

Members' mediation kit

June 2025

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What is mediation?

Mediation is a process designed to help parties in a dispute isolate and understand the issues, consider their options and their possible impact and reach a consensual agreement that will satisfy their respective interests. Although the parties give control of the process to an independent person, chosen by them (the mediator), the parties retain control over the substance of the dispute. The mediator will not make a decision for the parties.

How can I use mediation in my practice?

Mediation can be a voluntary process or parties can be ordered to attend mediation by a court or tribunal or contractual obligation/agreement. Mediation can also be required by legislation. As a mediation conference is usually confidential by law or by agreement, the parties may attempt to settle a matter at any time prior to trial with the knowledge that the matter can still proceed to a court hearing if they are unable to reach agreement. The difference between mediation and ordinary settlement negotiations is that a third party mediator is present during the mediation conference to help facilitate a resolution to the dispute.

Mediation has been used extensively in disputes involving personal injuries, commercial transactions where ongoing relationships are important, deceased estates, family separations, defamation, and complex multi-party disputes. Mediation should not be used if it could harm or prejudice your client.

Why use mediation?

The experience in many jurisdictions is that trained and experienced mediators can assist the parties in achieving a better resolution than would be possible on their own.

The presence of all the parties together in one place, working through a problem in a structured and disciplined way, can often work when negotiation alone has not.

Mediation can:

- result in satisfied clients who have participated in the resolution of their dispute
- stimulate file velocity together with increased profitability
- provide a service to clients for those disputes which are not cost-effective to litigate
- enhance your reputation as a solicitor who can provide an affordable service

Practitioners are reminded of their obligation to inform a client about alternatives to fully contested adjudication of cases which are reasonably available to the client: see Rule 7.2 the *Australian Solicitors Conduct Rules 2012*. The benefits of mediation have been touted by many experienced judges and practitioners, including Chief Justice Paul de Jersey (as he then was) who stated at a CLE seminar:

A lawyer may now seek to interest his client in the methods of ADR without abandoning his professional responsibility: indeed, the proper discharge of that responsibility will these days usually require that he or she alert the client to the usefulness of these methods where appropriate, and especially the importance of exploring fully the prospects of a negotiated settlement before the matter is put to litigation.

Mediation can be compulsory?

It is important to know, and advise your clients, about whether their matter requires that they participate in an alternative dispute resolution (ADR) process, including before proceeding to trial. ADR is often provided for in legislation and can be ordered by courts, commission and tribunals. Increasingly, commercial agreements contain clauses requiring parties to attend ADR and/or Mediation before proceedings are issued.

More and more jurisdictions are implementing mandatory ADR processes that parties will need to follow.

Why use a Law Society Nationally Accredited Mediator?

Mediators are able to be accredited under the Australian Mediator and Dispute Resolution Accreditation Standards (AMDRAS) which set out the role and functions of the AMDRAS Standards (the Standards) in the training, assessment and accreditation of the mediation practitioners to whom it applies.

AMDRAS can be found here (<https://amdras.au/wp-content/uploads/2025/04/AMDRAS-Standards-Master-February-2025.pdf>).

By choosing a QLS accredited mediator, you know they will:

- have been accredited under the Standards with the QLS as a Recognised Accreditation Provider (RAP)
- have been assessed as competent in conducting a mediation process
- have obtained reaccreditation from the QLS as a RAP every two (2) years
- be a current full member of the QLS
- and have the required professional indemnity insurance.

In addition, QLS accredited mediators:

- are required to comply with the *Australian Solicitors Conduct Rules 2012*
- are under a clear ethical obligation not to act for either party to a mediation in the same matter. The mediator must ensure they have no conflict of interest
- like all solicitors, are experienced in dealing with clients by balancing legal rights with commercial realities.

How do I find a Law Society Nationally Accredited Mediator?

QLS has established a register which can be accessed online from the QLS website (<https://www.qls.com.au/Register-of-solicitors>).

