

MEDIATION

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1. BACKGROUND

The Australian and New Zealand business and legal communities are more and more frequently turning to alternative dispute resolution processes, known as ADR, for improved means of resolving existing disputes and preventing and containing potential disputes. Mediation is the ADR process most widely used by business for the resolution of a variety of disputes.

2. WHAT IS MEDIATION?

- 2.1 Mediation is the process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and reach a consensual agreement that will accommodate their needs.
- 2.2 Mediation is a co-operative problem-solving process designed to help the parties to a dispute find constructive solutions to problems. Those solutions may or may not involve enforcement of the legal rights of the parties. Mediation does not result in winners and losers but in workable solutions. By opening up the channels of communication, relationships can be preserved and a greater variety of solutions considered.
- 2.3 During mediation an independent third party chosen by the disputing parties facilitates the negotiation by the parties of their own solution to the dispute. A mediator who is respected and trusted by all parties and, if necessary, has expertise in the area of the dispute can be of great benefit in helping the parties reach a solution satisfactory to all of them.

3. STAGES IN MEDIATION

- 3.1 Mediator's opening statement - Welcome and introductions; brief explanation of the mediation process; procedural guidelines for the conduct of the mediation; authority to settle; mediation agreement; goal mediation; commitment to begin.
- 3.2 The first joint session - the parties' statements and summarising; identification of issues; identification of common ground; exploration of issues.
- 3.3 The private session - when and why; who; how; check authority to disclose information.
- 3.4 The final joint session - encourage direct communication/negotiation; options; reality test; do not advise!
- 3.5 Closing - summarise; agreement; mediator to hand back documents and destroy notes.

4. QUALITIES OF A GOOD MEDIATOR

The following have been identified as essential qualities - listening skills; ability to recognise the issue; patience; lateral thinking; common sense; neutrality; ability to close; ability to summarise; persistence; analytical skill; creativity; ability to keep confidences.