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CONFLICT RESOLUTION SERVICE

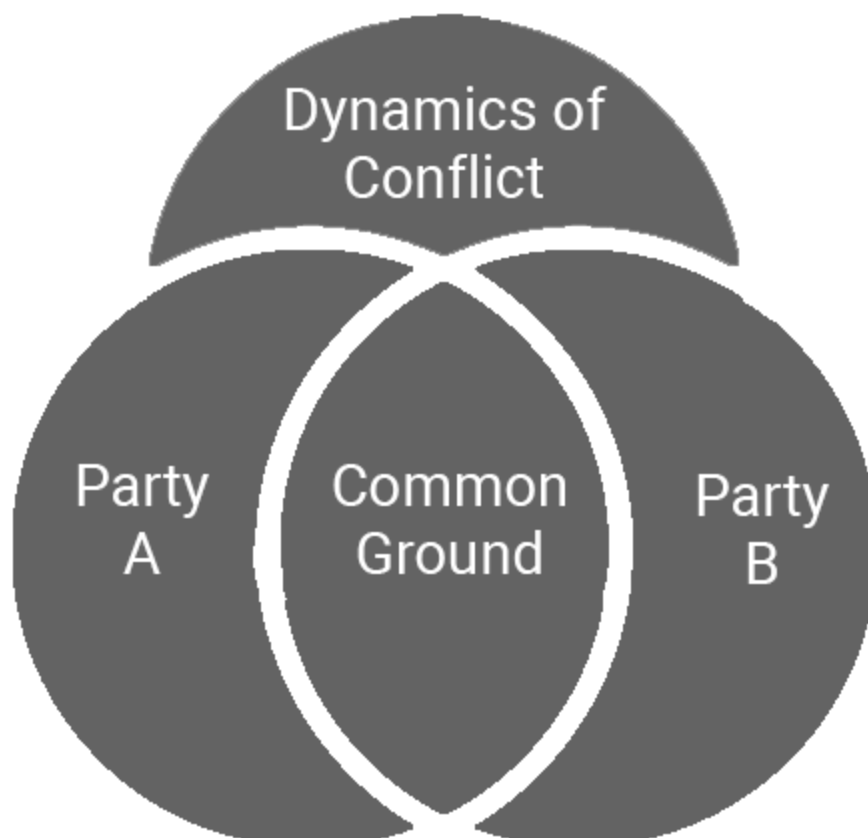
MEDIATION TRAINING

What is Mediation?

“A process in which the participants, with the support of a mediator, identify issues, develop options, consider alternatives and make decisions about future actions and outcomes. The mediator acts as a third party to assist the participants to reach their decision.” (National Mediation Accreditation System 2012)

Dynamics of Conflict

Conflict can escalate when parties have competing needs and solutions, neither has the power to impose a unilateral solution, and they seek a competitive solution to the issue. Conflicts relate to underlying differences and struggles between competing human needs. Disputes can be described as a formalised conflict with recognisable parties and positions.



The role and responsibilities of a mediator

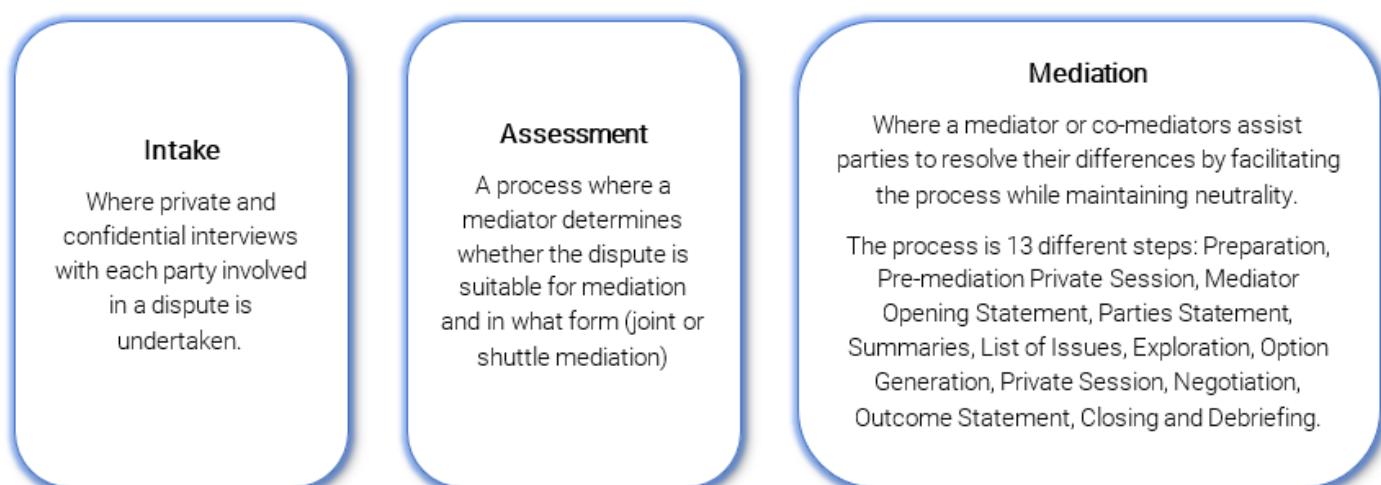
The role of the mediator includes:

- Ensure impartiality and neutrality.
- Maintain confidentiality.
- Not to take sides, generate options or give advice.
- Ensure ethical standards are adhered to.
- Facilitate the mediation process.

