

Mediation for Charities and Schools

*Presented by
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Introduction



CORNEY & LIND
LAWYERS



VOCARE

LAW





A little about us...

Same

- Same team, same mission
- Still called to deliver Just, Redemptive Outcomes[®]
- General practice of law with a particular focus on not-for-profit & charity law.

Different:

- Name change - Vocare (pronounced vo-ka-ray); latin meaning "to be Called.
- Additional new office in North Ryde, Sydney.
- Soon: office to be opened in Melbourne

What is Mediation?

Mediation is a structured dispute resolution process in which an independent person, known as a mediator, assists the parties to identify and assess options and negotiate an agreement to resolve their dispute. Mediation is an alternative to having an external decision maker (like a judge) impose a decision on the parties.



There are significant benefits to mediation:

- **Time:** ordinarily a dispute can be resolved more quickly through mediation than through a trial.
- **Cost:** Principally in avoiding a trial or other dispute resolution process.
- **Flexibility:** mediation offers parties more control over the outcome.
- **Stress:** mediation is less formal and less intimidating than appearing in court.
- **Confidentiality:** mediation is private and 'without prejudice'.
- **Satisfaction:** because the parties decide and agree on the outcome of their dispute they are more likely to be satisfied with the result and to comply with what has been agreed.
- **Finality:** settlement agreements can usually only be modified with the agreement of all parties.

National Mediator Accreditation System (NMAS)

- Mediators are able to apply to become nationally accredited by a Recognised Mediator Accreditation Body (RMAB).
- The NMAS is a voluntary system, however, many organisations and bodies are now requiring that mediators meet the National Mediator Accreditation Standards. For more information on the Standards and Accreditation please see: www.msb.org.au.
- As mediation is not regulated, there are a number of different mediation styles particularly in the litigation space:
 - **Family Dispute Resolution** - is conducted by an independent practitioner to assist people affected, or likely to be affected by separation or divorce, to manage and resolve some or all issues arising between them without going to court.
 - **Mandatory Conciliation** – is often required by the courts or tribunals prior to the matter proceeding to a hearing.
 - **Restorative, victim-offender, community accountability conferencing** – are processes which aim to steer an offender away from the formal criminal justice (or disciplinary) system and refer him/her to a conference with the victim, others affected by the offence, family members and/or other support people.
- In this Webinar we will look specifically in relation to NMAS Mediation as a neutral process of dispute resolution.



National Mediator Accreditation System (NMAS)

The NMAS Definition:

Mediation is a process that promotes the self-determination of participants and in which participants, with the support of a mediator:

- a) communicate with each other, exchange information and seek understanding
- b) identify, clarify and explore interests, issues and underlying needs
- c) consider their alternatives
- d) generate and evaluate options
- e) negotiate with each other; and
- f) reach and make their own decisions

Mediation is not a legal process. It is a relational process facilitated by a Mediator.



