

National Alternative Dispute Resolution Advisory Council

Who can refer to, or conduct, mediation?

*A compendium of Australian legislative
provisions covering referral to mediation
and accreditation of mediators*

August 2004

Introduction

The following tables summarise legislative provisions in Australian jurisdictions which regulate the powers to refer to, or conduct, mediation. These provisions may specify matters such as:

- the bodies or persons who can order, refer to, arrange or require mediation
- the procedures for referral to, and conduct of, mediation
- the bodies or persons authorised to conduct mediations,
- the obligations and benefits applying to such person or bodies, and
- the means by which a mediator or mediation body may be accredited, nominated, appointed or approved.

The material has been prepared by the secretariat of the National Alternative Dispute Resolution Advisory Council to assist Council's consideration of the issue of mediation accreditation. NADRAC has decided to make the material more widely available as a resource to other agencies and interested individuals.

The material in this compendium is provided for general information only, on the understanding that NADRAC is not providing advice on any specific legislative provision or mediation scheme. While due care has been taken in preparing these tables, errors or omissions may have occurred. New legislative provisions or amendments to existing provisions may also have been made since this data were gathered. It is noted that accreditation and referral requirements may be established by administrative as well as statutory provisions. Users therefore should check the precise arrangements with respect to specific legislation and mediation programs.

NADRAC welcomes comment on any of the material contained in this document. Comments may be e-mailed to nadrac@ag.gov.au.

NADRAC thanks Cathy Binnington, Legal Workshop student at the Australian National University, and Elizabeth Sinodinos, Legal Officer, NADRAC secretariat, for their assistance with this project.

Contents

Introduction.....	2
Commonwealth.....	3
Australian Capital Territory.....	25
Australian Capital Territory.....	25
New South Wales.....	28
Northern Territory.....	40
Queensland.....	44
South Australia.....	54
Tasmania.....	59
Victoria.....	63
Western Australia.....	67

