

**ANSR Dispute Resolution**

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Mediation Guide

Whilst ANSR Dispute Resolution recognises that disputes often involve complex legal issues, unresolved grievances, challenging dynamics and high emotions, it is important that parties understand and respect the mediation process if they are to achieve a successful outcome.

This mediation guide has been developed to help parties understand the mediation process and to create a setting that generates constructive dialogue and mutually acceptable outcomes for parties in dispute.

All parties that engage ANSR Dispute Resolution as mediator, or to represent them at any mediation, will be asked to read this mediation guide in addition to signing a standard form Mediation Agreement.

Your mediator:

1. Is an accredited mediator under the National Mediator Accreditation Scheme (NMAS).
2. Will:
 - 2.1 facilitate constructive and respectful dialogue between the parties;
 - 2.2 promote understanding between the parties;
 - 2.3 ask questions of the parties, either privately or jointly, to understand the respective needs, interests and objectives of the parties;
 - 2.4 assist the parties to identify their needs, interests and objectives;
 - 2.5 encourage the parties to focus on their respective needs, interests and objectives;
 - 2.6 seek to narrow the issues in dispute without dismissing or ignoring issues that may be important to the parties;
 - 2.7 assist the parties to develop, explore and agree potential outcomes; and
 - 2.8 seek to have any agreed terms recorded in writing.
3. Will not provide legal advice to the parties, either separately or jointly (unless and until he or she is formally instructed to do so by all parties in writing).
4. Will not determine any legal or factual issues in dispute.
5. Will not make decisions for the parties.
6. Cannot enforce any terms that may be agreed.
7. Will not disclose any private discussions held or confidential information presented during the mediation process (including during private sessions) without permission of the relevant party (unless otherwise required by law).
8. Is and will remain impartial and neutral throughout the mediation process.

9. Is required to disclose any conflict of interest, or any other reason that may impact his or her ability to remain impartial and neutral.
10. Will require all parties to sign a standard form Mediation Agreement setting out the terms upon which the mediation is to be conducted, including the roles and obligations of all participants.
11. May require non-parties (eg. professional advisors, experts or support persons) to sign a confidentiality agreement in respect of the mediation.
12. Will answer any questions that the parties may have regarding the mediation process or the Mediation Agreement.
13. May recommend that the mediation be adjourned if he or she considers it to be in the interests of a party or the parties that:
 - 13.1 further preparation be completed;
 - 13.2 additional information or materials be gathered and exchanged;
 - 13.3 other parties be introduced to the mediation;
 - 13.4 they seek legal or other professional advice regarding the dispute or any proposed outcomes.
14. May terminate the mediation if he or she determines that:
 - 14.1 he or she can no longer be impartial or neutral;
 - 14.2 a power imbalance exists between certain parties;
 - 14.3 a party is abusing the mediation process;
 - 14.4 a party is using the mediation process for alternative purposes;
 - 14.5 proposed settlement terms may be illegal.

The mediation process is likely to involve:

15. The mediator meeting with each of the parties separately in the lead up to the mediation to discuss, amongst other matters, the mediation process, the background to the dispute, any underlying issues between the parties, the parties' needs, interests and objectives and finally potential outcomes. These sessions may be substituted by a joint conference between the mediator and the parties' advisors where all parties are represented.
16. Relevant materials being exchanged between the parties and delivered to the mediator before the mediation.
17. The mediator preparing for the mediation by reference to the pre-mediation sessions and any materials received.
18. A half day or full day mediation at a time and venue agreed by the parties.
19. The mediator conducting a joint session between the parties and their advisors.
20. Private sessions being held between the mediator and each of the parties (with their advisors) separately.
21. In certain circumstances:
 - 21.1 The mediator meeting with the parties' advisors in the absence of the parties;
 - 21.2 The mediator meeting with the parties in the absence of the parties' advisors.
22. Where a matter resolves, the preparation and signing of a document or documents recording the agreed terms.

The parties and their advisors will:

23. Attend pre-mediation sessions if requested by the mediator.
24. Agree a date, time and venue for the mediation.
25. Share the costs of the mediation, including those of the mediator, equally.
26. Prepare for the mediation by:
 - 26.1 gathering, and where appropriate exchanging, all necessary information and materials that will assist in resolving the dispute;
 - 26.2 considering the needs, interests and objectives of all parties;
 - 26.3 considering potential mutually acceptable outcomes.
27. Attend the mediation with a view to resolving the dispute.
28. Allow the mediator to perform his or her role as mediator (as described above).
29. Engage in constructive discussions and good faith negotiations.
30. Express positions in terms of needs, interests and potential outcomes.
31. Refrain from adopting fixed positions.
32. Ask questions and seek information and documents for the purpose of resolving the dispute only.
33. Remain open-minded towards potential outcomes.
34. Ask the mediator for a private session or break where necessary.
35. Alert the mediator of any concerns regarding the:
 - 35.1 mediation process;
 - 35.2 conduct of any party or participant during the mediation;
 - 35.3 mediator's impartiality or neutrality; or
 - 35.4 mediator's performance generally.
36. Before terminating the mediation:
 - 36.1 notify the mediator of their intention to do so;
 - 36.2 discuss their concerns with the mediator; and
 - 36.3 afford the mediator an opportunity to address those concerns to allow the mediation to continue.
37. Demonstrate respect towards all parties, advisors, participants and the mediator.
38. Refrain from interrupting others, raising their voice, engaging in threatening or intimidating behaviour, delivering personal insults or making threats.

Mediations should be attended by:

39. all persons who have a legitimate interest in the dispute resolving;
40. persons who can assist the parties resolve their dispute (including professional advisors and experts, where appropriate);
41. those who have authority to resolve the dispute; and
41. support persons, if necessary.

All discussions held, and information and material exchanged, during the mediation process is and must remain **confidential and without prejudice** as between the parties and all participants, including the mediator (unless otherwise required by law).

The content of this Mediation Guide (a) is for general information purposes only,
(b) does not include or constitute legal advice and (c) should not be relied upon as legal advice.