

Alternative Dispute Resolution in Employment Disputes: A Comparative Analysis of Malaysia, United Kingdom and Australia

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ABSTRACT

This article employs a purposive comparative methodology to examine Alternative Dispute Resolution (ADR) mechanisms in employment disputes across Malaysia, the United Kingdom, and Australia, covering developments from 2015 to 2026. Jurisdictions were selected on four criteria: common law heritage, institutionally developed ADR statutory frameworks, comparable industrial relations architectures, and relevance to reform priorities in developing economies. Each system is evaluated across five dimensions: institutional framework, legislative basis, empirical effectiveness, access to justice, and reform potential. The United Kingdom's Advisory, Conciliation and Arbitration Service (ACAS) operates a centralized mandatory early conciliation model processing over 92,000 notifications annually with high documented settlement rates, demonstrating measurable cost savings relative to employment tribunal proceedings. Australia's Fair Work Commission employs a hybrid tribunal-based system combining statutory conciliation with accredited private ADR providers, offering strong outcome transparency and mediator regulation. In contrast, Malaysia's framework under the Industrial Relations Act 1967 confronts compounding institutional and socio-legal constraints: the Department of Industrial Relations Malaysia (DIRM) operates under chronic budgetary limitations, lacks a digital case-management portal, and faces significant rural access gaps. These structural deficits intersect with entrenched cultural norms including *maruah* (face-saving), hierarchical deference to authority, legal pluralism affecting migrant workers, and reluctance to escalate workplace grievances that shape how parties engage with formal dispute resolution. Critical scholarship warns that unchecked ADR expansion without adequate procedural safeguards risks marginalising substantive employment law development and limiting access to justice for structurally disadvantaged claimants. This study relies on doctrinal analysis and secondary empirical sources; primary data collection through mediator interviews or employer surveys is beyond its scope and is recommended as a priority for future empirical research. The comparative findings identify transferable institutional reforms mandatory pre-claim conciliation, mediator accreditation, transparent outcome reporting, and preservation of adjudicative pathways to strengthen Malaysia's employment ADR framework.

Keywords: Conciliation and Arbitration Service (ACAS), Fair Work Commission (FWC), Malaysia, United Kingdom, Australia

INTRODUCTION

Employment disputes impose significant economic and social costs, including litigation expenses, workplace disruption, and damaged employment relationships. Alternative Dispute Resolution (ADR) mechanisms that encompassing mediation, conciliation, and arbitration have emerged as essential components of modern employment law systems, offering faster, less adversarial, and potentially more cost-effective pathways than traditional litigation (Williams, 2023). This article critically examines ADR effectiveness in three common law jurisdictions: Malaysia, the United Kingdom, and Australia, with emphasis on recent developments between 2015 and 2026.

The comparative analysis addresses three research questions: (1) What are the inadequacies in Malaysia's Industrial Relations Act 1967 regarding ADR protection for parties in employment disputes? (2) How do the UK and Australia regulate ADR in employment disputes? (3) What legal reforms could enhance Malaysia's ADR

framework? By examining institutional structures, statutory frameworks, empirical effectiveness data, and critical scholarship, this article identifies transferable best practices while acknowledging jurisdiction-specific contextual factors.

METHODOLOGY

Jurisdiction Selection

This article employs a purposive comparative methodology, selecting three jurisdictions on the basis of four criteria: (1) common law heritage, which facilitates meaningful legal comparison; (2) differential ADR development stage, enabling identification of evolutionary pathways; (3) significant legislative changes in the period 2015–2026, ensuring contemporaneous relevance; and (4) reference jurisdiction relevance to Malaysian policymakers and legal reformers. The United Kingdom represents a mature mandatory conciliation model; Australia exemplifies an integrated tribunal-based hybrid system; and Malaysia serves as the reforming jurisdiction under examination.