Mediators are responsible for:

- Creating and maintaining a safe environment for the parties to participate in the mediation process.
- Enabling parties to feel heard.
- Bring clarity to the situation between the parties.
- Promoting understanding between the parties about their dispute.
- Facilitating the discussion between the parties.
- Promoting creative problem solving between the parties. This includes asking open questions, hypotheticals, reframing.
- Ensuring that the mediation process is being used appropriately.
- Continuously assess the suitability of the mediation.

Overall Mediation Process



Mediation Process Breakdown

Preparation

The mediator checks the venue and arranges the room.

Mediator Opening Statement

Welcome/Introductions, explain the role of the mediator and explain the process.

Summaries

Mediator will read back the statements to both parties to clarify they have been heard correctly.

Exploration

Exploration by name, exploration by nature. This step is for the parties to speak directly with each other and explore the issues raised previously.

Private Session

Each party will speak privately with the mediator. Opportunity to check in and allow each party time to think on their own.

Outcome Statement

If any outcomes have been reached, this is the opportunity to confirm with the parties the wording and the fine details.

Debrief

Even though the mediation is over, it is important to debrief to ensure the mediator deals with emotional issues which may affect them.

Pre-Mediation Private Sessions

Private session with each party to check in and see if anything has changed since the intake and if they are feeling okay to proceed.

Parties Statement

Each party will briefly explain their side of the dispute to the mediator.

List of Issues

Create a list of the main issues established from summaries. This will act as a n agenda for the Mediation.

Option Generation

Opportunity for the parties to identify the scope of possible resolutions for each issue.

Negotiation

This is for the parties to make offers for settlement. The focus is on the future relationship and changed behaviour.

Closing

Ending the mediation appropriately. Regardless of the outcome, congratulate the parties in the progress made.

Intake

Intake and assessment are vital processes in ensuring that a dispute is suitable for mediation. Intake interviews are individual appointments with a mediator for each party involved in a dispute. By undertaking intake interviews, a mediator can achieve the following:

- 🕒 Identifying who is involved and how.
- 🕒 Gaining an understanding of the presenting and underlying issues.
- 🕒 Understanding the scope of what each party is seeking from mediation.
- 🕒 Noting any safety concerns or requests for support people or shuttle style mediation (when the parties are kept in separate rooms from each other).
- 🕒 Identifying any Court Orders and ensuring that any Order allows for mediation and whether there are any restrictions on what can be decided and consider any impact the Orders have on the mediation occurring.
- 🕒 Identifying what processes and/or referrals are needed and when. This may include legal advice, counselling, conflict coaching or educational program.
- 🕒 Identify whether parties have enough good will and are willing to engage in the mediation process.

Key Questions for Intake

Asking the right questions in an intake interview are helpful in gaining a better understanding of each parties perspective and assist in assessing whether the dispute is suitable for mediation. Key intake questions can include:

- 🕒 What brings you to mediation?
- 🕒 What are your goals for mediation?
- 🕒 What do you think the other person might say if I was to ask them that question? (This can be used at any number of times during intake to get an understanding of what a party perceives is the other party's perspective.)
- 🕒 Is there anything that could happen in mediation to make the situation worse? For example, if mediation is unsuccessful or does not go well, could there be consequences?
- 🕒 Do you have any safety concerns? If so, what will you need to do to feel/keep safe?
- 🕒 What is the communication between you and the other party like?
- 🕒 When do you think things deteriorated/changed?
- 🕒 Do you know what the other party is seeking from mediation? How does that sit with you?
- 🕒 What changes do you want to see be made? How can you assist in those outcomes?

Assessment

Once all intake interviews are conducted, the mediator can assess whether the dispute is suitable for mediation. The considerations when making an assessment may include but are not limited to:

- Whether there is a problem, dispute, or conflict present.
- Whether there are any other processes available to the parties that are more suitable.
- Whether the parties are wishing to mediate the same dispute.
- Whether there is any good will between the parties.
- Each party's willingness to engage in the mediation process.
- Whether there is any control or power imbalances that cannot be mitigated during mediation.
- Whether the parties have capacity to discuss issues and make decisions.
- Whether a party can represent their own interests.
- Whether either party can agree or disagree with the other without fear or repercussions.
- Who should participate in the mediation?

Not every dispute is suitable for mediation. A mediator must continuously assess whether a dispute remains suitable for mediation even after the initial assessment. A dispute may be or become unsuitable as a result of any of the following:

- Fear of or high risk of violence.
- Bad faith (not committed to the mediation process).
- Unwillingness to negotiate.
- Lack of any negotiation power (because of power imbalance between the parties).
- Duress.

If the above issues arise during a mediation, the mediator will need to assess whether the mediation should continue or be terminated appropriately. At the end of assessment, there will be one of 3 outcomes – mediation, shuttle mediation or the dispute will not go to mediation.