How does a mediator charge?

Most mediators charge an hourly rate which varies depending on their experience as a mediator, experience as a solicitor, the area of law governing the dispute and their regional area of practice. Like any other service you can approach a mediator to negotiate their hourly rate or a lump sum fee.

Who arranges the meetings?

Depending on whether mediation is required in your client's matter, one party can approach the other about participating in mediation. It can then be determined which party will make the arrangements and how the costs are to be shared.

The best way to arrange a mediation is for you to approach the mediator directly and discuss costs, the venue, who will attend, documentation to be provided, pre-mediation meetings and availability for the mediation.

Queensland Law Society has rooms available for mediation. Reservations can be made by contacting the Society on (07) 3842 5888.

How do I advise clients about mediation?

QLS has prepared a brochure which may be useful in advising your client. This brochure can be requested from QLS and is available on the QLS website. A sample is contained in Appendix A.

A standard Dispute Resolution Clause (see Appendix B), which can be inserted in contracts, is included with this kit.

How do I prepare my client for mediation?

Matters to address in preparation include:

- explaining the process which will be followed at the mediation
- helping your client identify their needs
- helping your client prepare their opening statement (if necessary)
- discussing with your client issues that would be considered by a Court
- discussing with your client what would be the worst, best and possible outcomes for them
- discussing with your client ways to achieve their desired outcome
- discussing the likely reaction of the other party and ways to overcome any objections
- discussing the nature of a “without prejudice” and confidential discussion
- explaining to your client that it is better to approach the mediation with an open mind rather than a list of demands
- explaining to your client the decision must be theirs.

What is my role at the mediation?

At the mediation the mediator will initially direct most attention to the clients. This is to acknowledge that the clients own the dispute and will need to live with the outcome.

Your role at this stage is to help your client raise all the issues they have discussed with you. Unresolved issues will prevent any agreement from working.

You will find that your assistance in the private meetings will be invaluable. It is likely that once you have heard the other party's version you will need to take further instructions from your client and perhaps adjust your advice.

If you form the view that the other party is not willing to negotiate in good faith, raise this issue with your client and/or the mediator.

Be aware of the professional attributes required of a registered practitioner under the AMDRAS Framework. Request a private meeting with the mediator immediately if you are of the view that the requirements of a Registered Practitioner, are not being met.

The mediation process

These are general guidelines for the mediation process. Mediators may vary the steps, depending on the circumstances.

Opening statement by mediator

This statement is an important chance for the mediator to establish a rapport with the participants. Your client should be encouraged to raise any process queries they have at this time.

The parties' statements

In most cases the mediator will ask the participants to explain what needs to be discussed at the mediation and what has happened between the parties that has led to the need for these issues to be addressed. Your client will be more relaxed if they have had an opportunity to consider these issues before the session.

Defining the issues

Frequently the parties will have different issues. It is important that all participants have a common understanding of the areas of dispute.

Setting the agenda

The mediator can generally seek agreement from the parties on the order in which the issues should be discussed. If no agreement can be reached the mediator will set the agenda for the parties.

Private meetings

Private meetings are used for a number of reasons by the mediator. These include giving the parties a break from the tension, or a chance to give confidential information to the mediator. Your client can also consider information raised by the other party and receive further advice from you. Private meetings can happen at any time during the mediation and there may be more than one. Anyone present can ask for a private meeting. Clients often become worried when the other side requests a private meeting with the mediator. You may need to reassure your client in such a situation.

Generating options

Each issue on the agenda will be addressed in turn. The parties and their solicitors will be encouraged to generate all the options that could contribute to the resolution of the issue without necessarily deciding on the best one at this stage.

The negotiation phase

The parties should be restrained from starting to negotiate until it is clear all the issues which need to be resolved have been raised and there has been sufficient exploration of the options that are available. Negotiations can take place in joint sessions, in private meetings with the solicitors coming together or by the mediator taking offers and counter-offers between the parties. It is important that you test any proposed agreement with your client to check the who, how, when, where and what questions have been answered and that your client can perform what is promised.