Commonwealth

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Administrative Appeals Tribunal Act 1975</i>	<p>Section 34A Mediation</p> <p>(2) A mediator is to be a member or officer of the Tribunal directed by the President to mediate in the particular case.</p> <p>(8) A person who mediates in respect of a proceeding may not be a member of the Tribunal as constituted for the purposes of the proceeding other than for the purpose of the Tribunal making a decision or dismissing the application giving rise to the proceeding.</p>	<p>A mediator is a member or officer of the Tribunal, but is disqualified from later hearing the matter.</p>
<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	<p>Schedule Agricultural and Veterinary Chemicals Code</p> <p>Part 3</p> <p>(4) The parties concerned are invited to negotiate the terms of the compensation and provision is made for the appointment of a mediator if the parties are unable to agree and for the terms to be arbitrated if the mediation is unsuccessful.</p> <p>Division 3, 63</p> <p>(1) The APVMA must appoint a person as a mediator to try to help the parties to the negotiations to reach agreement as to the terms of the compensation.</p> <p>(3) If, before the mediation ceases, the person appointed as the mediator:</p> <ul style="list-style-type: none"> (a) dies; or (b) becomes incapable of performing, or continuing to perform, his or her functions; or (c) resigns his or her appointment; or (d) for any other reason refuses or fails to perform, or to complete the performance of, his or her functions as required by this section; <p>the APVMA may appoint another person as mediator in place of the first-mentioned person.</p>	<p>A mediator is appointed by the Agricultural and Veterinary Chemicals Authority (APVMA).</p>
<i>Corporations Act 2001</i>	<p>Section 241 General Powers of the Court</p> <p>(1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought including</p>	<p>Court may give directions about conduct of mediation.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	(b) directions about the conduct of the proceedings, including requiring mediation.	
<i>Defence Reserve Service (Protection) Regulations 2001</i>	<p>Regulation 22 Resolving disputes by mediation (2) The Office must ensure that a person working for the service as a mediator has appropriate qualifications as a mediator.</p>	The Office of Reserve Service Protection must ensure that mediators have qualifications.
<i>Family Law Act 1975</i>	<p>Section 13 Organisation may be approved as an approved counselling organisation, an approved mediation organisation, or both Subject to sections 13A and 13B, an organisation may be approved as: (a) an approved counselling organisation; or (b) an approved mediation organisation; or (c) both an approved counselling organisation and an approved mediation organisation.</p> <p>Section 13B Approval of mediation organisations (1) A voluntary organisation may apply to the Minister for approval as a mediation organisation. (2) The Minister may, in writing, approve the organisation as a mediation organisation if, and only if, the Minister is satisfied that: (a) the organisation is willing and able to engage in family and child mediation; and (b) the whole, or a substantial part, of the organisation's activities consist, or will consist, of family and child mediation. (3) If the Minister decides to refuse to approve the organisation, the Minister must give written notice of that decision to the organisation.</p> <p>Section 13C Approvals subject to conditions (2) An approval under section 13B is subject to: (a) a condition that the organisation must comply with the requirements of the regulations when it engages in family and child mediation; and (b) such other conditions (if any) as are specified in the instrument of approval.</p> <p>Section 13D Revocation of approvals</p>	The Minister may approve an organisation as an approved mediation organisation only if the organisation is willing and able to engage in family and child mediation.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(2) The Minister may, at any time, revoke the approval of an organisation under section 13B if:</p> <ul style="list-style-type: none"> (a) the organisation has failed to comply with a condition of the approval; or (b) the organisation has failed to comply with its obligations as an approved mediation organisation under section 13F; or (c) a person authorised by the organisation to offer family and child mediation on behalf of the organisation has failed to comply with a requirement of this Act or a direction made by a court under this Act; or (d) the Minister is no longer satisfied as mentioned in paragraph 13B(2)(b) in relation to the organisation; or (e) the Minister is satisfied that the organisation is not adequately carrying out family and child mediation. <p>Section 13E Minister to publish lists of approved counselling organisations and approved mediation organisations</p> <p>The Minister must publish annually, in such manner as the Minister thinks appropriate:</p> <ul style="list-style-type: none"> (a) a list of all approved counselling organisations; and (b) a list of all approved mediation organisations. <p>Section 13F Reports and financial statements of approved organisations</p> <p>(2) An approved mediation organisation must, in respect of each financial year, give the Minister:</p> <ul style="list-style-type: none"> (a) an audited financial statement of the receipts and payments of the organisation, in which receipts and payments in respect of its family and child mediation activities are shown separately from other receipts and payments; and (b) a report on its family and child mediation activities, including information about the number of cases dealt with by the organisation during the year. <p>Section 13H Grants to approved counselling organisations and approved mediation organisations</p> <p>(1) The Minister may, from time to time, out of money appropriated by the Parliament for the purposes of this Part, grant to an approved counselling organisation or an approved mediation organisation such sums</p>	<p>Approvals under the Act are subject to compliance with the Family Law Regulations and can be revoked if the Minister believes the organisation is not adequately carrying out mediation.</p> <p>The Minister may publish a list of approved mediation organisations.</p> <p>Reporting requirements apply to approved mediation organisations.</p> <p>The Minister may fund approved mediation organisations.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>by way of financial assistance as the Minister determines.</p> <p>Section 19A Request for mediation-request made through a Family Court (1) A person who is: (a) the parent or adoptive parent of a child; or (b) a child; or (c) a party to a marriage; and who is not a party to proceedings under this Act, may file in the Family Court, or in a Family Court of a State, a notice asking for the help of a mediator in settling a dispute to which the person is a party.