

10861NAT Diploma of Aboriginal and Torres Strait Islander Legal Advocacy

Block 5

Conflict & Mediation

NAT10861008 Provide mediation for clients needing legal assistance

Part 2

Conduct mediation interview



Acknowledgement of Country

We acknowledge the traditional owners of the land on which Tranby stands, the Gadigal people of the Eora nation. We pay our respects to their Elders both past and present, who remain the traditional knowledge holders of this land.



We proudly extend this respect to all current and emerging leaders around Australia, for they hold the memories, the traditions, the culture and the future of their people.



Mediation

➤ **Establish the Ground Rules**

- The mediator explains the rules and process involved in mediation.
- First, meet with each participant separately, to outline what they can expect from you and from the process. Make sure that they are both willing to participate – mediation won't work if you try to impose it!
- Agree on some ground rules for the next stage of the process. These might include asking each person to come prepared with some solutions or ideas, listening with an open mind, and avoiding interruptions. It's important that you build trust with both participants and make them feel safe enough to talk openly and truthfully with you and with one another.



Mediation

➤ **Statements by the parties**

- Each party has the opportunity to describe the dispute.

➤ **Identification of the dispute**

- The mediator will ask the parties questions in order to gain a better understanding of the conflict.



Mediation

➤ **Private caucuses**

- The mediator will conduct private meetings with the parties to obtain a better understanding of each party's side and to assess possible solutions.
- Find a quiet room in a neutral location where you won't be disturbed, away from the rest of the team.
- Meeting with the participants individually will allow them to share their side of the story with you openly and honestly. Use active listening skills and open questions to get to the root of the problem. Reflect upon and paraphrase what your team members tell you, to show that you understand their points of view.



Mediation

- Use your emotional intelligence to identify the underlying cause of the conflict and pay attention to each participant's body language to help you to get a better sense of their state of mind.
- Be prepared to encounter a range of strong feelings, from fear and distress to anger, and even a wish for revenge. But avoid shutting these feelings down – this might be the first time that your team members have fully expressed the impact of the conflict, and it will likely give you valuable clues to its cause.
- Then ask each person what they hope to gain from the mediation. Remind them that it's not about winning, but about finding a practical resolution that suits everyone who's involved.



Mediation

➤ Joint Meeting

- Once both sides have had time to reflect, arrange a joint meeting. Open the session on a positive note, by thanking them for being open to resolving the conflict. Remind them of the ground rules, summarize the situation, and then set out the main areas of agreement and disagreement.
- Explore every issue in turn and encourage the participants to express how they feel to one another. Make sure that they have equal time to talk, and that they can express themselves fully and without interruption. If they become defensive or aggressive, look for ways to bring the conversation back to the main problem at hand. Encourage them to empathize with one another, and to improve their understanding of one another's point of view by asking questions themselves.



Mediation

- During the mediation the mediator **should**:
 - Explain the mediation process and set the guidelines for how it will work
 - Ensure each person has a chance to talk, be heard and respond to the issues
 - Keep everyone focused on communicating and resolving the dispute
 - Ask questions to help people identify and communicate about what their goals and desires are and why they feel that way
 - Help clarify the issues and suggest ways of discussing the dispute
 - Help the people in dispute develop options and consider whether possible solutions are realistic
 - Try to assist the parties reach an agreement where appropriate and make sure everyone understands any agreement reached, and
 - Refer you to other helpful services if required.



Mediation

➤ The mediator **must not**:

- Take sides, make decisions or suggest solutions
- Tell parties what they should agree to do
- Decide who is right or wrong - the focus is on finding a solution that everyone can live with, not making a judgment
- Give legal, financial or other expert advice
- Provide counselling



Mediation

- Once both sides have given their views, shift their attention from the past to the future.
- Go over the points that were raised in your meetings and try to identify areas where they have at least some shared opinions. Resolve these issues first, as a “quick win” will help to build positive momentum, and bolster both sides' confidence that a workable solution can be found.
- Ask participants to brainstorm solutions and encourage win-win negotiation to make sure that they reach a solution that they're happy with. If a suggestion is unreasonable, ask the initiator what he would consider to be reasonable, and whether he thinks that the other party would agree.



Mediation

➤ **Document outcomes of mediation interview**

- If the parties reach a resolution, the mediator may confirm the agreement in writing and ask the parties to sign this agreement.
- Take notes during all of the meetings that you mediate and, once the participants have reached a solution, write that up as a formal agreement. Make sure that the agreement is easy to understand and that actions are SMART (Specific, Measurable, Achievable, Relevant, and Time-bound).



Mediation

- Help to avoid any confusion or further disagreement by checking that your language is neutral, free from jargon, and clear for all. Read the agreement back to both parties to make sure that they fully understand what will be expected from them, and to clarify any points that they do not understand or that are too general or vague.
- You might even consider getting each person to sign the agreement. This can add weight and finality to the outcome and help to increase their accountability. But mediation is designed to be a relatively informal process, and you could undermine this by pushing too hard.



Mediation

- It's time to bring the mediation to a close. Give the participants copies of the agreed statement, and clearly explain what will be expected from them once they're back in the workplace.
- Take some time to prepare, together, how to overcome obstacles to implementing the agreement, and to explore options for dealing with them. Summarize the next steps, offer your continued support as a mediator, and thank both parties for their help and cooperation.
- If you come to an agreement at mediation, if all parties agree, you can ask the court or tribunal to make 'consent orders' in the same terms as your agreement. If the court does this, it means the agreement can be enforced in the same way as other orders of the court.



Bibliography

<https://www.mindtools.com/pages/article/mediation.htm>

