



A fair say



*Managing Differences in Mediation
and Conciliation*

• **A GUIDE FOR ALL INVOLVED** •





A fair say



Managing Differences in Mediation and Conciliation

• **A GUIDE FOR ALL INVOLVED** •

Gender
Different Cultures
Indigenous Australians
Being Young and Being Old
Disabilities
Sexuality
Geography
Money, Position and Authority

© Commonwealth of Australia 1999

This work is copyright. It may be reproduced in whole or part subject to the inclusion of an acknowledgment of the source and no commercial usage or sale. Reproduction for purposes other than those indicated above, requires the written permission of the Commonwealth available through AusInfo.

Requests and inquiries should be addressed to the Manager, Legislative Services, AusInfo, GPO Box 1920, Canberra ACT 2601.

National Alternative Dispute Resolution Advisory Council,
Secretariat, Robert Garran Offices, National Circuit, Barton ACT 2600

ISBN 0 642 39956 5



FOREWORD

It gives me great pleasure to introduce this Guide. It has been prepared by the National Alternative Dispute Resolution Advisory Council, which advises me on the development of high quality and efficient ways of resolving disputes without the need for a judicial decision.

The Government wants more disputes resolved through alternative dispute resolution than through court processes. It firmly believes that mediation and other alternative dispute resolution processes should be the norm rather than the exception. Alternative dispute resolution methods, such as mediation, are increasingly recognised as valuable tools for resolving disputes, especially in family law. They are also being used in a range of other areas, such as small business and workplace relations.

Mediation and conciliation can provide people with more satisfaction about their role in resolving a dispute and more control over the outcome. For many people such alternative dispute resolution processes can provide a more flexible way of dealing with a dispute than the legal system, and a way which better meets their needs and interests.

With any dispute resolution process, whether judicial or non-judicial, we must be concerned to ensure that it is as fair as possible.

Everyone wants a fair say, especially in the distressing context of a dispute, but differences between us often make that difficult. This Guide highlights the need to acknowledge the diversity of people's needs and interests, particularly in the context of mediation and conciliation. It also shows how some people may have difficulty in getting their fair say because these different needs and interests are not understood. The Guide explains how those difficulties may be overcome.

Mediation and conciliation are about people having the opportunity to resolve their own disputes. This Guide gives practical advice to help people make the most of that opportunity, and be more satisfied with the outcome as a result.

I would like to take this opportunity to thank previous members of the Council for their work in this area. This Guide is based upon that work.

I commend this Guide to people who use mediation and conciliation and to those who practise it. I am sure they will find it a useful document.

DARYL WILLIAMS
Attorney-General

ABOUT THIS GUIDE

The aim of this Guide is to help you to use mediation or conciliation by understanding what to expect and how to make it work better for you.

One of the main benefits of mediation or conciliation is that it can be flexible enough to allow people of diverse backgrounds to resolve a dispute in a way that is comfortable for them.

We explain what happens in mediation and conciliation later in this Guide.

In order to take part in mediation or conciliation successfully you will have to be able to explain what your needs and interests are. Some people find this more difficult to do than others because of their culture, gender, age, upbringing or some other factor:

There are practical ways in which you and the mediator or conciliator can work to overcome these difficulties so that the mediation or conciliation can work for you. This Guide will help you to identify some of them. But you need to be aware that for some disputes mediation and conciliation will not be appropriate.

While this Guide is written primarily for you, as the user of mediation or conciliation, it is also meant to be used by mediators and conciliators. It will help them to know what you expect of the process. They will know what you expect from the process, what difficulties you might have, and how to help you overcome them.

The Guide deals with several diverse groups and how their experiences affect their use of mediation or conciliation. It does not deal with all of the different groups of people that exist. But, the general information at the beginning of the Guide can assist those groups not specifically mentioned.

You should also be aware that you may belong to several different groups at one time and the reason for your difficulty with mediation or conciliation may not be because you belong to the most obvious group. For example, you may be an elderly female migrant. It might be thought that your migrant background prevents you from participating effectively in mediation, when in fact the stumbling block might be how your age or gender is seen. Or you may have a combination of difficulties arising from your membership of several different groups.

In the Guide, we have chosen to illustrate certain points by using examples. Some of the examples deal with inappropriate behaviour. Our choice to use those examples is not because we agree with them, but because they help you to understand what we mean.

This Guide is based mainly on the Discussion Paper prepared by the National Alternative Dispute Resolution Council (the Council) called 'Issues of Fairness and Justice in Alternative Dispute Resolution'. That Paper discusses these issues in much greater depth. Other sources that the Council used in preparing this Guide are listed at the back of the Guide.

NADRAC

National Alternative Dispute Resolution Advisory Council

WHERE TO FIND THINGS IN THIS GUIDE

	page
Foreword	iii
About this Guide	iv
What are Mediation and Conciliation?	1
Why Use Mediation?	2
What You Can Expect in a Meeting	4
What You Should Do in a Meeting	5
What Stops a Meeting from Working?	6
How to Break Down Barriers in a Meeting	10
Gender	12
Different Cultures	14
Indigenous Australians	17
Being Young and Being Old	19
Disabilities	22
Sexuality	24
Geography	26
Money, Position and Authority	28
Violence	30
Some Material We have Used to Prepare this Guide	32

WHAT ARE MEDIATION AND CONCILIATION?