Finalisation

The parties may arrive at an agreement. If possible this agreement should be reduced to writing and photocopied so each client can take away their own copy even if the solicitor intends to file consent orders. Where no agreement has been reached it is helpful to agree on the issues that need to be resolved, or agree on the future process to follow, such as obtaining reports or valuations.

Where possible the mediator will attempt to bring the parties together before finalising the mediation, however, there will be some instances where this final step is not appropriate.

How to become a Law Society Nationally Accredited Mediator

QLS is a Recognised Accreditation Provider (RAP) under the Standards.

To be accredited by a RAP under AMDRAS, you must enrol in a course or program leading to a Certificate of Training. Having completed the course, you must complete an assessment and obtain a Certificate of Assessment.

To become a Law Society Nationally Accredited Mediator, it is the requirement of QLS that:

- you are a current full member of QLS;
- you have completed an approved training program and passed your national mediation assessment;
- you comply with all of the requirements referred to in the Standards, as summarised in the QLS Mediator Accreditation Handbook, available here (<https://www.qls.com.au/Practising-law-in-Qld/ADR/Alternative-Dispute-Resolution/ADR-Practitioners>).

To remain accredited you must:

- be a current full member of QLS;
- continue to meet the accreditation and accreditation renewal requirements set out in the Standards;
- have conducted at least 20 hours of dispute resolution related practice (e.g. as a mediator, co-mediator, or third-party dispute resolver) within the 2-year renewal period unless exempted under clause 48 of the Standards; and
- have completed at least 25 hours of continuing professional development over the 2-year renewal period, with the applicable CPD directed at developing or maintaining the Professional Attributes set out in the Standards.

The training programs must meet the requirements set out under the AMDRAS Training and Assessment Framework.

Resources for QLS Mediators

A sample Mediation Agreement has been drafted for adaption and use by mediators and is found in Appendix C.

The QLS website also contains a number of resources, including *Proctor* articles relating to Dispute Resolution.

The QLS Dispute Resolution Committee reviews developments in ADR and issues facing ADR practitioners and users. The Committee can be contacted through the QLS Legal Policy team via email to policy@qls.com.au.

Appendix A: Sample brochure

Alternative dispute resolution

A legal guide to your rights and obligations

No matter who you are in a dispute with – a neighbour, friend, former spouse or partner, business associate or a major corporation – the option of using alternative dispute resolution, instead of a draining legal battle, is well worth considering. Your solicitor can advise you on which course you should take to avoid going to court.

What is alternative dispute resolution?

Alternative dispute resolution (ADR) is the term used to describe methods, outside of court proceedings, which you can use to help resolve your legal problem.

The ADR methods provide a means for early resolution of new disputes. It also aids in quickly resolving lengthy disputes.

These dispute resolution methods can be built into agreements before disputes arise, so if a problem develops it can be sorted out quickly and at a lower cost.

Most importantly, with ADR, the solution is up to you.

What are the ADR methods?

The methods you can choose to help solve your legal problem include:

Mediation

An independent and neutral person helps you and the other parties to work out the issues in dispute, and come up with an acceptable solution. It is up to you to make an agreement. Control of the outcome stays with you. The mediator is not there to advise or make decisions regarding the issues. The mediator is a facilitator, not a decision maker.

Many courts and tribunals have the power to order you to try mediation before taking a matter to trial. Otherwise, it is voluntary. This means you cannot force the other party to mediate. They have to agree. If you and the other party choose to mediate and an agreement is not reached, you can still go to court.

Conciliation

Conciliation is a process in which the parties to a dispute, with the assistance of a neutral person, identify the disputed issues. The conciliator will help you and the other parties to look at the strengths and weaknesses of each other's arguments. Usually, the conciliator is an expert on the subject of the dispute and as a result, the conciliator may provide indications about how a court may decide your case. However, the conciliator does not make a decision for you.