Establishing Authority during the mediation process

Mediator authority arises from the parties' desire to resolve their dispute with third party assistance – the parties give their power to the mediators to use wisely and effectively. This is the “contract” that enables mediators to control the process of mediation. During the mediation process, you must establish and maintain authority over the mediation process, while leaving the content discussed at mediation up to the parties.

Your authority arises from the process you are implementing and from the parties.

Mediation Process

Preparation

Preparation starts with the mediator arriving at the venue and checking/arranging the physical setting for the mediation. This includes where seats are placed and whether the room has tissues, water, and stationery.

Preparation may include:

- 🕒 Arriving 30 minutes before start.
- 🕒 Arranging seating (including distance). Ensuring parties have access to paper/pens, water/glasses and tissues.
- 🕒 Reading the brief. Read and consider intake brief or file information.
- 🕒 Declaring any conflict of interests.
- 🕒 Consider the room layout (windows/doors/whiteboard).
- 🕒 Decide who sits where to overcome any power imbalances.
- 🕒 Anticipate a written agreement from the outset.
- 🕒 Unexpected participants – check with both parties that their presence is acceptable.

Once a party arrives, welcome them, and explain the pre-mediation process. Each person will be seen separately with equal time. Invite the parties into the room individually with Party A first as they initiated the mediation process.

Pre-Mediation Private Session

The pre-mediation private session aims to:

- 🕒 Reaffirm and build upon the trust and rapport with each party.
- 🕒 Provide reassurance to the parties.
- 🕒 Clarify the roles of additional parties (such as a parent/guardian or support person present at shuttle mediation).
- 🕒 Confirm the willingness of the parties to participate in the mediation process.
- 🕒 Allow each party to express their concerns or fear.
- 🕒 Provide any new information to the mediation in relation to the dispute.
- 🕒 Continue to assess the suitability of the mediation to proceed.

As a guide, the mediator will need to cover the following during the pre-mediation private session:

- Note the time.
- Welcome the party and thank them for their attendance.
- Assure confidentiality. “This part is confidential/what is said will remain private. I will also be meeting with other party and similarly, that meeting will remain confidential.”
- Explain the purpose of the pre-mediation session, reinforcing that it is a short session, and that the discussion is not going into the details of the dispute yet.
- Check-in questions such as “How are you feeling about being in the same room as the other party today?” and “If you do not agree with something the other party says today, do you think you can say so?” and “How will you feel if they disagree with you today?”
- Ask whether there are changes to the circumstances since the last contact.
- Ask if there is anything non-negotiable or that they are not willing to discuss at mediation with the other party.
- Ask if the party has any questions.
- Remind the party that their session was private and confidential.

At the conclusion of the pre-mediation private session, ask the party to wait outside, showing them back to the waiting areas. Invite the other party into the meeting room and conduct the same pre-mediation session.

During the pre-mediation private session, ensure you are neutral and show empathy. Remind both parties of your role, noting that you are not a decision maker but rather there to facilitate a discussion between them. Remind both parties that the mediation process can at times be difficult, but they are to remain respectful and listen to the other party.

Once the pre-mediation private sessions have been conducted, invite the parties into the mediation room. Prior to addressing the mediator’s statement, provide the parties with information on what they can expect and go over the information from the consent forms.

Mediator Opening Statement

Every mediator has their own style and delivery of their mediator opening statement. The following is a guide as to what should be included in your opening statement:

- Mediation is voluntary.
 - “You have both chosen to be here today to discuss what has been happening and what you want to see for the future. If at any time, you wish to leave, you may do so but let me know and I will end the mediation appropriately.”

Confidentiality

- Mediation is confidential. “I will not disclose anything about you or this mediation without your consent. However, there may be some discussions which occur that require disclosure by law, such as concerns for a person’s life or safety of property being under serious and imminent threat.”

Role of mediator/s

- “My role as mediator is to support you to participate and reach mutual understandings where possible.”
- Neutral/will not take sides.
- Non-judgmental. “I won’t be giving advice on your situation now, past or future.”
- Mediator not to make suggestions or decisions for the parties.

Not a legal forum

- Cannot be used in evidence.
- Mediators cannot be called as witnesses, unless compelled by law.
- Legal advice to be sought if today’s outcome is to be made legally binding.
- Mediator will not provide any advice.

Describe the process

- Party Statements: Both have opportunity to briefly explain to the mediator what has happened and what they want to achieve today. Mediator will take notes, read back to the parties and check for accuracy.
- Cover ground rules including being respectful, listening to each other, no name calling or speaking rudely.
- List of Issues: An agenda will be developed from the party statements which will form the structure of the discussion. Further items can be added later.
- Exploration: “You will each have the opportunity to talk to each other about each issue in more detail, acknowledge the past and how you feel about what has happened and how it has brought you here.”
- Option Generation: “You will have the opportunity to brainstorm possible options to reach a settlement.”
- Private Session: “Following option generation, I’ll meet with each of you separately and check how you are both travelling.”
- Negotiation: “We’ll come back together, and you’ll be able to take the options generated and formulate proposals and negotiate a settlement.”