There are many ways to try to resolve disputes. This Guide talks about two of them – mediation and conciliation.

Mediation

- Mediation is a meeting where people involved in a dispute:
 - work out what the dispute is really about;
 - try to find options to sort out the dispute;
 - think about them; and
 - try to reach an agreement.
- They are helped by someone outside the dispute—a mediator. This is because sometimes people who have a problem need someone outside the dispute to help them talk about it.
- The mediator does not tell the people who have the dispute what the agreement should be, but will:
 - help them talk about the dispute in a positive way;
 - make sure that everyone has a fair chance to have their say; and
 - manage the meeting but not decide what is in the agreement.

Conciliation

- Conciliation is similar, but the conciliator:
 - will be an expert or someone with special knowledge;
 - may give expert advice or information; and
 - may make suggestions about possible agreements.

While the processes of mediation and conciliation are different, from now on in this Guide we use the word **'MEDIATION'** to refer to both processes and we call people who mediate or conciliate, **'MEDIATORS'**.

We use the word **'MEETING'** to mean a mediation or a conciliation.

WHY USE MEDIATION?

Where it is important that the needs of people are taken into account in resolving disputes, then using mediation can have many advantages:

- Mediation can be more flexible and adaptable to the needs of the people involved.
- The people involved in the dispute can agree to apply their own values to the dispute rather than be constrained by legal rules that may not seem appropriate.
- Mediation processes and outcomes, which are different to the formal justice system, may better meet peoples' needs and interests.

Using mediation to resolve a dispute can have particular benefits in some cases:

Gender

- Mediation may be more appropriate for resolution of disputes that have gender as a factor because it can achieve outcomes that are fair to both women and men.

Different Cultures

- The legal system is dominated by English traditions and can therefore be unfamiliar and intimidating.
- Mediation has the flexibility to be tailored to the particular needs of the participants. It can accommodate disputes that may lie beyond the scope of the legal system. Participants can influence the process, control the content and outcome and this can be empowering for them.

Indigenous Australians

- Mediation is able to deal with disputes about customary law.
- Mediation allows the maintenance of harmonious relations between the participants. This is the emphasis of dispute resolution in traditional Aboriginal and Torres Strait Islander society.
- The legal system may be inappropriate for disputes involving Indigenous Australians because of its attribution of fault and its past treatment of Indigenous people.

- Traditional Indigenous Australian dispute resolution processes are more akin to mediation.
- Mediation emphasises empowerment, a chance to talk face to face and free expression of feelings, as well as facts.

Being Young and Being Old

- Mediation can provide direct communication, speed, reduction of trauma associated with power contests, comparative cheapness and a lack of formality. It can also be less confronting, more amenable to the continuation of good relations and the promotion of co-operative approaches, and provide greater control and ownership.

Disabilities

- The adaptability and potential of mediation to accommodate special needs, creates an environment where people with disabilities can speak for themselves.

Sexual Preferences

- Mediation offers the possibility of private, confidential dispute resolution processes.
- Mediation allows people to decide the values that they wish to apply to the resolution of their dispute.
- Mediation may provide for a choice of mediator.

Geography

- The flexibility of mediation may overcome problems of distance more readily.
- Mediation can be cheaper and quicker and may help to maintain ongoing relationships.

Money, Position and Authority

- Comparative cheapness may make mediation the only practical option.
- From a business perspective, mediation can lead to a quicker result, allow a wider range of remedies, avoid adverse publicity, result in a confidential outcome, give ownership of the dispute to the people who are most affected and maintain goodwill.

There are circumstances where mediation may not be appropriate and we talk about them later in this Guide. If you are worried about this, talk to your mediator or another support person before entering mediation.

WHAT YOU CAN EXPECT IN A MEETING

The Mediator's Role

Usually, you can expect that the mediator:

- meets with you privately before the meeting to talk to you about how the meeting will work;
- tells you if he or she knows or has helped any of the people involved in the dispute before and asks you if this is a problem and how it can be fixed;
- gives you information, in writing, about the meeting, who will be there, who will speak, how long the meeting will last and whether there will be more than one meeting;
- suggests you see other people who can give advice, information or support before or during the meeting;
- gives information about what sorts of things have appeared in agreements similar to your conflict;
- asks you what would make the meeting work fairly for you;
- gives you information to help you work out whether a meeting is the right way to sort out your problem;
- speaks to you directly rather than to any interpreter, support person or adviser you may use during the meeting;
- keeps secret anything heard at the meeting or explains when he or she won't;
- has no personal interest in the agreement and will always be fair and even-handed;
- works with all of the people involved in a positive way throughout the meeting;
- helps the meeting so that everyone involved understands what is being said and what is in the agreement;
- encourages you to ask questions;
- gives you time to think about whether an agreement will work for you; and
- does not push you or the other people into an agreement where it is obvious that this will not work.

How the meeting is run can be changed to meet your, and other people's, needs, provided that fairness and justice are not lost.

WHAT YOU SHOULD DO IN A MEETING

Your Role

In a meeting you can:

- talk about the things that matter to you;
- ask a question as many times as you need;
- talk to the mediator by yourself if you want to, and the mediator will not tell the other people involved in the meeting anything you have said if you don't want it repeated; and
- speak up if you feel that you are being pushed around. You can even bring the meeting to an end if you want to.