Analytical Framework and Evaluation Criteria

The comparative analysis is structured around five evaluative dimensions: (1) statutory architecture, examining the legislative framework and scope of ADR obligations; (2) institutional capacity, assessing the organisational infrastructure supporting ADR delivery; (3) empirical effectiveness, drawing on available data concerning settlement rates, average processing times, user satisfaction scores, and cost-effectiveness metrics from ACAS (2023) and the Fair Work Commission (2024); (4) access to justice considerations, including geographic reach, affordability, and representation equality; and (5) legal development implications, evaluating the effect of ADR expansion on judicial precedent and rights articulation.

Data Sources and Limitations

The analysis draws on primary legal sources including legislation, case law, and official institutional reports from ACAS, the Fair Work Commission (FWC), and Malaysia's Department of Industrial Relations Malaysia (DIRM). Peer-reviewed scholarship published between 2015 and 2026 and policy documents such as the Taylor Review (2017) supplement the doctrinal analysis. A significant limitation of this study is the absence of primary empirical data. No interviews with DIRM conciliators, mediators, employers, or employees were conducted. Future research should address this gap through structured interviews with DIRM conciliators and workplace stakeholder surveys to evaluate procedural fairness perceptions and outcome satisfaction across the three systems.

COMPARATIVE LEGAL FRAMEWORKS

United Kingdom: Mandatory Early Conciliation Model

The UK employment dispute resolution system centres on ACAS, a statutory non-departmental public body with a duty to promote settlement of employment disputes (Mansfield et al., 2023). Since 2014, prospective claimants must engage in mandatory early conciliation before filing Employment Tribunal claims, fundamentally reshaping the dispute resolution landscape (Blake et al., 2023). This pre-claim intervention aims to resolve disputes before formal litigation commences.

The Employment Rights (Dispute Resolution) Act 1998 and Employment Act 2002 established the statutory framework for ACAS arbitration as a voluntary alternative to tribunal proceedings for unfair dismissal claims (Hardy et al., 2003). The protected conversation regime, introduced in 2013, permits pre-termination discussions between employers and employees that cannot be referenced in subsequent tribunal proceedings, facilitating settlement negotiations (Mansfield et al., 2023). Settlement agreements must meet specific statutory requirements, including independent legal advice to prevent claimants from pursuing tribunal claims (Mansfield et al., 2023).

Recent case law illustrates practical application. In *Mrs. E L Carpenter (née Spanswick) v. Seasalt Limited* (Case No. 6006215/2024), the Employment Tribunal examined whether ACAS early conciliation requirements were

properly satisfied before claim submission. Similarly, *Mr G Ford v. ABM Facility Services UK Limited* (Case No. 6004199/2024) addressed the interplay between early conciliation and protected conversations in constructive dismissal claims. These cases demonstrate judicial scrutiny of procedural compliance with mandatory ADR requirements.

Australia: Hybrid Tribunal and Private ADR System

Australia's Fair Work Act 2009 established a comprehensive dispute resolution framework administered by the Fair Work Commission (FWC), which replaced the Australian Industrial Relations Commission (MacDermott et al., 2011). The Act enshrines "general protections" against adverse action and discrimination, providing broad workplace rights enforceable through ADR processes before formal adjudication (MacDermott et al., 2011).

The FWC employs conciliation and mediation for individual workplace rights disputes, particularly unfair dismissal and general protections matters (Forbes-Mewett et al., 2005). Unlike the UK's mandatory pre-claim model, Australian ADR operates as an integrated tribunal function, with commissioners facilitating settlement before arbitration (Bray et al., 2019). The Workplace Relations Act 1996 curtailed traditional arbitral powers, emphasizing party responsibility for dispute resolution while maintaining tribunal intervention capacity (Forbes-Mewett et al., 2005).

Private ADR providers play an increasingly significant role under the Fair Work Act, though this privatization raises concerns about workplace rights protection and outcome enforceability (Riley, 2011). Recent cases demonstrate FWC's ADR application: *Ms Joanna Pascua v Doessel Group Pty Ltd* [2024] FWC 2669 involved conciliation of unfair dismissal claims, while *Ms Catherine Favaloro v MSCI Australia Pty Ltd* [2024] FWC 1508 addressed general protections disputes through mediation. The landmark case *Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836 examined employment status determination in the gig economy, highlighting ADR's role in emerging workplace issues.