As with mediation, some courts and tribunals may order you to try conciliation before going to trial. You cannot force another party to conciliate. If you and the other party choose to conciliate and an agreement is not reached, you can still go to court.

Collaborative law

Collaborative law involves both parties and their legal representatives signing an agreement to reach a settlement without resorting to litigation. The focus of all participants is, therefore, entirely on reaching a negotiated settlement.

Arbitration

Using this process, the parties to a dispute choose an independent arbitrator to act as a decision-maker. The person appointed as the arbitrator makes a decision which, in some jurisdictions, is binding on you and the other parties. In other jurisdictions such in family law property cases you and the other party will need to agree to file the arbitrator's award in court for it to be binding.

Why use ADR?

Cost savings

Research into mediation has found the cost of disputes that go to court is notably much higher than the cost for matters that have been successfully mediated.

Time saving

Settlement is usually quicker than it would be if you went to court.

Flexibility

You decide on the time and place of the ADR session. You choose whether the session should be formal.

Privacy

You can agree that discussions during the session is confidential. This may be subject to legal limitations.

Greater range of solutions

You can expand the range of possible solutions to your dispute.

Future cooperative relations

An early amicable solution may improve your future relationship with the other parties.

When is ADR used?

ADR is a flexible way of sorting out disputes. It has already been used for everything from neighbour disputes over a fence, to divorce settlements, to multi-million dollar commercial contract disputes.

Courts generally expect parties to participate in some form of ADR to try to resolve their legal disputes.

ADR can be used at any time in the dispute, from the early stages before it goes to court, right up until the dispute is ready for trial.

Adjudication

Under the *Building and Construction Industry Payments Act 2004* (the Act), a process of rapid adjudication has been introduced to resolve progress payment disputes.

Queensland Law Society is registered as an Authorised Nominating Authority (QLS ANA) under the Act.

The Society can put you and your solicitor in contact with skilled adjudicators who can make quick (within ten business days), legally enforceable decisions.

If the respondent fails to pay by the due date stated in an adjudicator's decision, the QLS ANA can issue an Adjudication Certificate that, in essence, confirms that decision. This can be filed in an appropriate court for enforcement and without the need for a hearing.

Why use a solicitor?

Many solicitors have been trained to act as mediators, conciliators, arbitrators and adjudicators. Your solicitor will also advise you when ADR is appropriate.

If you have a legal problem, expert advice in the early stages can save time and money. A solicitor can help you to choose the best way to resolve your dispute. If ADR is the best option, a solicitor can:

- help persuade other parties in the dispute to use ADR
- help you find an independent person for your ADR session
- assist you in preparing for the negotiations
- appear with you at the ADR session.

Legal costs

At your first appointment, ask your solicitor about the costs involved in using ADR to resolve your dispute.

Finding a mediator, arbitrator or adjudicator

If you are interested in using ADR, visit the QLS Register of solicitors <https://www.qls.com.au/Register-of-solicitors> and refine your search to find mediators. You can find a list of QLS arbitrators here <https://www.qls.com.au/Practising-law-in-Qld/ADR/Alternative-Dispute-Resolution/Arbitration>. Alternately, you can contact Queensland Law Society at the number below and ask for a referral to a nationally accredited mediator, arbitrator or adjudicator.

Queensland Law Society

Contact us

1300 367 757

info@qls.com.au

Law Society House

179 Ann Street, Brisbane Qld 4000

GPO Box 1785, Brisbane Qld 4001

The information in this brochure is merely a guide. It is not meant to be a detailed explanation of the law and it does not constitute legal advice. Queensland Law Society recommends you see your solicitor about particular legal concerns.

Appendix B: Standard dispute resolution clause

Any dispute or difference whatsoever arising out of or in connection with this contract ('Dispute') shall be resolved as follows.