- Outcome: Any agreements to be recorded by the mediator.
- Closing.
- Ground Rules:
 - Important aspect is to listen and understand what the other person is saying.
 - Be respectful, avoid interruptions or using inappropriate language.
- Administration
 - “Please let me know if a break is needed at any time.”
 - Mediation is expected to take about 4 hours – is this ok?
 - Mobile phones to be turned off or to silent to minimise disruptions.
- Questions.

Party Statements

Party statements aim to:

- Provide an opportunity for parties to establish how each one sees the dispute, in the presence of the mediators and the other party.
- Ensure the mediator gains an understanding of the issue and scope of the dispute, as well as what is important to a party.
- Establish common ground that forms the basis of the discussions.

As a guide, party statements can be conducted as follows:

- Outline scope of what is being asked. “I am going to ask that both of you tell me briefly about what has brought you to mediation today and what you want to achieve. While one person is talking, the other is to listen without interruption but may take notes if needed.”
- Invite Party A first to speak directly to the mediator. Flag with the parties that you will take notes and that you may ask them to slow down or pause. “I will take notes of what you both say so I may need to ask you to pause or slow down to make sure I capture the issues that are important to you. After you have both spoken about the issues impacting you, I will summaries back to you what you have said and this will assist me in capturing the issues you need to discuss further.”
- At the end of the first statement, thank the party who gave the statement and also thank Party B for allowing the other party to speak.
- Ask the other party for their statement.

During this process, ensure the following:

- 🕒 You maintain eye contact and engagement.
- 🕒 You continue to control the process and deal with interruptions appropriately.
- 🕒 Discourage the parties in direct communication between each other.
- 🕒 Ask minimal clarifying questions.



Do not summarise the statements yet!

Summaries

Summaries aim to:

- 🕒 Demonstrate to the parties that they have been heard without judgment.
- 🕒 Allow the mediator to confirm and clarify details of the dispute.
- 🕒 Acknowledge the importance of feelings and facts.
- 🕒 Demonstrate using reported speech, ownership of the dispute and settlement is controlled by the parties.
- 🕒 Lay the foundations for the list of issues.

When summarising party statements ensure you use reported speech.

DO's	DON'Ts
	
<ul style="list-style-type: none"> - You said... - Then you said... - You went on to say... - You added... - You reported... 	<ul style="list-style-type: none"> - I think you said... - I think you meant to say... - I understand you feel... - It sounded like you were trying to say...

As a guide, the steps of summaries are as follows:

- 🕒 Thank both parties for contributing and listening to each other.
- 🕒 Mediators summarise Party A's statement.
- 🕒 After reading the statement, ask "Have I captured all the main things you were saying?"
- 🕒 Undertake the same task with Party B's statement.
- 🕒 Thereafter, start formulating the list of issues. You may need a bit of time, so you can advise the parties, "I will take a few minutes to finish drafting your list of issues and then share it with you. I will then write them on the white board behind me. The list of issues will then guide your discussion further but also gives us an agenda to ensure we haven't missed anything through the exploration part of the process."

List of Issues

Once you have formulated the list of issues, check with the parties that you have captured their concerns. You can say things such as, “You have both reported that XYZ is important to you, so the issue of “XYZ” is part of the list.” Explain each item on the list and seek an agreement from the parties.

You can also say, “Thank you for your contribution in creating the list of issues. This list of issues can be adjusted or added to at any stage of the mediation process. This list is aimed at providing you with a framework to be able to move forward with your discussion. The list will help guide the rest of your discussion today and we can add to the list as we go through the process. It will also assist you in generating options once we get to that stage of the mediation.”

Write the list of issues on the whiteboard and use as a check list during the exploration phase. Remember to use neutral language such as “relationship”, “communication” or “living arrangements”. More issues can be added as the Mediation progresses.

Exploration

Exploration by name, exploration by nature! This step in the process is about getting the parties to talk to each other to explore how and what happened in the past that has led them to their current situation. Your role as a mediator is to assist the parties to explore the issues they have had in the past, to gain mutual understanding about why these issues are still a problem now and to start focusing on how these issues can be resolved. The aim of exploration is to:

- 🌀 Establish constructive, direct dialogue between the parties in a safe and respectful setting.
- 🌀 Encourage the parties to hear, appreciate, and understand each other.
- 🌀 Allow parties to express their feelings and emotions.
- 🌀 Allow parties to deal with substantive and non-substantive issues in the dispute.
- 🌀 Allow parties to begin to take responsibility for the dispute and its resolution.
- 🌀 Prepare parties for interest-based negotiation.
- 🌀 Assist the mediator to understand the dispute and the parties to prepare for the remainder of the mediation.

When facilitating the exploration step in the mediation process, the mediator:

- 🌀 Establishes and controls constructive communication between the parties.
- 🌀 Assists the parties to state feelings and expectations, priorities and demands.
- 🌀 Assists the parties to explore underlying issues and deal with them.
- 🌀 Encourages understanding by the parties of the development of the dispute.
- 🌀 Acknowledges common ground between the parties.