Malaysia: Industrial Relations Act 1967 Framework

Malaysia's employment dispute resolution framework operates primarily through the Industrial Relations Act 1967, which establishes conciliation and arbitration mechanisms administered by the Department of Industrial Relations Malaysia (DIRM). The Act provides for conciliation of trade disputes and unfair dismissal claims, with unresolved matters referred to the Industrial Court for arbitration. The Code of Conduct for Industrial Harmony, while non-binding, provides guidelines for promoting sound industrial relations and amicable dispute resolution.

However, the Malaysian framework faces significant limitations. Unlike the UK's mandatory early conciliation or Australia's integrated tribunal system, Malaysia lacks comprehensive empirical data on ADR effectiveness, settlement rates, or outcome quality. The Industrial Relations Act 1967 does not mandate pre-litigation ADR for individual employment rights claims, potentially missing opportunities for early intervention. Recent Malaysian cases, *Andy Bachtar Ibrahim v. Pujangga Sari (M) Sdn Bhd* (2022), *Alex Aloysius Quah v. Oriental Summit Industries Sdn. Bhd* (2011), and *Aznam Bin Rahim & 11 Others v. Oriental Summit Industries Sdn. Bhd* (2013), illustrate Industrial Court arbitration practice, but published decisions provide limited insight into conciliation processes or settlement outcomes.

Beyond statutory deficiencies, the Malaysian ADR landscape is shaped by distinctive socio-legal conditions that complicate the transplantation of UK or Australian models. Hierarchical deference rooted in workplace cultures that discourage direct confrontation with employers may suppress utilisation of conciliation mechanisms among lower-income workers. The concept of *maruah* (dignity preserving conduct) further influences dispute behaviour, with some parties preferring informal resolution over formal ADR processes that may expose grievances publicly. Migrant workers, who constitute a significant proportion of Malaysia's labour force, face compounded barriers including language limitations, fear of immigration consequences, and lack of awareness of rights under the Industrial Relations Act 1967. Malaysia's pluralistic legal landscape encompassing federal labour law, state-level variations, and sector-specific exemptions which creates additional inconsistency in ADR access and quality. These contextual factors counsel caution against wholesale transplantation of ACAS or FWC institutional models without substantive adaptation to Malaysian socio-legal realities.

INSTITUTIONAL MECHANISMS AND IMPLEMENTATION

ACAS: Centralized Early Intervention Model

ACAS operates as the UK's primary employment ADR institution, providing early conciliation, workplace mediation, collective conciliation, and voluntary arbitration services (Jones et al., 1983). The Taylor Review documented ACAS's operational scale: in 2016/17, ACAS handled approximately 900,000 helpline calls, 500,000 online queries, 92,000 early conciliation notifications, and 744 collective disputes (Taylor et al., 2017). This high-volume throughput demonstrates both the demand for ADR services and the capacity challenges facing centralized systems.

Early conciliation operates through a structured process: prospective claimants notify ACAS before filing tribunal claims, triggering a conciliation period during which ACAS officers facilitate settlement discussions (Blake et al., 2023). If settlement is not achieved, ACAS issues an early conciliation certificate permitting tribunal claim submission. The process is free, confidential, and typically completed within one month (Blake et al., 2023). ACAS conciliated agreements have contractual effect and, if properly executed, prevent subsequent tribunal claims (Mansfield et al., 2023).

For collective disputes, ACAS provides conciliation and mediation services on a voluntary basis, with high reported satisfaction rates (Potocnik et al., 2019). The distinction between conciliation (where the conciliator may suggest settlement terms) and mediation (where the mediator facilitates party-generated solutions without recommendations) reflects different intervention levels appropriate to dispute contexts (Potocnik et al., 2019).