What you need to do

You can help fairness by:

- being prepared to listen even if you do not agree;
- co-operating;
- taking an active part;
- thinking about what might be a fair agreement for everybody involved;
- keeping an open mind about what might fix the dispute. There might be more than one answer;
- accepting that people are different and have different needs; and
- understanding that the way a mediator treats each of the people at the meeting might need to be different if the meeting and the agreement are going to be fair.

WHAT STOPS A MEETING FROM WORKING?

A meeting won't work if people think that it is not fair. 'Fair' can mean different things to different people—sometimes we don't treat people fairly because they are a member of a certain group.

This Guide uses the word 'barriers' for those things that stop meetings from working fairly. In any conflict situation, there is usually potential for one or more barriers.

Some barriers are:

- It is common for people to make judgments about other people because they belong to a certain group. This is called 'stereotyping'.

For example:

It might be assumed that a person in a wheelchair, or a man, is not capable of caring for a child.

It might be assumed that women cannot do a particular type of job or that adolescents or older people do not have a legitimate view about a particular problem.

Because English is a new language for a migrant and he or she may make mistakes, it might be assumed that his or her ideas or beliefs are less worthy than those of someone who uses English well.

- Some people find it hard to believe other people tell the truth, just because the other person belongs to a certain group.

For example:

A middle aged professional person may be assumed to be more believable than a young person who is unemployed.

A person with a hearing impairment whose speech sounds slurred may not be believed when claiming that he or she is not drunk.

- A reaction either in favour of or against a person. This is called 'bias'.

For example:

A person might disapprove of another's sexual preference and feel uneasy being around him or her and therefore be unable to treat that person fairly.

A mediator might know one of the people involved in the dispute and may either favour, or appear to be against, that person. Or the other person involved in the dispute may think the mediator will be biased against him or her.

- A barrier can occur because of a person's skills, support, money, position or authority. This is called a 'power imbalance'.

For example:

An adult may have more power than a child because the adult has the authority to make decisions for the child.

A big company might seem more powerful than the person wanting his or her broken machine fixed.

A well-known person in a community might have more influence on his or her side, because of community support, than a local, seemingly more powerful, institution.

- Just because a person has a legal right doesn't give them power. They have to choose to use it.

For example:

A female worker has the right to work without being harassed because she is a woman. However, because she is afraid that she might lose her job if she complains, she puts up with the harassment.

- A lack of knowledge or experience can be a barrier.

For example:

A newly arrived migrant may not understand the legal system or the rights that he or she has.

A person with a severe disability might not have had the same access to education or life experience and may not have the information that he or she needs.

A person who is geographically isolated may not know of his or her rights, responsibilities and options. Even if a person does know of his or her rights, that person may not be able to access the legal system or other services due to where he or she lives.

A person who has never used a meeting to sort out a problem may have little knowledge and experience of the mediation process and, consequently, feel uncomfortable or out of control.

- How people communicate can be a barrier for many reasons.

For example:

A person might not be comfortable enough with English to be able to say clearly what that person wants to say or be sure that he or she understands what is being said.

The same idea expressed in Auslan (Australian sign language) is different to how it will be expressed in English.

Some people might like being called by their first name, whereas others might prefer something more formal.

Looking directly at a person when talking to them might appear rude to an Indigenous Australian.

Young women of certain backgrounds might believe that they should not disagree with what their parents say or do.

Some people's upbringing might help them to talk easily about a problem with someone else, whereas other people might believe that avoiding the situation is the best way to deal with a problem.

Some people may find having to talk in a large group to be difficult. Other people may find that having to read lots of information, or having to concentrate for a long period of time can be hard.

- How people perceive a problem can be a barrier too.

For example:

A request to wear a hard hat in a safety area instead of a religious veil might seem like a very reasonable request. However, for the person wearing a veil, the request not to wear it can cause hurt because of religious beliefs.

- People can feel disadvantaged because of where they live and how much money they have.
- In some places, it is not always allowed or possible to seek out help.

For example:

Living in a small community might mean that a person's fear of losing his or her privacy might stop that person from seeking help from a mediator to resolve a problem.

- Sometimes a problem between a few people might affect a lot of other people. If an agreement is to be fair it may have to involve other people.

For example:

Two people making an agreement about how much water is pumped out of a stream may need to think about those people who live further down the stream.



Living in a group house and making an agreement for use of the lounge room might need the co-operation of all of the people sharing the house, rather than just the two people fighting.

- It is common for people to refuse to admit that conflict exists or that it is serious.
- Personal problems can stop people from dealing with other problems.

For example:

A man, who usually can deal with problems but who has just lost his job and is attending a meeting to agree about access to see his young children, might not be as confident as usual. He may not believe in his ability to sort out the access arrangements with his ex partner.

It is important to remember that for every example listed in the previous pages there is an example where the reverse might apply.

HOW TO BREAK DOWN BARRIERS IN A MEETING

A mediator will try to identify and address any barriers that each person might face. You can help the mediator to do this.