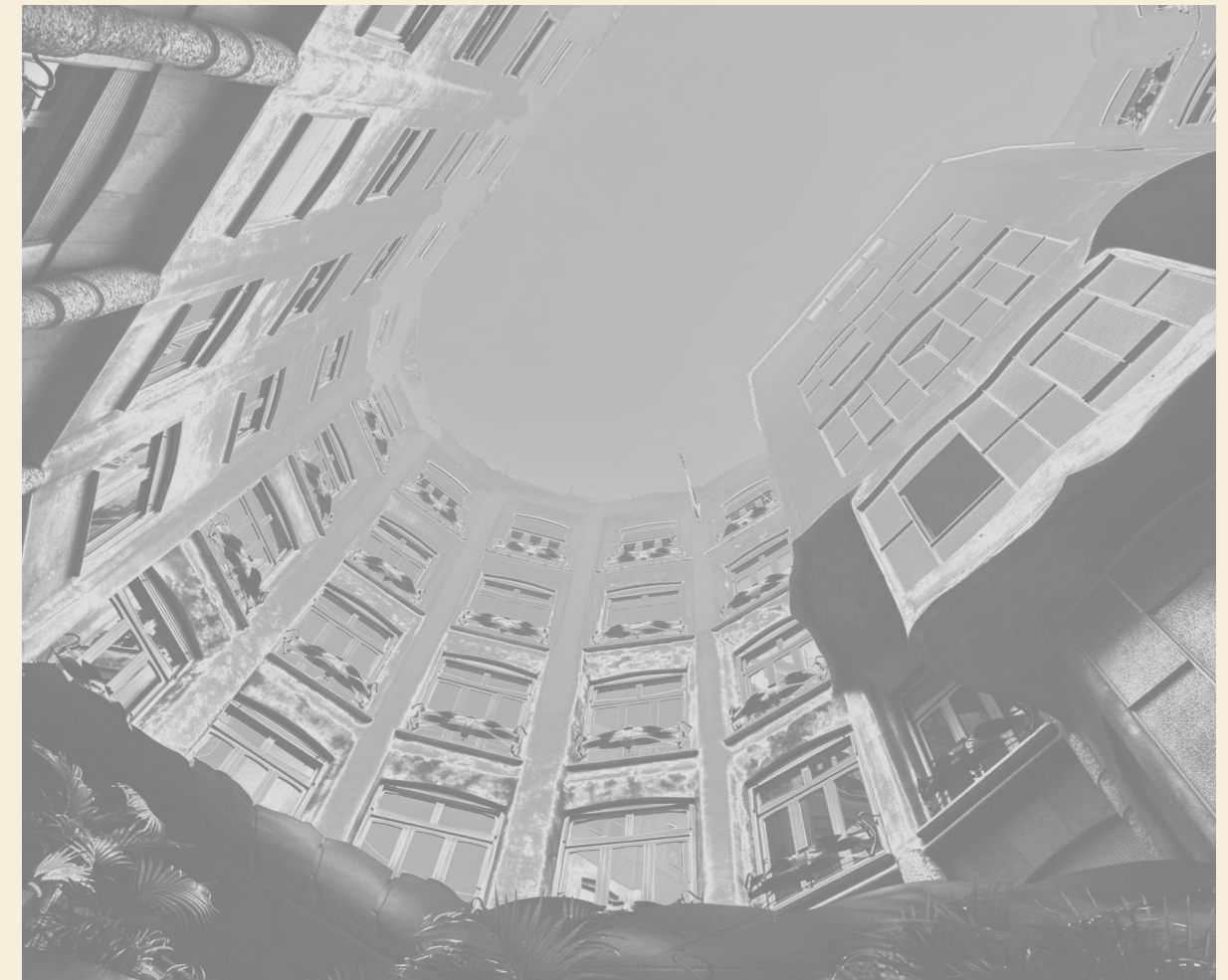
Biblical Basis of Mediation



1. The Christian approach to mediation is primarily drawn from 3 passages:

- i. Matthew 5:9 states, "Blessed are the peacemakers, For they shall be called sons of God."
- ii. Matthew 18:15-17 says: "If your brother or sister sins, go and point out their fault, just between the two of you. If they listen to you, you have won them over."
- iii. 1 Corinthians 6:1-7 relates to resolving disputes without the need for recourse to secular courts.