Fair Work Commission: Integrated Tribunal ADR

The Fair Work Commission combines adjudicative and facilitative functions, with commissioners conducting conciliation and mediation before exercising arbitral powers (MacDermott et al., 2011). This integrated model differs from the UK's pre-claim separation of ADR and adjudication. For unfair dismissal claims, the FWC typically schedules conciliation conferences where commissioners explore settlement possibilities before formal hearings (Hampton, 2016).

The FWC's approach to general protections disputes covering discrimination, adverse action, and workplace rights violations that emphasizes early resolution through conciliation (MacDermott et al., 2011). Commissioners possess broad discretion to tailor ADR processes to dispute characteristics, including relationship repair objectives, power imbalances, and legal complexity (Forbes-Mewett et al., 2005). This flexibility enables responsive dispute management but may create inconsistency in process application.

Australian practitioners strongly support tribunal intervention in dispute resolution, with many employers favouring more interventionist approaches despite legislative emphasis on party responsibility (Forbes-Mewett et al., 2005). This suggests that effective ADR requires skilled neutral facilitators rather than purely party-driven negotiation, particularly where power imbalances exist.

Malaysia: DIRM and Industrial Court

The Department of Industrial Relations Malaysia (DIRM) administers conciliation services for trade disputes and individual employment claims under the Industrial Relations Act 1967. Conciliation officers facilitate settlement discussions, with unresolved disputes referred to the Industrial Court for arbitration. However, unlike ACAS or the FWC, DIRM does not publish comprehensive operational statistics, settlement rates, or effectiveness metrics, limiting evidence-based assessment of ADR performance.

The Industrial Court exercises arbitral jurisdiction over trade disputes and unfair dismissal claims, issuing binding awards. While the Court's adjudicative function is well-established, its role in facilitating settlement before arbitration is less developed than the FWC's integrated model. The absence of mandatory pre-claim conciliation means many disputes proceed directly to Industrial Court arbitration without early intervention opportunities.

The institutional capacity of DIRM remains a critical implementation constraint. Operating across 13 states and three Federal Territories, DIRM's conciliation infrastructure is widely regarded as understaffed relative to the volume of disputes generated by Malaysia's expanding gig economy and informal labour sector. Unlike ACAS, which maintains a dedicated professional development framework, or the FWC, which operates structured mediator accreditation and benchmarking programmes, DIRM has no comparable continuing professional development (CPD) scheme or publicly reported performance benchmarking. The dual role of DIRM officers performing both conciliation and administrative functions generate risks perceived neutrality tensions that undermine disputant confidence in the conciliation process. Without investment in institutional capacity, regulatory reform alone cannot deliver the settlement rate improvements observed in the UK (ACAS, 2023) or Australia (FWC, 2024).

EFFECTIVENESS AND EMPIRICAL EVIDENCE

United Kingdom: Settlement Rates and Outcomes

Empirical evidence on UK ADR effectiveness presents a mixed picture. The Taylor Review reported that in 2015-2016, 17% of early conciliation notifications resulted in formal ACAS-conciliated settlements, while 65% of cases did not progress to Employment Tribunal claims (Taylor et al., 2017), (Blackham et al., 2019). This suggests that early conciliation achieves dispute resolution, whether through settlement, withdrawal, or abandonment, in a substantial majority of cases, significantly reducing tribunal caseloads.

However, critical analysis reveals concerns about settlement quality and access to justice. Blackham et al. (2019) found that most settlements involve financial compensation, often at lower amounts than tribunal awards, and rarely include systemic remedies or policy changes. The confidentiality of settlement terms prevents public accountability and limits precedent development in discrimination and employment law (Blackham et al., 2019). Furthermore, the mandatory nature of early conciliation may pressure unrepresented claimants into unfavourable settlements, particularly where power imbalances favour employers (Dupont et al., 2018).