To start the exploration step of the mediation process, the mediator will need to explain the stage and remind the parties of the ground rules regarding respectful communication. “Up until now, you have been talking directly to me. Now I would like you to talk directly to each other. Now is the time for you to talk to each other about the concerns you have raised. This may be challenging at times, but it is important that you both talk openly and respectfully with each other. This is your opportunity to ask questions of each other and to respond and share feelings and thoughts. This will help the both of you to understand what has brought you to this point today.”

You may also wish to remind the parties of your role during this step. “I will facilitate the discussion between the two of you and ensure that each of the list of issues is discussed. Again, my role is not to judge or take sides. But from time to time, I may intervene to highlight important aspects of your conversation or help you move along to a new topic.”

Use the list of issues as a guide to the discussion. You can suggest the order or let the parties come to an agreement.

When moving from issues once the conversation has run its course, you may say “The next item on your list is...” or “Tell Party A your concerns about ...”. Find the common ground between the parties, such as them both sharing a concern or frustration. “Based on your discussion, it sounds like you are both feeling frustrated about ABC and you both want to improve this aspect.”

To end the exploration step, thank the parties for their open discussion and recap what has been discussed. “Thank you for your open discussion and the respectful way you have done this. Before moving on to the next step, let me recap what you have been discussing.” Address each of the issues and summarise what the parties discussed before moving on to the next step.

Option Generation

Option generation is an opportunity for the parties to identify the scope of possible resolutions for each issue. Similar to the exploration step, your role as the mediator is to facilitate a discussion that is future, and outcome focused using the list of issues.

There are two possibilities when dealing with option generation:

1. The parties start the option generation step during the exploration step; or
2. The parties do not generate options during exploration and need assistance in starting the generating process.

If the parties have not generated any options during exploration, you will need to explain the process and start them off by saying, “You’ve explored all the issues in the previous step, going through the list again, what are some different options that you can both generate to try and resolve this dispute.” “Do either of you have any suggestions about future living arrangements?”

You may wish to use the white board to capture the options but remember to keep your engagement with the parties (eye contact, body language). Do not keep your back turned very long as the dynamics in the room may change.

Remind the parties that your role is not to option generate for them. This is their opportunity to “brainstorm” potential ideas to help resolve their dispute. Remember to continuously check the list of issues to make sure the parties have generated options for each issue. Remind the parties that this part of the process is not for them to negotiate. “This step in the process is to give you both an idea of what possible options that are available for the both of you to resolve your dispute and help you forward into the future. Once you have generated options, you will have a chance to think about them some more before negotiating the finer details.”

You may wish to have the parties write down the options for their own reflection if they are not otherwise on the whiteboard.

Once the parties have generated options, move to private session. “Thank you for your participation in generating options. Now is a good time to move to private session and for both of you to have a bit of a break from the process.”

Private Session

Private session is an opportunity for you to check in with each party and allow each of them time to think by themselves. It is similar to the pre-mediation session where the mediator meets with each party separately. The focus is on the parties experience of the mediation and provides an opportunity for the parties to discuss and reality test the options generated in a confidential environment without losing face. The private session also gives each party time alone for reflection.

While the private session occurs after option generating and before negotiation, there may be times when mediators will call additional private sessions (including during the exploration step of the process). This can occur if one of the parties is upset or if there has been serious disclosure. Further, depending on the circumstances, a mediator may deem it appropriate for the mediation to continue in a “shuttle” style for a period or for the balance of the mediation.

The aim of private session is to:

- 🌀 Enable the parties to speak freely, in private, without losing face, exposing a frailty or mistake, and without prejudice.
- 🌀 Enable the parties to explore the possibilities of settlement, with the assistance of the mediator, but in the absence of the other party.
- 🌀 Give the party who is not in the private session with the mediator, some time to contemplate the progress of the session alone, or with support people and to formulate proposals for settlement.
- 🌀 Ensure the parties feel they have been able to express their real concerns.

As the mediator, your objectives during the private session include:

- 🕒 To check in with each party and ensure that they can continue with the mediation process.
- 🕒 To ensure all aspects of the dispute have been fully aired by the parties.
- 🕒 To clarify details of the dispute, if needed and to ensure both parties are adequately negotiating on their own behalf.
- 🕒 To determine the needs of the individual parties.
- 🕒 To ascertain the base line of a party's willingness for agreement.
- 🕒 To explore the options generated by the parties and explore the scope for agreement.

To ensure equality, ask Party B to have the first private session as Party A had their party statement taken first. Ask Party A to wait in the waiting room and suggest that this is an opportunity for them to have a break. It is useful to ask the party waiting outside the room to think about what has happened during the mediation, what it is they want to achieve and ask them to write down any thoughts. Make a note of the time and aim to have equal time with both parties. During the private session, maintain control of the discussion by discussing one issue at a time. Check in with the party as to how they are travelling and how they think the mediation is going for them. Encourage mutual understanding by asking direct and clarifying questions while providing empathy and encouragement. Assist the party to get over any stalemate. During this step, you are also checking for hidden agendas. Remind the parties that these sessions are confidential, brief and the purpose of the session.