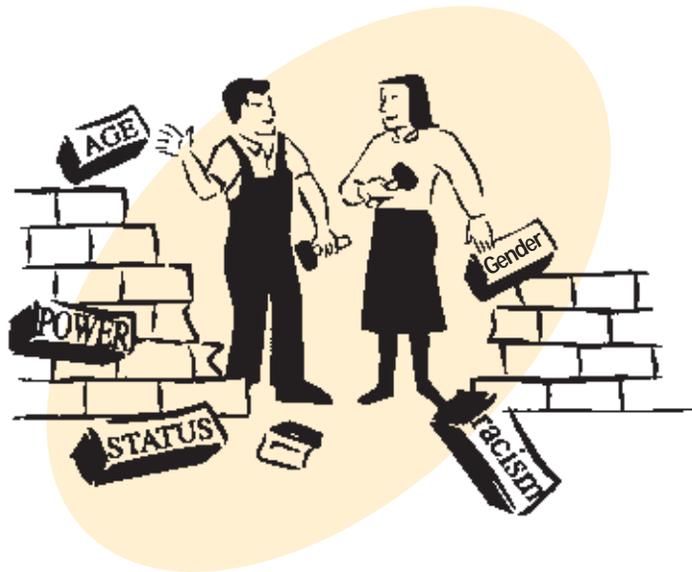
Usually the mediator:

- asks you whether you have any specific needs to make the meeting work well for you. The mediator will be interested in knowing what you think will make the meeting work better.
- asks you whether you have specific needs that the meeting should be planned around. They should check with you whether you think these needs should be considered and also whether the plans they suggest will meet those needs.
- asks a community or representative group of which you are a member, whether there are ways that the meeting should be changed so that it works better.
- works out a time, place and other facilities (such as disabled parking) to make the meeting work for all the people involved.
- takes into consideration your needs when they work out where people will sit during the meeting.
- discusses with you the need to have two people manage the meeting to better match the backgrounds of the people coming to the meeting.
- asks you to consider having a support person or a special adviser. This person should:
 - help you talk about the problem if you find it hard;
 - concentrate only on your problem and not on any problems they might have had with the other people involved;
 - help you work out any options to sort out the problem; and
 - look at the agreement with you, during any break in the meeting, to help you work out whether it is an agreement with which you can live.
- checks during the meeting and at any private meetings that people understand what is happening during the meeting.

In addition to common barriers, there are certain barriers that may only affect some people. The Guide now looks at:

- Gender
- Different Cultures
- Indigenous Australians
- Being Young and Being Old
- Disabilities
- Sexuality
- Geography
- Money, Position and Authority

And suggests how these barriers can be broken down.



GENDER

- For all of us, our gender plays an important role in how we look at ourselves and other people. There are differences about what we expect people to do or believe, or how we expect them to behave, based on their gender.
- Because of different expectations and stereotypes about who should do what, problems can occur.

For example:

A boss might sack a pregnant worker because he doesn't like her appearance and believes she should be at home.

- Stereotypes about women and what they should do, the way they should behave and what they are capable of achieving, can mean that women are treated unfairly.

For example:

For many years, it was thought that women could not be firefighters and were stopped from applying for firefighter jobs. Now, women can apply and are working as firefighters.

- Stereotypes about men can also mean that they are treated unfairly.

For example:

A man asks his boss if he can work part time so he can look after his children after school. The boss says 'no' because he believes that looking after the children is women's work and because he believes the request shows the man is weak.

- In a meeting women can be at a disadvantage if they believe they cannot speak freely about their own needs, or believe that they should put their own needs last, or find it hard to disagree or say 'no'.

For example:

At a meeting, two parents are talking about their separation and caring for their children. The mother believes that she should only talk about when the children will see their father because it is more important than how she is going to pay the electricity bills, and she finds it hard to disagree with the father when he says that she should pay the bills.

- In a meeting women may not be believed as much as men.

For example:

A female electrician might find it harder to convince a contractor that she can do the work as well as a man and is the best person for the job.

How to Break Down Barriers for Men and Women

The mediator may:

- ask you if you are prepared to be open and honest.
- ask you if you think that the other people involved in the meeting will be open and honest.
- ask you if you believe that you can talk as an equal in the meeting or whether you need a support person.
- suggest that two mediators are used—a male and a female.



DIFFERENT CULTURES

- Within the Australian community there are more than one hundred and forty different cultures. Each different culture is a way of life for people.
- While there are many things in common between different cultures, there are also differences, which need to be understood and respected. Within a culture, there may also be individual differences between people. Some of the differences between cultures may become stereotypes.

For example:

A stereotype might be that Frenchmen are great lovers.

Or that women who wear religious veils have a particular political belief.

- Some stereotypes are simply the result of prejudice and are often labelled racist.

For example:

A stereotype resulting from prejudice might be when someone says

"... Scots are selfish with money", "... Irish are stupid" or "...young Asian men are gang members and sell drugs".

- These negative stereotypes are harmful and need to be talked about in the meeting.
- How the meeting is managed may need to be changed to meet the needs of people from different cultures.

For example:

In one culture, when people fight or argue, they expect that there will be noise, emotions and angry words. For another culture, showing emotion may be considered rude.

- Different cultures have different ways of resolving problems. In one culture, people may talk about how they agree with each other, then how they disagree and then reach an agreement. In another culture, people may start

talking about how they disagree, then talk about how they agree and then reach an agreement.

- In some cases being from one particular culture might mean that a person may not use English well or may not have the same knowledge as a person who was born in Australia or has lived here for a long time.

For example:

Telling a person who has recently arrived in Australia to apply some 'elbow grease' to their work may be misunderstood.

- Using a meeting to fix a problem may not always be a fair or appropriate thing to do.