2. This is a strong basis for dispute resolution through informal means.

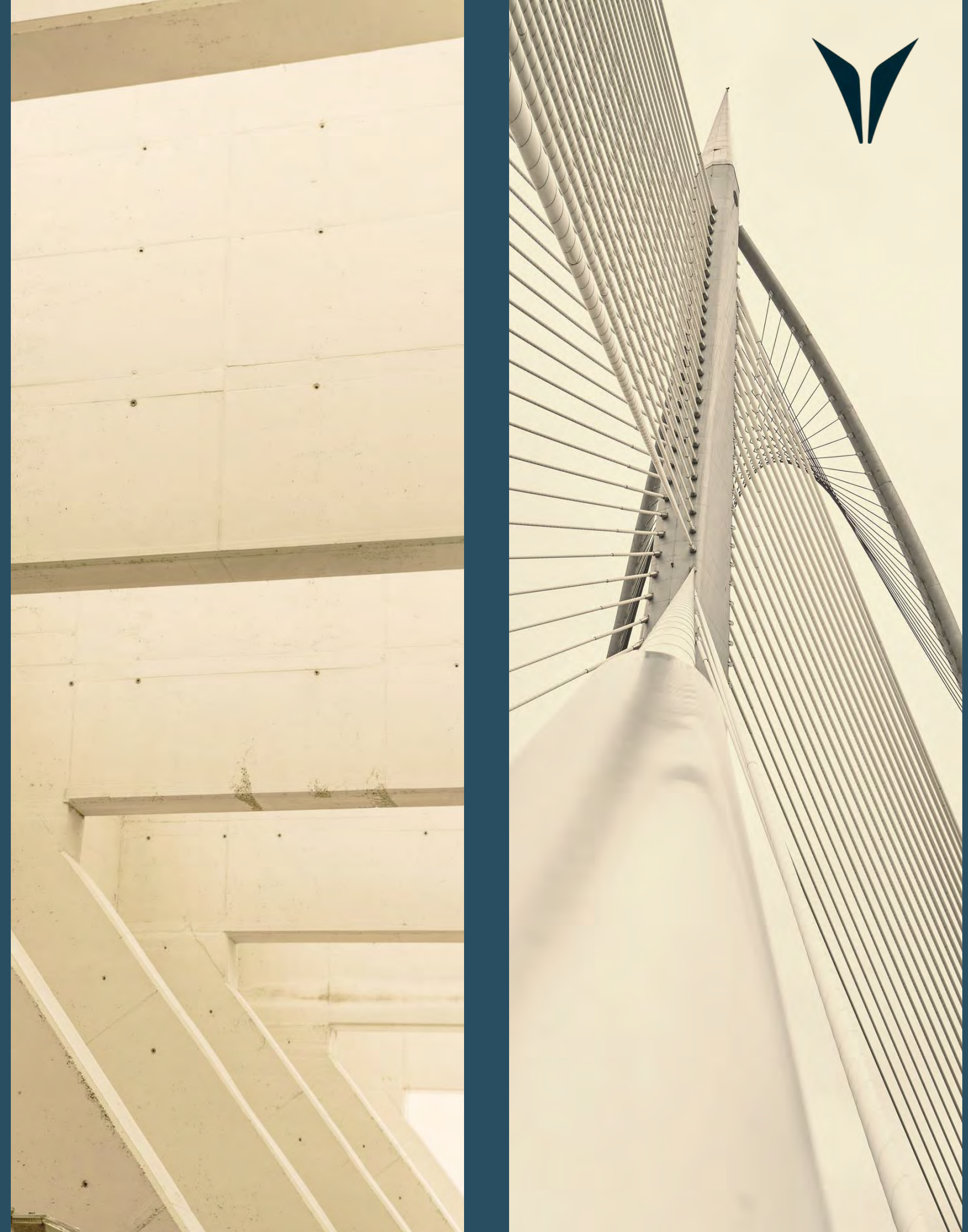


Mediation in Judaism

- Judaism strongly encourages parties to settle their disputes through mediation. Judaism draws upon the biblical text, the Talmud, various other texts, and numerous commentaries when addressing conflicts. These sources focus on compromise in the context of monetary disputes and accepting compromise in order to prevent conflict and preserve the peace and welfare of the community.
- The desire for peace (or 'shalom') is a central theme in Judaism and flows through every level of Judaism. This leads to principles that encourage peaceful debate and compromise.

Mediation in Islam

- The Islamic tradition is supportive of mediation as an alternative to litigation. Key Muslim texts sources encourage peaceful conflict settlement. The Qur'an has several verses addressing mediation principles.



