Ethical Guidelines for Mediators

Updated: April 2026



Law Council
OF AUSTRALIA

Contents

Introductory Note: Ethical Guidelines for Mediators 2

1. Process 4
Comment....4

2. Impartiality....4
Comment....5

3. Conflicts of Interest 5
Comment....6

4. Competence....6
Comment....6

5. Confidentiality....7
Comment....7

6. Termination of mediation....8

7. Recording settlement 8
Comment....8

8. Publicity and advertising 9

9. Fees....9
Comment....9

Introductory Note: Ethical Guidelines for Mediators

The Law Council of Australia has developed these guidelines to serve as a general ethical and practical framework for the practice of mediation. The guidelines are intended to apply to all types of mediation. Professional and other bodies may have different requirements. It is expected that the guidelines will be reviewed from time to time.

The guidelines for mediators are intended to perform three major functions:

- to serve as a guide for the ethical conduct of mediators;
- to inform the mediating parties of what they should expect; and
- to promote public confidence in mediation as a process for resolving disputes.

These ethical guidelines draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, organisations and institutions involved in mediation in all practice contexts.

These guidelines were originally based on the work of four professional groups in the United States: the American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution, and the Association for Conflict Resolution. They were reworked for Australia in 1996 by members of the Law Council of Australia Expert Standing Committee on Alternative Dispute Resolution:

Alan Limbury	Laurence Boulle	Charles Brabazon QC
Carol Dance	Michael Klug	Henry Jolson QC
Ruth McColl S.C.	Julian Riekert	Philip Theobald
Mary Walker		

They were further reviewed and updated by the Committee in February 2000 and in February 2006:

Henry Jolson QC	Michael Hollingdale	Ian Hanger AM QC
Alan Limbury	Joanne Staugas	Geoff Gronow
Mary Walker	Michael Klug	Laurence Boulle
	Philip Theobold	Nadja Alexander

In its February 2006 review, the Committee adopted some aspects of the Draft European Code of Conduct for Mediators, April 2004 on Independence and Neutrality.

These guidelines were reviewed and updated by the Committee in August 2011:

Mary Walker	Ian Bloemendal	Laurence Boulle
Scott Ellis	Geri Ettinger	Catherine Gale
David Gaszner	George Golvan QC	Michael Kent SC
Kathy Mack	Tim McFarlane	Joanne Staugas
Philip Theobald		

These guidelines were further updated by the Committee in April 2018:

Mary Walker	Ian Bloemendal	Anthony Nolan QC
Scott Ellis	Geri Ettinger	Michael Hollingdale
George Golvan QC	Tim McFarlane	
Joanne Staugas	Philip Theobald	

These guidelines were further updated by the Federal Dispute Resolution Section ADR Committee in June 2025 with minor edits in April 2026 and adopted some aspects of the United Nations Convention on International Settlement Agreements Resulting from Mediation ('Singapore Convention on Mediation') (New York 20 December 2018), particularly the definition of mediation:

Mary Walker OAM	Toby Boys	Alistair Wyvill SC
Philip Theobald	Geri Ettinger	Glen Pauline
Michael Hollingdale	Rachael Field	Jon Clarke

1. Process

Mediation means a process, in which parties to a dispute engage with the assistance of an independent third party or parties (the mediator or co-mediators), to reach a mutually acceptable resolution. This process emphasizes self-determination, good faith negotiations, and collaborative problem-solving, without conferring upon the mediator any authority to impose a binding solution.

A mediator:

- facilitates communication;
- promotes understanding;
- assists the parties to identify their needs and interests; and
- uses creative problem-solving techniques to enable the parties to reach their own agreement.

Comment

a) The above definition is intended to describe the mediation process broadly, irrespective of the expression used or the basis upon which the process is carried out.

b) A mediator should provide information about the mediation process both before and during the mediation. The mediator should help the parties identify their real concerns and all their options for resolution. The primary role of a mediator is to facilitate voluntary resolution of disputes by the parties themselves.

c) A mediator should explore with the parties prior to a mediation commencing the authority each party will have to conclude a settlement.

d) A mediator cannot personally ensure that each party has made a fully informed decision when reaching an agreement to resolve a dispute, but it is good practice for the mediator to make the parties aware of the importance of consulting other professionals, where appropriate, to help them make informed decisions.

e) A mediator will aim to be impartial at all times and treat the parties in an even-handed manner to facilitate a fair and balanced dialogue.

f) While the meaning of 'good faith' will usually be derived from the common law, interpretation in the context of a mediation can vary. The term usually conveys having a genuine intention to engage in open, honest, and respectful communication, to consider the perspectives and interests of all parties, and to actively participate in seeking a mutually acceptable resolution, without deceit or intent to undermine the process.