Suggested questions to ask include:

- 🕒 How is the mediation going for you?
- 🕒 Have you had the opportunity to say everything you need to say?
- 🕒 Do you feel ready to leave what happened in the past and move to the future?
- 🕒 What do you want to happen regarding...?
- 🕒 What are you prepared to do?
- 🕒 How might the other person respond?
- 🕒 What options do you think may work to achieve what you want?
- 🕒 If accepted, how will you manage?
- 🕒 If not accepted, what else can happen?

Assist with reality testing the options. These include:

- 🕒 Clarity: What are they able to negotiate? Can they make decisions?
- 🕒 Agent of reality: How realistic and practical?

- Hypothetical: Identify and address any potential issues. For example, “The option of communicating by email only was generated. How will that work in the event of an emergency?”
- Creativity: Assist the parties to think outside the box and remind them of common ground.
- Bottom line: BATNA & WATNA

During private session, be aware of the following things:

- New information and disclosure. These need to be explored particularly from the perspective of power imbalances, safety, and fear.
- Parties can become emotional at this stage of the mediation, particularly if there is still high conflict between the parties.
- Keep an eye on the time so both parties have equal time.
- Be mindful the other party is outside and consider what may be happening for them.
- Remember your role and responsibilities. It can be easy to slip into a counselling role!
- Be tactful and assertive with talkative parties so this step does not become long, or there is a substantial time imbalance between private sessions.

Undertake private sessions with both parties before bringing them back into the mediation room for negotiation. Remind the parties that the meetings held with each party are confidential.

Negotiation

The purpose of the negotiation step of the mediation is for the parties to make offers for settlement. Your role is to encourage the parties to creatively problem solve together to achieve realistic and workable outcomes. The focus of these discussions is on the future relationship and changed behaviour.

Explain to the parties, the focus on the negotiation step of the process. Change the focus from past discussions to future resolutions. “You have had the opportunity to talk about the issues that concerned you both. You have then been able to generate a number of different options together. I would like you to put the past behind you and look to the future. You are the only people who can resolve your dispute, and you both have expressed today that you wish to have it settled.”

Using the list of issues as a guide, ask the parties to present any proposals they wish to submit to the other. Let the parties enter into the negotiations and highlight points of agreement. If parties continue to disagree, ask them for alternate options. Move through the list of issues, writing up any agreements as you move through the list of issues.

Promote the parties to think creatively in their problem solving. Resist the temptation to offer solutions or alternatives. This is for the parties to undertake; you are facilitating the process only.

Confirm agreements with the parties and reality test. Using hypotheticals is a great tool for the parties to work on the finer details of their agreement. Questions can include, “What if this was to happen?” and “How would you see things?” and “Do you see any potential issues with this?” and “How would that affect things from your point of view?”

Should there be an impasse during negotiation, acknowledge what is happening and invite the parties to find a different way forward. This may include role reversal (having the parties stand in the other parties’ shoes and see the issue from a different perspective). While this may not be possible, park the issue and move on to another issue and return to the impasse later. You may find that once the parties are able to come to agreements on other issues, they may be able to work through a previous impasse.

Outcome

If any outcomes have been reached between the parties, this is the opportunity to confirm with them the wording and the fine details as to what has been agreed.

Thank the parties for their work and cooperation to date. Write down points of agreement and points of common ground recognised by the parties.

Start drafting the outcome statement and explain what you are doing. “I will write up an outcome statement for you as to what has been agreed today. This is not a legally binding document. You will need to seek legal advice for it to be converted into something binding. It may take me some time to write up the agreement, but it is worth having an accurate record of what was achieved today for you both to refer to. I will ask you to suggest wording for each clause that best captures what you have agreed to today.”

Tips and things to remember when writing an outcome statement:

- 🌀 Start the outcome statement with a mutual preamble and explain to the parties what it is. This is a general good will statement.
- 🌀 Ensure that the statement is balanced.
- 🌀 Are all the points covered?
- 🌀 Have I captured the agreement correctly?
- 🌀 Avoid writing in legalese.
- 🌀 Should not contain any clauses that have damaging admissions.
- 🌀 Use mutual, future focused language.
- 🌀 Use plain English.
- 🌀 Do not record, “Party A says... Party B says...”.
- 🌀 You may wish to preface a clause with a statement to provide context.
- 🌀 Outline progress to date and agreed further actions.

Once an outcome statement is drafted, read the agreement back to the parties and ensure it captures the agreement in its entirety. Make any changes if necessary and otherwise provide a copy to both to sign and date the agreement.

Closing

The mediation has come to an end and now is the time to end the mediation appropriately. Regardless of whether the mediation resulted in resolution, congratulate the parties in the progress made today and thank them for their time and effort.

Remind the parties to re-contact the service, if necessary. Assure both parties of confidentiality and explain what happens to the notes you have taken. As a general guide, mediators are not required to keep any notes other than a copy of any outcome statement. Notes taken during intake and during the mediation are to be destroyed. Ask if either party has any questions and otherwise thank them again and say your goodbyes.

Debrief

While the mediation might be over, as a mediator, you have one last task to undertake. After each mediation, it is important to debrief. The development of mediation skills, an individual's development as a mediator and their job satisfaction is closely tied to effective debriefing. The maintenance of "equilibrium" of mediators is dependent upon the opportunities for discussion presented in the debriefing process. Debriefing ensures that mediators deal with emotional issues which have affected them. Mediators should leave with a sense of the matter being concluded.