For example:

For women in traditional Vietnamese cultures it is seen as shameful to seek outside help, or even to let other people know they are having family problems.

- Working out who needs to be involved in fixing the problem may need to take into account different cultures.

For example

In some cultures it might be the mother's family who is responsible for caring for a child if the mother cannot, and the family members would need to be included in a meeting about the child's care.

- In some cases it may be better if the mediator is known, trusted and respected.
- In some cases other members of the particular cultural group, or community, might need to know about how the problem is to be fixed, if the agreement is going to work.

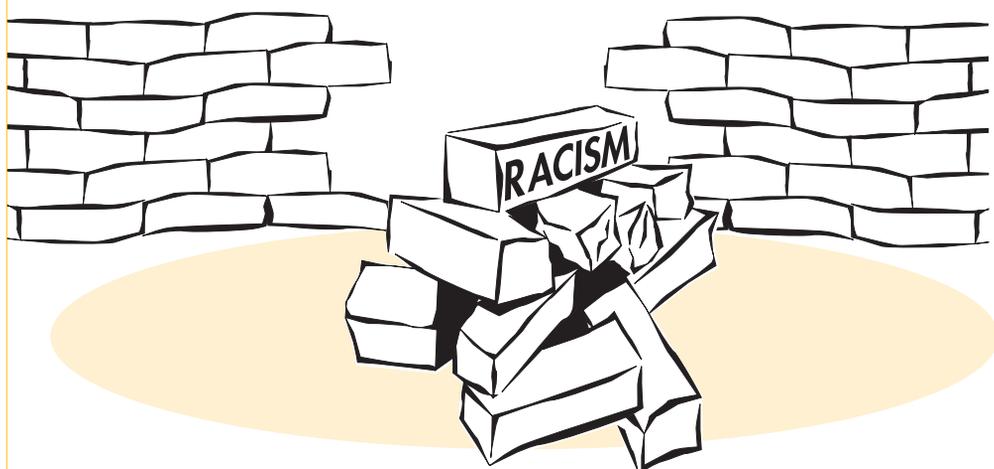
For example:

In some communities, if a young person commits a crime and reaches an agreement with the victim about how to deal with it, the whole community will accept responsibility for making sure that the young person keeps their word.

How to Break Down Barriers for People from Different Cultures

The mediator may:

- talk to you about how the meeting will be managed, and may ask you about any ways that the meeting could be managed to take into account any needs you have. You can tell the mediator about your culture's rules and practices that you need to respect in the meeting.
- ask representatives of your cultural group whether there are ways that the meeting should be managed so that it works better.
- discuss with you the need to have two people manage the meeting to better match the cultural backgrounds of the people coming to the meeting.
- suggest that the meeting be stopped so that the mediator can meet with you separate from the other people involved in the problem. At this separate meeting, the mediator may ask you how you feel about the meeting, whether you believe you have had a fair chance to talk about what is important to you and whether the meeting is being managed in a way that meets your needs.
- ask you if you need an interpreter. The mediator will talk to you rather than the interpreter.
- talk to you about using a support person. You may wish to use a respected person from your community to help you during the meeting.



INDIGENOUS AUSTRALIANS

This part of the Guide deals with Aboriginals and Torres Strait Islanders.

- Indigenous people have a culture and way of life of their own, no matter if they live in cities, country areas or traditional communities.

For example:

Indigenous Australians, no matter where they live, believe that keeping a relationship on friendly terms can be more important than disagreeing with something that has been said. A person might agree to something even though it's not exactly what they need because keeping a friendly relationship is more important.

- Often problems are seen as belonging to the community rather than to one person.
- It is expected that the mediator will be known and respected by the people involved in the problem.
- Often the community will know about a problem between people and expect to know about the agreement or be involved in deciding how it is to be fixed.
- Often Elders will demand that people involved in a problem sort it out through a meeting.
- Usually a mediator will need to work along side the Elders, who are responsible for sorting out problems.

For example:

It is the role of Elders to hold family or clan meetings to hear what the problem is about and for the Elders to say how the problem will be fixed.

- For indigenous people to have faith in a meeting, they may need to know that the problem still belongs to them and that how to fix it is up to them.

For example:

Where there is a problem about customary law, an agreement can only work where the people involved can say what the problem is about and how it should be fixed.

How to Break Down the Barriers for Indigenous People

The mediator may:

- ask representatives of your community whether there are ways that the meeting should be managed so that it works better. This can include who needs to be at the meeting and who should be allowed to speak at the meeting.
- need to find the right time to hold a meeting. The mediator should encourage your involvement and understand that keeping promises made to family and community members are also important.
- explain to the people attending the meeting that eye contact can sometimes be seen as rude or threatening. Or if you wish, you can tell the mediator that you want to talk about it as one of the rules for the meeting.
- need to be wary of "gratuitous concurrence", where a person may agree with a question that they do not understand. Direct questions or questions that can only be answered with a 'yes' or 'no' may be inappropriate for members of traditional communities. Questions about time, location and quantity may not be understood.
- need to be older than the people having the problem.

BEING YOUNG AND BEING OLD

- As we grow up we develop skills and knowledge such as being able to speak, hear, concentrate, understand simple and complex ideas, work out our needs and how to meet them, make decisions, negotiate and more. Each person develops differently. For some people, growing old can mean losing some skills.
- While people may grow up and age in similar ways, stereotypes and bias can happen simply because of a person's age.