Updated data from the ACAS Economic Impact Report 2023 to 2024 provides more recent evidence of early conciliation performance. Of 104,884 early conciliation notifications received in 2023-24, an estimated 20,067 resulted in formal COT3 conciliated agreements, representing a 19.1% formal settlement rate (Urwin, Saundry and Saundry, 2024). More significantly, an estimated 76,894 notifications, approximately 73.3% of all cases did not progress to Employment Tribunal claims, whether through formal settlement, withdrawal, or abandonment attributable to ACAS intervention (Urwin, Saundry and Saundry, 2024). The total estimated economic benefit of ACAS individual and collective conciliation in 2023-2024 reached £208 million, yielding a benefit-to-cost ratio of 5.6:1 against the cost of running the service; of this, £114 million was attributable to savings in management and staff time alone, and a further 17% of employers reported that ACAS conciliation prevented recurrence of similar disputes (Urwin, Saundry and Saundry, 2024). By 2025-2026, ACAS was handling over 150,000 individual conciliation cases annually, with the majority resolved before reaching a tribunal, and achieved resolution or progression towards settlement in 93% of the 400 collective disputes referred in that year (ACAS, 2026). These figures confirm that early conciliation's aggregate dispute-diversion effect suppressing approximately three-quarters of potential tribunal claims have delivers substantial systemic value well beyond its formal settlement rate.

ACAS collective conciliation demonstrates higher satisfaction rates: 89% of employees and 82% of managers reported satisfaction with ACAS services in 2007, with 76% of users reporting successful outcomes and 91% of agreements fully implemented (Potocnik et al., 2019). ACAS intervention in 14 key collective disputes avoided an estimated £255.3 million in economic losses (Potocnik et al., 2019). These figures suggest that voluntary, facilitated ADR for collective disputes achieves both high satisfaction and substantial economic benefits.

Australia: Conciliation Success and Privatization Concerns

Australian ADR effectiveness data shows that 72% of federal discrimination claims were successfully resolved through conciliation in 2014-2015 (Blackham et al., 2019). The Fair Work Commission's integrated conciliation model achieves dispute resolution in a majority of unfair dismissal and general protections matters before formal

arbitration. Practitioners report strong support for tribunal intervention, focusing on outcomes rather than specific processes (Forbes-Mewett et al., 2005).

However, the growing role of private ADR providers raises regulatory concerns. Riley (2011) argues that privatization of workplace dispute resolution risks compromising recognition of important workplace rights without adequate regulatory safeguards. Private mediators may lack employment law expertise, operate without transparency or accountability mechanisms, and prioritize settlement over rights vindication (Riley, 2011). The Fair Work Act's permissive approach to private ADR, while offering flexibility, requires stronger regulation to ensure quality, enforceability, and rights protection (Riley, 2011).

Comparative analysis by Blackham et al. (2019) highlights that while Australian ADR achieves higher settlement rates than the UK (72% versus 17% formal settlements), both jurisdictions face similar challenges: settlements typically involve lower compensation than adjudicated outcomes, confidentiality limits legal development, and systemic discrimination issues rarely receive remediation through ADR.

More recent data from the Fair Work Commission reinforces the effectiveness of Australia's integrated conciliation model. In 2024–2025, the FWC reported an 87% positive user experience rating across unfair dismissal and general protections conciliation, incorporating specific measures of conciliator impartiality (86.3%), overall satisfaction with case handling (82.3%), and satisfaction with timeliness (87.2%), all exceeding the Commission's 75% positive-rating target (Fair Work Commission, 2025). Of 44,075 total lodgements in 2024–2025, the Commission achieved a 98% clearance rate, with 81% of all matters finalised within eight weeks of lodgement and 50% within five weeks (Fair Work Commission, 2025). The scale of pre-hearing resolution is illustrated by hearing outcome data: in 2023–2024, only 265 unfair dismissal applications proceeded to a formal hearing decision from the thousands lodged annually, indicating that the overwhelming majority are resolved through staff conciliation conferences before arbitration (Fair Work Commission, 2024). Unfair dismissal constituted 37% of the Commission's caseload in 2024–2025, with general protections (involving dismissal) representing a further 14%, and approximately 13,800 staff conciliation processes were conducted for these combined categories in that year (Fair Work Commission, 2025). For cases that did proceed to hearing, median compensation remained between five and seven weeks' pay, with fewer than 0.4% of applicants receiving the maximum statutory compensation cap (Fair Work Commission, 2026). These statistics confirm that the FWC's integrated model delivers high-volume, timely, and user-endorsed dispute resolution, though the access and power-imbalance concerns identified by Riley (2011) and Blackham et al. (2019) remain relevant policy considerations.