What is the Purpose of Mediation?

1. Preservation of Relationship (ideally)
2. Minimisation of the risk of a costly and protracted dispute.

Mediator's Overriding Goals :

- Facilitate effective communication
- Assist parties to move from positions to interests.
- Shift thinking/ perceptions
- Narrow gap
- Generate movement
- Resolve differences
- Achieve consensus



Mediation in Practice

Mediation can be a highly structured process and is so designed to ensure it is fair and transparent.

- Stage 1 - Preliminaries are undertaken, agreements to mediate are signed, and position papers setting out in detail the issues and the parties position are provided to the Mediator. In mediation the mediator will present the purpose of the Mediation and the role of the mediator.
- Stage 2 - Opening Statements, Issue identification and Agenda setting.
- Stage 3 - Exploration phase → Collaborative problem solving, brainstorming, 'all options on the table'.
- Stage 4 - Negotiation stage (This may includes shuttle negotiation)
- Stage 5 - Agreement phase





What is the Role of the Mediator?

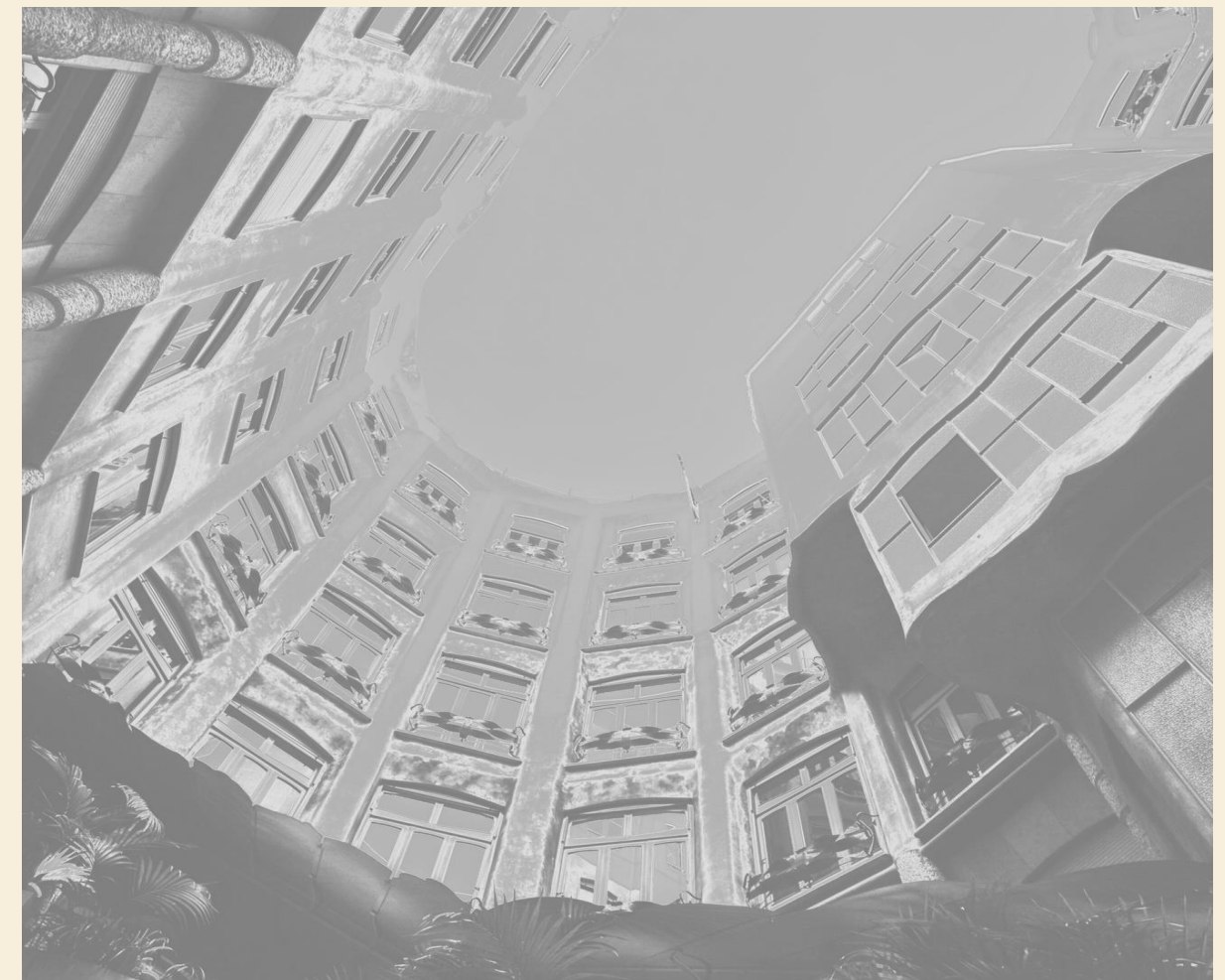
- Facilitating conversation (not with the mediator but between the parties);
- Listening – Model empathy without factual agreement;
- Questioning – to expand open factual questions, to assist with expressing personal impact and to facilitate discussion. The mediators questions change to closed questions in negotiation.
- Reframing – De-toxifying and de-escalating when necessary;
- Summarising – Keeping the issues in the frame; and,
- Even-handedness – Creating an environment of fairness and counteracting any power dynamics (real or imagined).