Reference to ADR

The parties shall first refer the Dispute to mediation ('the ADR reference') by a Law Society Nationally Accredited Mediator agreed by the parties or failing agreement appointed by the President of the Society on the terms of the Standard Mediation Agreement approved by the Queensland Law Society.

The ADR reference shall commence when any party gives written notice to the other(s) specifying the Dispute and requiring its resolution under this clause.

Any information or documents obtained through or as part of the reference under this sub-clause shall not be used for any purpose other than the settlement of the Dispute under this sub-clause.

Final resolution

If the Dispute is not resolved within (21 days) of the commencement of the ADR reference either party may then, but not earlier:

(Strike out the alternative which does not apply. If neither alternative is struck out then the parties shall be deemed to have chosen Alternative 1).

Alternative 1 (if a court settlement is desired)

Commence proceedings in any court of competent jurisdiction. Alternative 2 (if arbitration is desired)

Submit the Dispute to arbitration in accordance with *[specify the rules which are to apply]*.

If no rules are inserted, the parties shall be deemed to have chosen the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitrations.

Such arbitration shall be conducted by a single arbitrator agreed by the parties or failing such agreement appointed by the President of the Queensland Law Society.

Any arbitrator so appointed shall not be the same person as any mediator or conciliator appointed under the ADR reference.

Venue

Any mediation under this clause shall be held at the offices of the Queensland Law Society unless the parties otherwise agree.

Contract performance

Each party shall continue to perform this contract notwithstanding the existence of a dispute or any proceedings under this clause.

Appendix C: Sample Mediation Agreement

Party A full name
(Party A short name)

Party B full name
(Party B short name)

[Mediator name]
(Mediator)

Mediation Agreement

Practice note for AMDRAS accredited mediators:

- Ensure that you identify that you are acting in accordance with AMDRAS;
- Identify a complaints process, in accordance with AMDRAS.

The Mediator acknowledges that they are bound by the *Australian Solicitors Conduct Rules 2012*.

Mediators who are insured by Lexon Insurance should refer to the:

- (a) Family Law Mediation LastCheck; and
- (b) General Litigation Settlements LastCheck.

THIS MEDIATION AGREEMENT is dated [date]

PARTIES:

PARTY A FULL NAME of [address] (**Party A**)

PARTY B FULL NAME of [address] (**Party B**)

[MEDIATOR NAME] of [address] (**Mediator**)

RECITALS:

INTRODUCTION:

A Party A and Party B are in dispute in connection with [summary of dispute] (Dispute).

B The parties wish to appoint the Mediator to mediate the Dispute on the terms of this agreement (Mediation).

IT IS AGREED:

1 APPOINTMENT OF MEDIATOR

- (a) The parties appoint the Mediator and the Mediator accepts appointment to conduct the Mediation on the terms of this agreement.
- (b) The parties consent to the Mediator assisting the parties to discuss the Dispute, identify issues, consider possible interests, legal rights and obligations and practical matters factors and attempt to develop mutually acceptable solutions.
- (c) The parties acknowledge and agree that the Mediator is acting as a mediator and will not provide legal or other advice (including, but not limited to advice on time limits), decide whether or how the Dispute should be resolved, coerce a solution or ensure that any settlement is fair.
- (d) The Mediator is not aware of any conflict of interest. However, if the Mediator becomes aware of any matter that the Mediator considers might cause a conflict of interest or affect the Mediator's capacity to act impartially, the Mediator will inform the parties and the parties will then decide whether to continue the Mediation with the Mediator.

2 CONDUCT OF THE MEDIATION

- (a) The Mediation will be conducted in a manner that the Mediator considers appropriate.
- (b) The parties involved in the mediation process must be represented by a person authorised to negotiate and settle on behalf of the parties.
- (c) Each party must cooperate and act courteously and in good faith throughout the Mediation and must comply with reasonable requests made and procedural directions given by the Mediator in connection with the Mediation.
- (d) During the mediation, the Mediator may meet and/or communicate orally and/or in writing as frequently as the Mediator considers appropriate with the parties or separately with any of the parties and need not disclose a meeting, discussion or communication to any other party.