2. Impartiality

A mediator may mediate only those matters in which the mediator can remain impartial and even handed. If at any time the mediator is unable to conduct the process in an impartial manner the mediator should withdraw.

Accordingly, a mediator must avoid:

a) partiality or prejudice; and

b) conduct that gives any appearance of partiality or prejudice.

Comment

a) Whatever their own views and standards, mediators should be impartial and should avoid the appearance of partiality or prejudice by reason, for example of such matters as the parties' personal characteristics, background, values and beliefs or conduct at a mediation.

b) Mediators should be conscious of behaviour which, however innocent, may be interpreted as indicating partiality or prejudice, such as spending more time with one party than another without good reason, socialising with a party and adopting different modes of address. Mediators should be mindful that the risk of partiality or the potential appearance of partiality may be heightened when addressing power imbalances.

c) Even if all the parties agree that they would like the mediator to express an opinion on the merits, there remains a substantial risk in giving such an opinion that the mediator may no longer appear to be impartial and as a result the mediator may then be obliged to withdraw.

d) Should the parties agree to terminate a mediation and enter an alternative process, using the mediator, the mediator must consider the suitability of continuing as the appointed resolver and may need to withdraw notwithstanding the parties' wishes.

3. Conflicts of Interest

Before a mediation begins, a mediator must disclose all actual, potential or perceived conflicts of interest known to the mediator. The mediator should:

a) discuss any circumstances, including previous professional or social interactions with any of the parties, aside from acting as a mediator in past disputes, that may, or may be seen to, affect the mediator's independence or impartiality; and
b) at all times be transparent about the mediator's relations with the parties in the mediation process.

Disclosure must also be made if conflicts arise or may be apprehended during a mediation.

After making disclosure the mediator may proceed with the mediation if all parties agree and the mediator is satisfied that the conflict or perception of conflict will not preclude the proper discharge of the mediator's duties. Before proceeding further, the mediator must be certain of:

a) the parties' agreement; and
b) the mediator's ability to undertake the mediation with independence so as to ensure impartiality.

If the conflict of interest cannot be resolved to the satisfaction of the parties, the mediator should withdraw and terminate the mediation process.

After a mediation, a mediator must not act in such a manner as to raise legitimate questions about the integrity of the mediation process.

Comment

a) Conflicts of interest may arise when recommending the services of others. It may be preferable to recommend referral services or associations which maintain rosters of qualified persons.

b) External pressures should never influence a mediator. A mediator's commitment should be to the parties and the process.

c) Interests which must be disclosed include any association with a party or adviser or representative of a party, which could reasonably be seen to affect the impartiality of a mediator.

d) A mediator must disclose to the participants any circumstances which may cause, or have a tendency to cause, a conflict of interest. In particular, a mediator who is a partner or an associate of any representative retained by either of the parties must not act as mediator without the fully informed consent of all the parties. A mediator should also consider disclosing a former relationship with the parties (such as being a former partner of a legal representative) in order to avoid the perception of bias or of a conflict of interest.

e) A mediator should not establish a professional relationship with one of the parties in relation to the same dispute without the fully informed consent of all of the parties.

4. Competence

A mediator must not mediate unless the mediator has the necessary competence to do so and to satisfy the reasonable expectations of the parties.

A person who agrees to act as a mediator holds out to the parties an appropriate level of expertise and competence to effectively mediate.

Comment

a) Competence comprises appropriate knowledge and skills which would normally be acquired through training, education, and experience.

b) Mediators should have available for the parties information regarding their training, education and experience.

c) When a person is appointed or nominated to a panel or list of mediators, the appointing court, tribunal, institution, or agency should ensure that the mediator has through training, education and experience acquired the necessary knowledge and skill for inclusion on the particular panel or list.

d) The qualifications for inclusion on a list of mediators should be made public and available to interested persons.

5. Confidentiality

Subject to the requirements of the law, including any applicable Rules of Court and reporting requirements, and the mediation agreement, a mediator must maintain the confidentiality required by the parties.