Sometimes mediation is about facilitating a conversation the parties could have had themselves but for the skill gap. Crucially, the Mediator does not propose solutions, advise or direct the parties.

The Exploration Phase



The mediator's main objective is the changing of the communication flow from initially parties talking to the mediator, depending on how respectful and cooperative the parties are towards each other, to them being encouraged to begin to talk directly with each other. Once parties start talking directly to each other, this may foster a broader discussion of the underlying concerns for each of them in regard to issues listed as agenda items. Mediators assist parties to have a deeper understanding of each other so that parties can enter each other's world... (Mediators assist parties to) acknowledge an experience that they may not have been able to communicate to others, and make it more understandable. When this happens something transformational occurs. A profound feeling of trust and intimacy is created at having been understood at the deepest level. *(Lois Gold, 'Mediation and the Culture of Healing' in Daniel Bowling and David Hoffman (Eds.), Bringing Peace into the Room (San Francisco: Jossey-Bass, 2003) 194.)*



Should Solicitors be involved in Mediation?

There is an important role for solicitors:

1. Drafting position papers /clarifying the issues;
2. Setting expectations for a party in relation to the risks and costs of litigation;
3. Coaching;
4. Identifying best and worst window of agreement to settling;
5. Advice on features of a negotiated settlement;
6. Assisting the parties in the process of reality-testing a proposed solution;
7. Assisting drafting the Mediation Agreement

However, it is the role of the Mediator to ensure that the parties are heard in the mediation and that professional advisors do not dominate. The Mediation room is not a courtroom.

