand (without judgment) what is going on, what are the perceived problems and what are the parties’ apparent needs and interests? 2. Assess & Understand - Separate the people (ie: personalities and egos) from the problem (ie: the issues). De-construct and analyse the identified problem(s) by: <i>“going hard on the problem and easy on the people”</i>. 	<ol style="list-style-type: none"> 1. Generate Options– Examine possibilities and alternatives through a joint problem solving process. Again, “work <i>on</i> the problem, work <i>with</i> the people”. Generate options for solutions that could work – propositions the other party can easily say “yes” to. 2. Develop Agreement – craft the best and most attractive of the proposed solutions into a workable, written agreement. Produce the “best possible outcome” for everybody, under all the circumstances.

It also uses a co-mediation model, where Aboriginal and non-Aboriginal mediators ensure cultural relevancy of mediations and the non-Aboriginal mediator offering a layer of separateness from the parties.

More similarities:

- Someone presides over process.
- They have to be a trusted person
- Not necessarily neutral but play a leadership role in restoring trust or untangling a problem.

Profumo Affair

The **Profumo affair** was a British political scandal that originated with a brief sexual relationship in 1961 between [John Profumo](#), the [Secretary of State for War](#) in [Harold Macmillan](#)'s government, and [Christine Keeler](#), a 19-year-old would-be model. In March 1963 Profumo denied any impropriety in a personal statement[n 1] to the [House of Commons](#), but was forced to admit the truth a few weeks later. He resigned from the government and from Parliament. The repercussions of the affair severely damaged Macmillan's self-confidence, and he resigned as prime minister on health grounds in October 1963. His [Conservative Party](#) was marked by the scandal, which may have contributed to its defeat by [Labour](#) in the [1964 general election](#).