The aim of the debriefing process is to:

- Enhance individual development and job satisfaction.
- Give mediator the opportunity to deal with emotional issues that may have affected them.
- Enhance mediators understanding of the dispute process.
- Reflect of their own practices and areas of improvement.
- Uphold industry standards.

Questions to ask yourself while debriefing include:

- What happened in the mediation session?
- How do I feel about the mediation and the process?
- What went well in the mediation?
- What would I do differently next time?
- How can I improve my mediation skills in the future?

Debriefing is also an opportunity to reflect on the following:

- How the parties responded to the mediation process.
- What the parties' attitudes to each other were, and if/how these changed during the mediation process.
- What the parties' needs, and interests were.
- If there were any hidden agendas.
- Reflecting on any power imbalances and negotiating advantages.
- The nature of the conflict between the parties and the degree to which it was resolved. If the issues were not, or not completely resolved, what would need to happen for them to be resolved?

Different forms of Mediation

There are two main forms of mediation being, joint and shuttle. Either of these two types of mediation can involve a sole mediator or co-mediators.

When co-mediating, it is vital that co-mediators adequately prepare themselves as well as work out their plan for the conduct of the mediation regardless if it is a joint session or shuttle style. This includes getting to know your co-mediator, identifying each other's strengths, areas for improvement and a breakdown of what each mediator will undertake during the mediation. The breakdown in roles can be formalised or fluid in nature.

Co-Mediating Joint Sessions

The following table provides an example of how co-mediators can divide each step of the process to ensure the smooth running of a joint session mediation:

Step of the Mediation Process	Mediator A	Mediator B
Preparation	Jointly	Jointly
Pre-Mediation Private Session	Jointly but taking the lead with Party A	Jointly but taking the lead with Party B
Mediator's Opening Statement	Mediator A delivering the statement	Mediator B adding anything at the end if omitted by Mediator A
Party Statements and Summaries		Mediator B taking both statements and summarising
List of Issues	Mediator A formulates the list of issues	
Exploration	Jointly	Jointly
Option Generation	Jointly	Jointly
Private Session	Jointly but taking the lead with Party B	Jointly but taking the lead with Party A
Negotiation	Jointly	Jointly
Outcome Statement	Mediator A writing up the agreement	
Closing		Mediator B taking the lead
Debriefing	Jointly	Jointly

This table is by no means the only way to conduct a co-mediation but is an example of how each step can be shared or lead by one mediator. Each mediator has their own style, and it is important to be able to work collaboratively.

Tips for co-mediating joint session:

- You may wish to call for more breaks during a joint session mediation. This is so you can speak to your co-mediator in the absence of the parties to discuss issues that may arise from time to time (this may include discussions regarding suitability, early termination or continuing the mediation in shuttle mode). If breaks are required, ensure the parties do not remain in the same room by themselves and that the break is not too long. When calling for a break, you can say, “Thank you both for your effort this far. I think this is a good point in the process to call for a short break. You are both welcome to use the facilities, check phone messages or make cups of tea. We’ll break for about 10 minutes.” Ensure that both parties know which room or area to wait in during the break.
- Use subtle body language to signal to your co-mediator that you have something to say during joint sessions. A common technique is to sit leaning back in your chair and when wanting to add something, leaning forward. Your co-mediator should be able to pick up on this signal and once they are finished speaking, they will sit leaning back in their chair.
- When needing assistance from your co-mediator, you can ask them, “Is there anything you wish to add?” This can signal to your co-mediator that you need some assistance or confirm that you have not forgotten anything.
- Model the behaviour that you want the parties to exhibit in the room. Remain calm, professional and follow the rules you have set for the parties. Working collaboratively and professionally may affect the parties in their ability to communicate and reach agreements.

Tips for co-mediating in shuttle mode:

- Manage the party’s expectations! As you will be walking to and from each room and explaining and undertaking each part of the process to the parties separately, let each party know how long you expect to be out of the room as well as ensuring equal time. The use of support people is beneficial here as each party is not left pondering life by themselves.
- Ensure that you clarify what you can and cannot take back to the other party by way of disclosure.
- Remind the parties of your role and responsibilities. Remind the parties that you are delivering information from the other party rather than presenting something that you agree with.
- When co-mediating in shuttle mode, you and your co-mediator will have the opportunity to check in with each other as you move between rooms more frequently. Keep in mind of the time you spend outside of the rooms. You may discuss whether the parties can enter a joint session, the suitability of the mediation and early termination.
- As the parties are in separate rooms, there is no need to conduct a traditional ‘private session’ as the entire process is treated as a private session. However, be sure to continuously check in with each party as to how they are travelling and how they think the mediation is going.

Termination of Mediation Process early

While as a mediator, one of your primary roles is to facilitate a process, there are times you may find yourself in a position to terminate a mediation early. There may be clear reasons as to why a mediation should be terminated, such as violence present within the room (for example, throwing a tissue box), or when one party no longer wishes to participate. However, there are other reasons why you may choose to terminate the process early, or at the very least, cause you to assess the suitability of the dispute and call for a private session.