Assumptions commonly held are:

All teenagers are lazy, selfish and take no notice of good advice when it is given to them.

People over fifty can't learn new skills.

All retired people are 'deaf' and unwilling to listen to new ideas.

- How people deal with a problem can depend upon the skills and knowledge they have developed.
- Using a meeting to fix a problem may not always be a fair or appropriate thing to do.

For example:

Where a problem is about a child being abused, or where people believe that a child might have been abused.

Where the meeting is about a family problem and a family has lost its ability to talk about things and can't work together, or where violence has been threatened.

Barriers that Children may face

- Children may have to rely on adults giving them information and taking up a problem for them.
- Adults, whether they are a parent or a mediator or somebody else, may think that they know what is best for the child, think that a child might not want to be involved in a meeting or the child is not mature enough to help

work out an agreement. Many children have learnt the skills that mediators use to sort out problems, and use these skills to help other children sort out problems in the school playground.



For example:

Children often have a strong feeling about what they need or how to sort out a problem and they will not co-operate if they think that they have not been listened to.

Barriers that Adolescents may face

- Sometimes problems can be difficult because both parents and adolescents have very different ideas about the problem and what will fix it.
- Adolescents may not have all the information they need or may not know how to go about sorting out a problem.

For example:

When a person has his or her first job that person may not know about his or her right to award pay or what to do if the person is sacked.

- Stereotyping can be a bigger problem for adolescents when they come from a different culture. People may wrongly see them, their problems and needs as being all bad and not listen to what they have to say.

For example:

Young people, such as those who are Aboriginal, Middle Eastern, South East Asian or Pacific Islanders, may be blamed and feared simply because of their cultural background.

Barriers that Elderly Adults may face

- Stereotypes about people over fifty or the elderly and what they can or can't do, can mean that they are treated unfairly.

For example:

A boss might believe that once a worker reaches a certain age he or she won't be capable of coming up with new ideas or will be too slow, or not aggressive enough to win new contracts.

Believing that all 90 year old people can't make decisions for themselves.

- Many elderly adults may not be sure how they fit into the community, may not be as positive about themselves, may not be as fast or as fit as they once were and this might make meetings difficult for them.

For example:

A person who has just retired and who isn't feeling comfortable about it, might not have the same confidence as a person who finds retirement rewarding.

How to Break Down the Barriers for People of Different Age Groups

The mediator may:

- discuss with you the need to have a support person.
- discuss with you the need to have two people manage the meeting to better match the ages of the people coming to the meeting.
- include in the rules of how the meeting is managed, a rule that says that people can take a break from a meeting at any time. The mediator may suggest that more than one meeting might be held so the people involved in the meeting can work at a comfortable pace.
- may suggest that the meeting be stopped so that the mediator can meet with you separately from the other people involved in the problem. The mediator may ask you how you feel about the meeting, your understanding of what is happening and whether you have had a fair chance to talk about the things that are important to you. There may be more than one private meeting.

DISABILITIES

- Many people with disabilities live just as other people do, while others may need a range of help, care or support from others. People with the same disability are not all the same. Having a disability doesn't always affect a person's lifestyle or actions.
- Stereotypes about people with disabilities and what they can and can't do because of their disability, can mean that people with disabilities are treated unfairly.

For example:

Many people treat people with hearing impairments as though they are also stupid.

Many people believe that they need to speak slowly to a person who is blind.

Using a wheelchair doesn't mean that a person will take more sick days than a person who doesn't use a wheelchair.

- Not being able to get into a building, not being able to use public transport, or not being able to use all of the services and facilities that other people use, are also barriers.
- Some people can feel uncomfortable about a person who has a disability and would prefer that the person goes away and this can mean that they stop listening to what the person is saying. This can mean for some people with disabilities they have to work twice as hard to get what they need.
- Some people with disabilities may have to rely on other people giving them information and taking up a problem for them.
- Other people may think that they know what is best for the person with a disability, think that the person might not want to be involved in a meeting or the person does not have enough skills to help work out an agreement.

- Using a meeting to fix a problem may not always be a fair or appropriate thing to do. Sometimes, it may be more appropriate to approach a specific organisation, such as the Anti-Discrimination Board or the Disability Discrimination Commission.

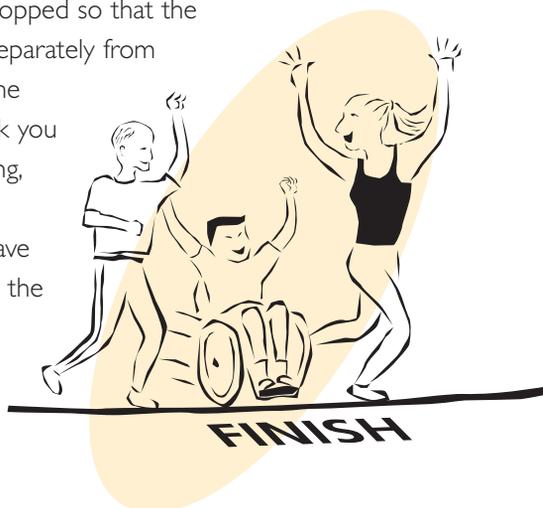
For example:

A person with a disability may be evicted from a boarding house because they are disabled, leaving them with nowhere else to go.