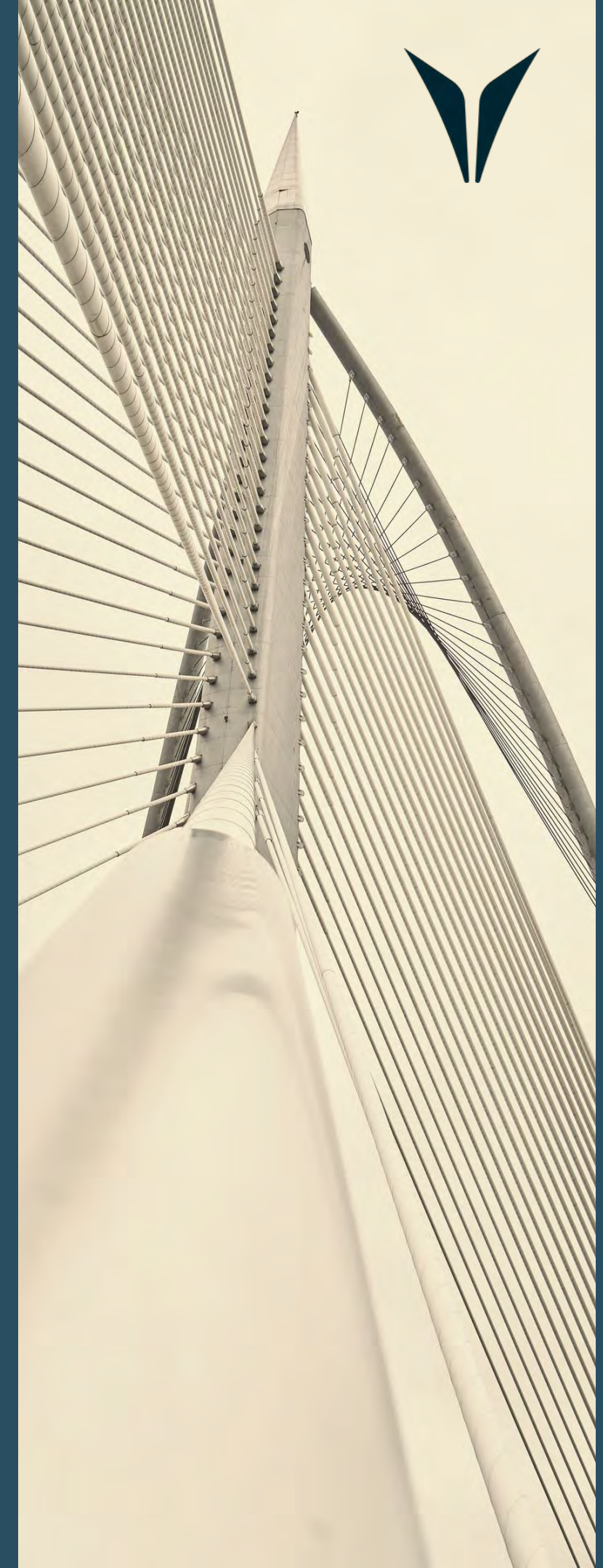


Types of Disputes that Benefit from Mediation

There are a number of dispute types that can benefit from mediation:

- Neighbour disputes;
- Disputes within faith communities;
- Disputes between employer-employee relations;
- Directors, members and management committee disputes;
- Family disputes (particularly over shared properties or businesses);
- Family separations;
- Franchise relationships;
- School disputes (parent-parent, parent-staff)

A key feature of mediation is the potential to bring resolution where there is a need to preserve continuity of relationships.



Mediation – Example 1



Dispute in a Church

- *Party A was an elder in a Church who sold a business to Party B who was also an elder.*
- *Party B alleged the business was over-valued and that Party A had misrepresented the value of contracts. Party A denied this. There was a significant risk of litigation.*
- *The church leadership counselled the parties to engage in mediation. The parties sought legal advice and each had a position statement prepared by a solicitor.*
- *The parties engaged in mediation and were able to resolve the dispute with a written apology and a settlement in a sum that represented a compromise to their differing positions.*



Mediation – Example 2



Dispute in a School

- *Party A is a teacher of senior English working 4 days per week. She's aged in her 50s . She cares for her husband, recently diagnosed with a degenerative illness*
- *Party B was appointed English HOD in January 2024, having taught at another school prior. She's aged in her 30s. Her mother resides with her and has increasing care needs*
- *Party C is an administrative assistant who is challenged by expectations placed on him by Party A & Party B. He's aged in his early 20s raising a young child on his own.*
- *Party A say Party B is bullying her and has made a written complaint*
- *Party B says Party A refuses to take direction from her, is sloppy in her work, and has commenced Party A on a performance improvement plan*
- *Party C says he is struggling to perform his job, and has just come back from stress leave*
- *Is this suitable for mediation? With which parties?*



Questions





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Thank you.

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