3 CONFIDENTIALITY AND PRIVILEGE

- (a) A person who acquires information, whether oral or written, in the course of the Mediation will not disclose or use that information except in accordance with this agreement unless and until disclosure is required by law or the information becomes public knowledge otherwise than by a breach of this agreement.
- (b) Persons who have signed this agreement may discuss information that comes to their knowledge in the course of the Mediation for the purpose of the Mediation and with professional advisers and insurers and within their respective organisations (including parent organisations) on the condition that any information is not further disclosed unless and until it becomes public knowledge otherwise than by a breach of this agreement.
- (c) Every admission, concession, proposal and other statement or document made, prepared or disclosed in connection with the Mediation other than a binding settlement will be entirely "without prejudice" and will retain the benefit of any privilege, including legal professional privilege, that would otherwise have applied and will not be disclosed or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings.

4 SETTLEMENT

Unless the parties otherwise agree in writing or are ordered by a court or tribunal of competent jurisdiction, the resolution of a Dispute is not binding or enforceable until a settlement agreement in writing has been signed by the parties or their representatives.

5 TERMINATION

Subject to any order of a court or tribunal of competent jurisdiction, the Mediation will terminate in respect of a Dispute when:

- (a) a settlement agreement is signed in respect of a Dispute;
- (b) a party gives notice of termination to the other parties and the Mediator; or
- (c) after consultation with the parties, the Mediator gives notice of termination to the parties.

6 MEDIATOR'S FEES

- (a) The parties will be severally liable to pay 50% each of the Mediator's fee of \$[amount] (including GST) for preparation and up to 8 hours at the Mediation Conference.
- (b) The parties will each pay a further \$[amount] including GST per hour for any hours of mediation after 8 hours or any subsequent Mediation conferences.

[alternative option] "The parties will be severally liable to pay 50% each of the Mediator's fee of \$[amount] (including GST) per hour for each hour spent on preparation and at the Mediation Conference.]

7 GENERAL PROVISIONS

- (a) Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this agreement.
- (b) This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

EXECUTED as an agreement.

EXECUTED by **[PARTY A – INDIVIDUALS]**)

)

)

.....
Signature

.....
Witness

EXECUTED by **[PARTY B – COMPANY]**

in accordance with section 127 of the
Corporations Act:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

EXECUTED by **[MEDIATOR NAME]**

.....
Signature

.....
Name of signatory

Appendix D: Third party confidentiality agreement (optional)

New cl 23 (under confidential information)

The mediator and the parties and all persons brought within the mediation by either party shall each sign and comply with the confidentiality agreement in the accompanying form.

Confidentiality agreement

As the condition of being present at, participating in, or receiving information regarding communications and the course of proceedings within, this mediation of the dispute described in the Schedule, all of the signatories to this Confidentiality Agreement severally agree with each other that they will unless otherwise compelled by law preserve total confidentiality in relation to all communications and the course of proceedings within this mediation that may come to their knowledge. This agreement does not restrict any person's freedom to disclose and discuss communications and the course of proceedings within this mediation within the organisation or legitimate field of intimacy of the party on whose behalf or at whose request such person is present at the mediation including the advisers and insurers of that party **PROVIDED ALWAYS** that any such disclosures and discussions will only be on this same basis of confidentiality.

Schedule

(same description as schedule to Mediation Agreement)

Queensland Law Society wishes to acknowledge Sir Laurence Street's publication, *Mediation – A Practical Outline* as the source of this third party confidentiality document.

NOTE: Practitioners should consider the ramifications of entering into this agreement with respect to communications which may otherwise be subject to legal professional privilege.