How to Break Down the Barriers for People with Disabilities

The mediator may:

- talk to you about how the meeting will be managed. At the same time the mediator may ask you about any ways that the meeting could be managed to take into account any needs you have. You can tell the mediator about the needs you have and the way you handle them in other situations.
- talk to you about the building where the meeting will be held, disabled parking, getting to the meeting room, how information will be shared at the meeting and how the meeting will work at a comfortable pace for all the people involved.
- talk to you about using a support person or an interpreter during the meeting. During the meeting, the mediator will talk to you rather than to your support person or the interpreter.
- may suggest the meeting be stopped so that the mediator can meet with you separately from the other people involved in the problem. The mediator may ask you how you feel about the meeting, your understanding of what is happening and whether you have had a fair chance to talk about the things that are important to you. There may be more than one private meeting.



SEXUALITY

- Stereotypes about people because of their sexuality, can mean they are treated unfairly.

For example:

A person might believe that all gay men will abuse young boys.

Another person might fear that their daughter could become a lesbian if she is taught by a woman who is a lesbian.

- People might have a strong bias against gay men and lesbian women. Such a bias can stop them from listening to what the person has to say about the problem and their needs or ideas for fixing the problem.

For example:

An employer's religion tells him that homosexuality is wrong and consequently, he believes that it would be wrong to employ a gay man.

- Because homosexual relationships are seen as being different and not covered by law, people can be treated unfairly.

For example:

Two women lived together just like a married couple. One died in a car accident and didn't leave a will. Her partner may not receive anything from her estate because the law in some parts of Australia doesn't see their relationship as being the same as a marriage.

How to Break Down Barriers for People of Different Sexualities

The mediator may:

- talk with you before the meeting to ensure that you feel comfortable with the mediator and you can assess whether the mediator feels comfortable with you.
- talk to you about using outsiders, or another service, that better matches the people involved in the problem and whether you think this would be useful.

- check with you during private meetings whether you have had a fair opportunity to talk about the things that are important to you. You must tell the mediator if you think you are not being treated as an equal.



GEOGRAPHY

- Living in a small and close knit community may affect the way people look at the world.

For example:

A young man lives in a town of 8,000 people. He has AIDS and he doesn't tell other people because he fears what they might say.

- For some people living in the country can be tough. People might not have jobs, where people do have jobs they may not be well paid. Education and other opportunities may be limited.

For example:

Youth suicide, particularly for young men, is higher in rural areas.

- Having to travel, long hours of work or having limited choices about services may be part of life for people living in rural or remote communities.
- It may be harder for people to ask for or find help with problems.

For example:

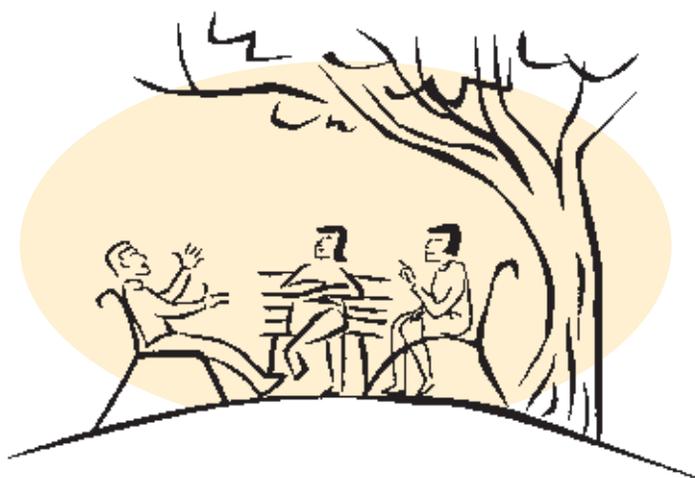
The local doctor in a country town doesn't want to see a counsellor within the local Community Health Centre to talk about her marital problems. She is afraid that she would lose her privacy.

- People living in the country might have different beliefs to people living in the city.
- It can be difficult to find a mediator when you need one or to find a mediator who is not known by one of the people involved in a problem.
- Options for fixing a problem might be limited.

How to Break Down Barriers for People in Rural and Remote Areas

The mediator may:

- have to help the people check out whether options for fixing a problem are workable in their local community. For example, the mediator might ask questions about how an option would work in different circumstances, or if things started to go wrong.
- need to travel to the people involved in a problem rather than expect people to travel.
- need to use new technology to allow people to have a meeting over the phone where they can hear and/or see each other.
- need to come from another town.
- need to ask people how they will deal with other people from the town, asking them questions about the dispute or any agreement.



MONEY, POSITION AND AUTHORITY

- Having money, position and authority may give people better access to information and advice. It may also help people to be more convincing or believable.
- This may create a power imbalance.

For example:

If one person has not been able to get advice or information while the other person has prepared well and gained information and advice, then the latter person might seem more believable and persuasive.

- There may be further power imbalances when a person has position, authority and has used meetings before. This can make a meeting unfair.

For example:

A person who has been to a lot of meetings will know some of the questions the mediator will ask. This may make them appear more relaxed and convincing during the meeting.

- A person may believe that because of their position they shouldn't "give in" to the other person.

For example:

In a dispute between a bank and a farmer, the farmer might feel that agreeing to any suggestion made by the bank would mean that the bank had won again.

- A person's position might also control how much effort they can put into a problem.