Comment

a) *As the parties' expectations regarding confidentiality are important, the mediator should discuss those expectations with the parties and endeavour to meet them. The mediator should clarify when a mediation begins and when it ends, and whether conversations on the telephone, in videoconference or in meetings and communications by email and other means are also confidential. The mediator should, in the case of videoconference mediations, clarify whether any third parties are present at the mediation and any confidentiality issues associated with their involvement.*

b) *The parties' expectations of confidentiality depend on the circumstances of a mediation and any agreements they, and any other persons present at the mediation, and the mediator may make.*

c) *A mediator should not disclose any matter that a party requires to be kept confidential (including information about how the parties acted in the mediation process, the merits of the case, any settlement offers or agreed outcomes) unless:*

   i. *the mediator is given permission to do so by all persons legally entitled to enforce the confidentiality; or*

   ii. *the mediator is required by law to do so.*

d) *The parties and the mediator may make their own rules with respect to confidentiality, or the accepted practice of the mediator or an institution may mandate a particular set of expectations.*

e) *If a mediator intends to hold private sessions with a party, the mediator should before such sessions discuss with the parties the confidentiality attaching to them.*

f) *During and at the end of a mediation the mediator should also remind the parties of their respective confidentiality obligations.*

g) *Any reporting which requires a subjective judgment by a mediator of the conduct of the parties is likely to undermine the integrity of the mediation process.*

h) *Under appropriate circumstances, researchers may be permitted to obtain access to statistical data.*

i) *With the permission of all parties, researchers may be permitted access to individual case files, to observe mediations, and to interview participants.*

j) *A mediator should render anonymous all identifying information. When materials emanating from a mediation are used for research, supervision, or training purposes, the mediator should remove all identifying information from them.*

k) In some mediations there may be two or more mediators working together, usually referred to as a co-mediation model. Co-mediators may be chosen to provide specialist subject matter expertise.

l) A mediator should inform the parties and lawyers of any post-mediation reporting obligation they have at the earliest opportunity.

6. Termination of mediation

A mediator may terminate a mediation, as may be appropriate, after conferring with the parties if the mediator considers that:

a) any party is frustrating the process;
b) there is no reasonable prospect of settlement or a narrowing of the issues in dispute;
c) the mediator is unable to act impartially or forms the view that the parties perceive that the mediator cannot act impartially; or
d) a settlement is being reached that to the mediator appears unenforceable or illegal, having regard to the circumstances of the dispute and the competence of the mediator for making such an assessment.

The mediation agreement will usually provide that the parties may also terminate the mediation, subject to any court rules or court orders that might apply.

7. Recording settlement

If the parties to a mediation appear to have reached a settlement, the mediator should encourage the parties to continue the mediation until the parties have:

a) recorded terms of settlement in writing; and
b) addressed any enforceability issues.

Comment

a) Normally agreement to record the terms of any settlement in writing and to provide for the circumstances in which binding legal obligations will arise should be made prior to the commencement of a mediation.

b) A mediator ought to be cautious about direct involvement in drafting the terms of agreement, as the mediator's involvement in drafting may be construed as providing legal advice. If a party is unrepresented, the mediator should recommend that they consider obtaining independent legal advice about any proposed settlement terms.

c) A mediator should however assist the parties to take whatever steps may be necessary to formalise any settlement agreement, and to be reasonably satisfied regarding its enforceability. The mediator may consider whether binding or non-binding heads of agreement are appropriate or recommend that the parties reconvene the mediation at a later time to allow the parties to finalise a settlement deed or any necessary court orders.

d) *If the mediator is aware of actual or potential instances of deceit, fraud and misleading statements the mediator should consider the need to address them with one or more of the parties before any settlement is reached.*

8. Publicity and advertising

A mediator must not engage in misleading or deceptive publicity or advertising.

A mediator must not make any false or misleading statement including statements or claims as to the mediation process, its costs and benefits, or the mediator's role, skills, or competence.

9. Fees

A mediator must fully disclose the mediator's engagement terms and fees to the parties.

Comment

a) *As early as practicable, and before a mediation session begins, a mediator should obtain the agreement of the parties regarding all engagement terms, fees and other expenses to be charged for the mediation, and by whom and when the fees and expenses are to be paid.*

b) *The better practice is to record in writing the arrangements in respect of fees and costs.*

c) *A mediator should not agree to a fee which is contingent upon the result of a mediation or amount of settlement.*