Malaysia: Evidence Gaps and Implementation Challenges

Malaysia's ADR effectiveness remains inadequately documented. The Industrial Relations Act 1967 framework lacks published data on conciliation settlement rates, case processing times, party satisfaction, or comparative outcomes between conciliated settlements and Industrial Court awards. This evidence gap prevents rigorous assessment of ADR performance and limits evidence-based policy development.

Notwithstanding these documentation gaps, official statistics from the Department of Industrial Relations Malaysia (JPPM) provide emerging empirical grounding for assessing conciliation performance within the domestic framework. Under Section 20 of the Industrial Relations Act 1967, JPPM received 3,914 unfair dismissal representations in 2023, with 4,299 cases resolved out of 5,218 cases dealt during that year, a resolution rate of 82.39%, representing a significant improvement from 72.96% in 2022 (Department of Industrial Relations Malaysia, 2024). Of the cases resolved in 2023, 2,806 were settled through conciliation (*rundingan damai*) at JPPM level, while a further 1,493 were referred onwards to the Industrial Court for arbitration; the total value of ex-gratia payments secured through conciliation settlements in 2023 reached RM 66.1 million (Department of Industrial Relations Malaysia, 2024). For trade disputes arising under Sections 8, 13, and 18 of the Act, JPPM achieved a combined conciliation resolution rate of 79% across 216 settled cases in the same year (Department of Industrial Relations Malaysia, 2024). A 2024 case management study commissioned by the Department of Statistics Malaysia independently found that 86.94% of 53,024 dismissal cases received at the Industrial Court between 2019 and 2023 were ultimately resolved, with 8,020 court-level mediation sessions conducted during that period, of which 80.96% were led by the Court's own Chairman (Department of Statistics Malaysia, 2025).

JPPM advisory and counselling services reached 51,012 parties in 2023, and the Department's Industrial Harmony Index registered 78.9 per cent in that year, classified as a 'good level' of employer-employee relations (Department of Industrial Relations Malaysia, 2024). Despite these encouraging indicators, the absence of published data on average case processing times, user satisfaction, or cost-effectiveness metrics where figures routinely reported by ACAS and the Fair Work Commission remains a significant limitation, constraining robust comparative assessment and hampering evidence-based policy reform.

The absence of mandatory pre-claim conciliation means many disputes proceed directly to Industrial Court arbitration without early intervention opportunities. While the Industrial Court's arbitral function provides binding dispute resolution, the lack of integrated conciliation before arbitration may miss opportunities for relationship repair, cost reduction, and expedited resolution. Furthermore, the Code of Conduct for Industrial Harmony's non-binding status limits its practical impact on dispute prevention and early resolution.

These structural deficiencies are compounded by resource and socio-behavioural constraints. Budgetary limitations restrict DIRM's ability to extend conciliation services to rural and semi-urban areas, creating a geographic disparity in ADR access that disadvantages workers outside major industrial centres. The absence of an online conciliation platform in contrast with ACAS's digital early conciliation portal, which processed over 100,000 notifications in 2022–2023 further restricts accessibility for geographically dispersed or mobility-constrained claimants. Among migrant and low-income workers, authority deference and risk aversion significantly reduce willingness to initiate formal conciliation, even where entitlements exist. Power asymmetry is a persistent concern: employers in Malaysia routinely engage legal representatives in Industrial Court proceedings, while individual employees often appear alone and unrepresented, undermining the equality of arms that effective ADR requires. Addressing these compounding constraints demands not only legislative reform but sustained institutional investment, public legal education, and targeted outreach to vulnerable worker populations.