For example:

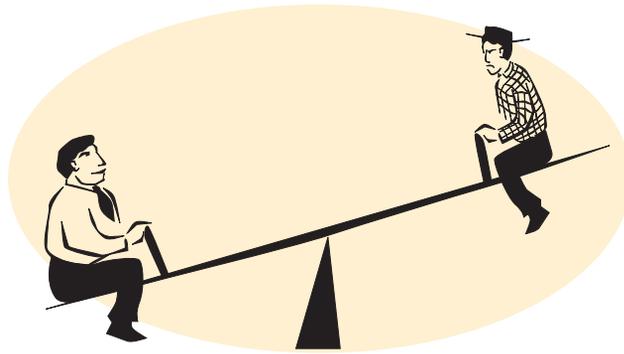
A person who runs a small business with only a few staff may not be able to take time away from his or her business to attend a meeting where a big business may have more staff and may be able to afford more time.

- Position and authority doesn't always help.

For example:

If a person threatens to take their story about the problem to the local newspaper, the other person might give in just to avoid bad publicity, even if they feel that they are 'in the right' and an agreement should be in their favour.

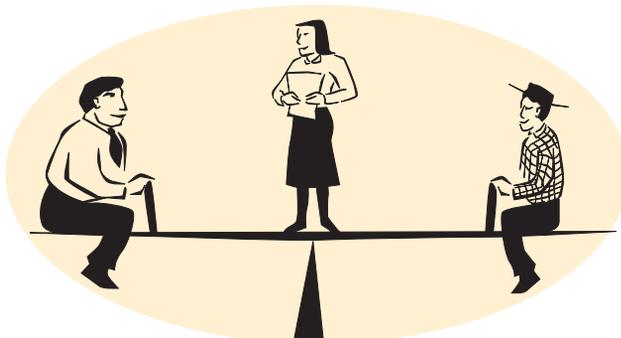
Certain big businesses may be seen as the 'bad person' in a problem whether or not they are.



How to Break Down Barriers about Money, Position and Authority

The mediator may:

- tell you where you can find information and advice. If money is a problem then the mediator may be able to tell where to get free advice.
- work out when to hold a meeting so that people don't feel forced to meet or to agree because they can't spend any more time on it.
- check before the meeting if the people coming to the meeting can make an agreement.



VIOLENCE

- Violence may be a problem for many groups of people. It may be threatened or actual. Both can be destructive.

For example:

A boy has an intellectual disability. At school the other children pick fights with him because they think he is weird.

An Asian student works part-time in the local bar. One night, he is assaulted by a drunk customer and told to "go home where you belong".

A young woman is hit by her father when she says she wants to leave home.

- Using a meeting to fix a problem may not always be a fair or appropriate thing to do.

For example:

It may be inappropriate to hold a meeting to talk about a daughter returning to the family home when she doesn't feel that she can say how she feels because she is afraid that her father might hit her again.

Dealing with Violence

The mediator should have lots of experience in managing meetings.

The mediator will not allow the violence to be part of the bargain.

For example:

This means the mediator will not allow a person to say "if you don't burn the tea, I won't hit you."

The mediator may:

- ask you questions to help you work out whether violence is a problem for you.
- agree to a meeting if you and the mediator believe that you can trust the other person, you feel safe and you feel that you can talk about what is important to you.

- suggest different ways of holding the meeting to make sure that the people involved feel safe, such as:
 - using two mediators to better match the people coming to the meeting;
 - starting the meeting with the people involved in separate rooms;
 - having more than one meeting, each meeting being short;
 - having a private meeting, where the mediator talks to each side separately;
 - suggesting that you get information or advice before the meeting;
 - giving homework for people to do between meetings;
 - talking about rules for safety during the meeting;
 - checking with you privately that you think that the agreement is fair and it will work;
 - checking with you between meetings that you wish to continue the meetings; or
 - ending the meeting if violent threats or acts occur.
- may talk to you about using a support person.

SOME MATERIAL WE HAVE USED TO PREPARE THIS GUIDE

1. National Alternative Dispute Resolution Advisory Council. *Issues of Fairness and Justice in Alternative Dispute Resolution Discussion Paper*, November 1997
2. Astor, H. on behalf of the National Committee on Violence Against Women. *Women and Mediation: Information about Mediation for Women*, Department of Prime Minister and Cabinet: Canberra 1992
3. Frederico, M. Cooper, B. and Picton, C. *Mediation and Cultural Values: A Model of Culturally Sensitive Mediation*, Department of Immigration and Multicultural Affairs, 1998
4. Family Law Council. *Violence and the Family Law Act: financial remedies Discussion Paper*, August 1998
5. Langton, M. "Urbanizing Aborigines: The Social Scientists' Great Deception", *Social Alternatives*, 1981, 2(2), 16-29
6. Astor, H. on behalf of the National Committee on Violence Against Women, *Guidelines for Use If Mediating in Cases Involving Violence Against Women*, May 1992
7. Kalowski, J. "In a Manner of Speaking: A Cross-Cultural View of Mediation" *Commercial Dispute Resolution Journal*, 2 (2) April 1996, 200-208

Acknowledgment

The Council acknowledges the invaluable assistance provided by Ms Deborah Tyler (Acting Director of the NADRAC Secretariat 23 July 1998 to 9 October 1998) in preparing this Guide.