This can include the behaviour exhibited by one or both of the parties, refusal to share information that may assist the mediation progressing, or loss of good will. For example, a party may say, "If you don't agree with XYZ, then you can take me to Court." Another example may include a party refusing to share information with the other party in relation to a substantive issue and says, "I don't want to talk about it, they should know what they have done and what it is I want." As a mediator and the other party, you may not understand what the issue is, making exploration, option generation and negotiation very difficult. A comprehensive intake interview is critical to avoid these situations, however, they can still arise later in the process. This type of dialogue coupled with reading the room will indicate whether you call a private session to reality test the parties before making a decision to terminate. Other behaviours to be aware of are:

- Complete compliance and agreement by one party.
- The emotions of each party and how they may have changed during the mediation.
- Any dramatic shift in a parties position.
- Change in the dynamics of the room (for example, one party stops talking or they become aggressive with each other).
- Parties not wanting to engage in the process.
- Evident pressure, undue influence, or coercion.

How to avoid taking sides

You may find that as a mediator, you can relate to a party because you 'have been in their shoes' or know someone who has experienced something similar. You may be able to relate to a party more than the other, whether that is because you are both mothers/fathers, you support the same sport team or you hold similar values. We are human after all, and commonly find similarities with people we meet to form connections. However, there is a difference when acting as a mediator.

While you can be empathetic with a party and understand their narrative, you need to leave your personal values, experiences, and biases at the door. If you are unable to do so, you cannot undertake your role as a mediator and you should consider referring the matter on to another mediator. There is nothing wrong with referring a matter on, and by doing so you are upholding ethical standards. Your duties as a mediator do not end following the conclusion of a mediation. This includes maintaining confidentiality, neutrality and all ethical standards as contained in the NMAS.

Key Terms

Active Listening: A way of listening that focuses entirely on what the other person is saying and confirms understanding of both the content of the message and the emotions and feelings underlying the message to ensure that understanding is accurate.

ADR: (Alternate Dispute Resolution) Commonly used to refer to a variety of alternatives to litigation, wherein a neutral party assists the disputing parties, includes a full range of dispute resolution processes between direct negotiation and litigation.

Assessment: The process of reviewing the details of a dispute in order to determine suitability.

BATNA: The best alternative to a negotiated agreement or BATNA is the most advantageous alternative course of action a party can take if negotiations fail and an agreement cannot be reached.

Confidentiality: Mediation is a private process. The contents of mediation remain confidential unless the mediator believes on reasonable grounds that disclosure needs to be made.

Conflict: When two or more people disagree.

Consensus: A mutually acceptable agreement that integrates the interests of all concerned parties. Consensus is different from decisions reached through voting or an individual or body making a unilateral decision. Consensus does not require unanimous consent. An agreement reached through consensus may not satisfy each participant's interests equally or receive a similar level of support from all participants.

Co-mediate: When two mediators with different areas of expertise work on the same dispute.

Disclosure: When an intake person or mediator has a party's permission to give the other party some content information; we call that a disclosure. Or where a person or party reveals or shares specific information that is relevant.

Empowerment: Parties to mediation have the autonomy and authority to represent their interests and advocate for their needs.

Facilitation: A process in which the parties with the assistance of a dispute resolution practitioner (the facilitator), identify problems to be solved, tasks to be accomplished or disputed issues to be resolved.

Good Faith: A concept of values that each party who participates in a mediation comes with an open mind to resolve the dispute.

Impartiality: The mediator's attitude, which in the mediation process takes care of the structure and supports the negotiation process. This helps the parties name their needs or interests and supports the search for solutions based on those needs and interests.

Impasse: Parties within mediation are unable or unwilling to release their respective 'positions' in favour of compromise.

Intake: The initial meeting with a potential party to a dispute to understand their perspective on the matter and what they are wanting to achieve through mediation.

Joint Session: Stages of the mediation process where parties are brought together.

Mediation: A neutral, non-binding dispute resolution process in which an independent third party (mediator) assists the parties to settle their differences but does not advise them of his or her own opinion as to the issues and merits of the dispute.

Multi-party Mediation: A mediation that has more than one person representing each side of the dispute.

Negotiation: The process of working out an agreement by direct communication.

Party: An individual, entity, or group taking part in a mediation as a disputant.

Private Session: A confidential meeting between the mediator with only one of the parties.

Reality Testing: A tool used by mediators to assist parties to test what they propose by way of options or solutions during the mediation process.

Reframing: Changing the conceptual and emotional viewpoint in relation to a former experience and placing it in a different scaffold for the participants to see the point more clearly, differently, or more positively.

Shuttle Mediation: The process of conducting a mediation with parties in separate rooms for the entire process. The mediator(s) 'shuttle' between rooms.

Support Person: A person, other than a professional such as a lawyer, who provides support to a person participating in a mediation process. The support is often emotional support. As a general guide, support people do not participate in the discussion during joint mediation sessions.

WATNA: Enables negotiating parties to evaluate their options with the worst possible scenario. The reverse of BATNA, or The Worst Alternative To A Negotiated Agreement. Parties involved in negotiation should always have both their BATNA and WATNA prepared in advance.



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