CRITICAL ANALYSIS AND CHALLENGES

Access to Justice and Power Imbalances

Critical scholarship raises fundamental concerns about ADR's impact on access to justice in employment disputes. Dupont et al. (2018) argue that UK ADR expansion, particularly mandatory early conciliation, may promote "access to injustice" by diverting cases from tribunals without adequate safeguards for vulnerable claimants. Power imbalances between employers and employees, including resource disparities, legal representation access, and information asymmetries, can result in coerced or unfavourable settlements (Dupont et al., 2018).

Blackham et al. (2019) identify five key risks of extensive ADR reliance: (1) reinforcement of power imbalances leading to "second class justice"; (2) confidentiality preventing public accountability and legal development; (3) lower settlement amounts compared to adjudicated outcomes; (4) rare systemic remedies or policy changes; and (5) limited precedent development in discrimination and employment law. These concerns apply across all three jurisdictions examined, though institutional variations affect risk severity.

The UK's mandatory early conciliation model particularly raises access to justice concerns. Unrepresented claimants who constitute the majority of Employment Tribunal claimants may lack capacity to assess settlement fairness, understand legal rights, or negotiate effectively with represented employers (Dupont et al., 2018). While ACAS officers provide impartial facilitation, they do not offer legal advice or advocate for claimants, potentially leaving vulnerable parties without adequate protection.

Legal Development and Precedent Erosion

ADR's confidential, settlement-focused nature limits public law development and precedent creation (Blackham et al., 2019). Employment and discrimination law evolve through judicial interpretation of statutory provisions, establishing precedents that clarify rights, define prohibited conduct, and guide future behaviour. When disputes settle privately through ADR, these precedent-setting opportunities disappear, potentially stagnating legal development (Blackham et al., 2019).

This concern is particularly acute for discrimination claims, where systemic issues require public adjudication to establish legal standards and deter future violations (Blackham et al., 2019). Confidential settlements may resolve individual complaints without addressing underlying discriminatory practices, perpetuating systemic inequality. Furthermore, the absence of published outcomes prevents researchers, policymakers, and practitioners from assessing discrimination patterns, settlement adequacy, or ADR effectiveness (Blackham et al., 2019).

Dolder (2004) cautions that mediation's incorporation into employment dispute resolution, while offering benefits, must not merely add procedural layers or facilitate settlement for tactical reasons. Effective ADR requires careful dispute classification, appropriate process selection, and preservation of adjudicative pathways for cases requiring legal clarification or public precedent (Dolder, 2004).

Mediator Quality and Regulation

The quality and regulation of mediators and conciliators significantly affect ADR effectiveness and fairness. Hasbi et al. (2024) conducted comparative analysis of mediator regulation in Indonesia and the UK, identifying critical regulatory elements: mediator training and accreditation standards, ethical guidelines, confidentiality frameworks, enforceability of mediated agreements, and case reporting mechanisms. Their findings emphasize that robust regulatory environments enhance mediation credibility, increase party willingness to engage, and improve dispute resolution outcomes (Hasbi et al., 2024).

The UK benefits from established ACAS conciliator training, quality assurance, and professional standards, though private mediators operate with less regulatory oversight (Hasbi et al., 2024). Australia's mediator regulation varies between tribunal-employed commissioners (who receive specialized training) and private providers (who face minimal regulatory requirements) (Riley, 2011). Malaysia lacks comprehensive mediator accreditation, continuing professional development requirements, or quality assurance mechanisms for employment dispute mediators.

Hasbi et al. (2024) recommend: (1) comprehensive national standards for mediator qualifications and continuous professional development; (2) specialized tribunals or procedures for efficient enforcement of mediated agreements; (3) balanced confidentiality and transparency frameworks; (4) regulated case reporting systems; and (5) harmonized ethical guidelines. These recommendations provide a roadmap for strengthening mediator regulation across jurisdictions.

RECOMMENDATIONS FOR MALAYSIA

Based on comparative analysis and critical scholarship, this article proposes five key reforms to strengthen Malaysia's ADR framework:

Implement Mandatory Pre-Claim Conciliation

Malaysia should adopt mandatory pre-claim conciliation for individual employment disputes, modelled on the UK's early conciliation system but adapted to Malaysian context. This reform would require prospective claimants to engage with DIRM conciliation services before filing Industrial Court claims, creating early intervention opportunities and reducing tribunal caseloads. The conciliation period should be time-limited (e.g., 30 days) to prevent undue delay, with certificates issued to permit claim filing if settlement is not achieved.

Establish Comprehensive Mediator Regulation

Malaysia should develop national standards for employment mediator accreditation, training, and ethical conduct. This regulatory framework should include: (1) minimum qualifications combining employment law knowledge and mediation skills; (2) mandatory initial training and continuing professional development; (3) ethical guidelines addressing impartiality, confidentiality, and conflict of interest; (4) quality assurance mechanisms including performance monitoring and complaint procedures; and (5) public registration of accredited mediators (Hasbi et al., 2024).

Enhance Transparency and Outcome Reporting

To address evidence gaps and enable evidence-based policy development, DIRM should publish annual statistics on conciliation activities, including case volumes, settlement rates, processing times, party satisfaction surveys, and outcome types. While maintaining individual case confidentiality, aggregated data should be publicly available to inform research, policy evaluation, and continuous improvement. This transparency would also enhance public confidence in ADR processes (Blackham et al., 2019).

Strengthen Settlement Agreement Enforceability

Malaysia should clarify the legal status and enforceability of conciliated settlement agreements. Drawing on UK precedent, legislation should specify that properly executed settlement agreements prevent subsequent Industrial Court claims, while establishing grounds for setting aside agreements (e.g., mistake, misrepresentation, duress, undue influence). Requirements for independent legal advice before signing settlement agreements would protect vulnerable parties while ensuring informed consent (Mansfield et al., 2023).

Preserve Adjudicative Pathways for Precedent Development

To balance ADR benefits with legal development needs, Malaysia should establish mechanisms for referring significant cases to Industrial Court adjudication despite settlement potential. Criteria might include novel legal issues, systemic discrimination allegations, public interest considerations, or cases requiring precedent clarification. This approach, recommended by Blackham et al. (2019), ensures that ADR expansion does not erode employment law development or public accountability.

CONCLUSION

This comparative analysis demonstrates that effective ADR in employment disputes requires more than statutory authorization of mediation, conciliation, and arbitration. The UK's centralized, mandatory early conciliation model achieves high dispute diversion rates but raises access to justice concerns for unrepresented claimants. Australia's integrated tribunal ADR system combines facilitation and adjudication effectively, though privatization trends require stronger regulation. Malaysia's Industrial Relations Act 1967 framework, while establishing basic ADR mechanisms, lacks mandatory pre-claim intervention, comprehensive mediator regulation, transparency in outcomes, and empirical effectiveness data. Recent scholarship from 2015 to 2026 emphasizes that ADR expansion without adequate safeguards risks undermining substantive employment law development, reinforcing power imbalances, and creating "second class justice" for vulnerable workers. Effective ADR systems require: (1) mandatory early intervention to maximize settlement opportunities; (2) robust mediator training, accreditation, and ethical standards; (3) transparent outcome reporting enabling evidence-based evaluation; (4) enforceable settlement agreements with procedural safeguards; and (5) preserved adjudicative pathways for precedent development and systemic issues. Malaysia can strengthen its ADR framework by adopting these best practices while adapting them to local context. Implementing mandatory pre-claim conciliation, establishing comprehensive mediator regulation, enhancing transparency, strengthening settlement enforceability, and preserving adjudicative pathways would position Malaysia's employment dispute resolution system among international best practices. These reforms require legislative amendment, institutional capacity building, and sustained commitment to evidence-based policy development. The comparative lessons from the UK and Australia provide valuable guidance, while critical scholarship highlights pitfalls to avoid. With thoughtful implementation, Malaysia can develop an ADR system that balances efficiency, fairness, access to justice, and legal development that ultimately serving the interests of employers, employees and society.

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