</p> <p>Section 19AA Request for mediation-where made direct to a family and child mediator A person may at any time request a family and child mediator to mediate a dispute.</p> <p>Section 19AAA Request for mediation-Federal Magistrates Court (1) A person who is: (a) the parent or adoptive parent of a child; or (b) a child; or (c) a party to a marriage; or (d) a party to proceedings in the Federal Magistrates Court under this Act; may ask a designated officer of the Federal Magistrates Court for the help of a family and child mediator in settling a dispute to which the person is a party. (4) For the purposes of this section, a <i>designated officer</i> of the Federal Magistrates Court is an officer of the Federal Magistrates Court specified in writing by the Chief Executive Officer of the Federal Magistrates Court for the purposes of this subsection.</p> <p>Section 19B Family Court may refer matters for mediation (1) The Family Court or a Family Court of a State, may, with the consent of the parties to any proceedings before it under this Act (other than prescribed proceedings), make an order referring any or all of the matters in dispute in the proceedings for mediation by a court mediator. (3) Where a court makes an order under subsection (1), the appropriate officer of the court must make</p>	<p>A person who is a parent, child or a party to a marriage may request mediation.</p> <p>The parties to a proceeding <u>must consent</u> to mediation in the Family Court or the Federal Magistrates Court, and the appropriate or designated officer of the Court will make arrangements for a court mediator. However, all courts under the <i>Family Law Act</i> must advise parties to seek the help of a mediator if it believes it will help resolve the dispute</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>arrangements for a court mediator to mediate the relevant disputed matter.</p> <p>Section 19BA Court to advise people to attend mediation (1) Subject to the regulations (if any), a court having jurisdiction under this Act must, if it considers it may help the parties to a dispute before it to resolve that dispute, advise the parties to seek the help of a family and child mediator.</p> <p>Section 19BAA Federal Magistrates Court may refer matters for mediation (1) The Federal Magistrates Court may, with the consent of the parties to any proceedings before it under this Act (other than prescribed proceedings), make an order referring any or all of the matters in dispute in the proceedings for mediation by a family and child mediator.</p> <p>Section 19J Advice about mediation and arbitration (1) The appropriate officer of the Family Court or of a Family Court of a State must, as far as practicable, on request by a party to a marriage or to proceedings under this Act, advise the party about:</p> <ul style="list-style-type: none"> (a) the mediation or arbitration facilities (if any) available in the court and how those facilities are made available; and (b) the mediation services provided by approved mediation organisations. <p>Section 19K Oath or affirmation by court mediator A court mediator or a community mediator must, before starting to perform the functions of such a mediator, make an oath or affirmation of secrecy in accordance with the prescribed form before a person authorised under a law of the Commonwealth, or of a State or Territory, to take affidavits.</p> <p>Section 19M Protection of mediators and arbitrators A family and child mediator or an arbitrator has, in performing the functions of such a mediator or arbitrator, the same protection and immunity as a Judge of the Family Court has in performing the functions of such a Judge.</p> <p>Section 19P Regulations to be complied with by family and child mediators</p>	<p>A mediator is to swear an oath or affirmation of secrecy.</p> <p>A mediator has the same protection and immunity as a judge.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(1) The regulations may prescribe requirements to be complied with by family and child mediators in relation to the family and child mediation services they provide.</p> <p>Section 19Q Advertising in Family Court registries of counselling, mediation and arbitration services</p> <p>(2) Subject to the regulations (if any), a family and child mediator, or an approved mediation organisation, may advertise, at a Registry of the Family Court, the mediation services the mediator or organisation provides.</p> <p>Section 4 Interpretation <i>family and child mediator</i> means:</p> <ul style="list-style-type: none"> (a) a person employed or engaged by the Family Court or a Family Court of a State to provide family and child mediation services; or (b) a person authorised by an approved mediation organisation to offer family and child mediation on behalf of the organisation; or (c) a person, other than a person mentioned in paragraph (a) or (b), who offers family and child mediation. <p>Section 123 Rules of Court</p> <p>(1) The Judges may make Rules of Court providing for the practice and procedure to be followed in the Family Court and any other courts and in relation to all matters necessary for the conduct of any business in those courts and, in particular:</p> <ul style="list-style-type: none"> (sa) prescribing the functions and duties of assessors and of court mediators and arbitrators; and (sd) providing for and in relation to: <ul style="list-style-type: none"> (i) the procedures to be followed by a court mediator or an arbitrator in mediating or arbitrating a dispute, proceeding or matter under this Act; <p>Section 125 Regulations</p> <p>The Governor-General may make regulations prescribing all matters that are required or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:</p>	<p>Mediator who comply with the regulations, or approved mediation organisations, may advertise their services at Family Court registries.</p> <p>Judges may make Rules of Court about the duties of mediators and procedures to be followed, but the Governor-General may make regulations in relation to the same matters and about who can be approved as court mediators.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<ul style="list-style-type: none"> (ba) providing for the approval of persons as court mediators; and (bc) prescribing anything that may be dealt with in Rules of Court made under paragraph 123(1)(sa), (sb), (sc), (sd) or (se); and (ca) prescribing fees to be payable in respect of the use of the counselling or mediation facilities of the Family Court in situations other than where a court orders or directs a person to attend the counselling or mediation; 	
<p><i>Family Law Regulations 1984</i></p>	<p>Regulation 59 Approved court mediator</p> <ul style="list-style-type: none"> (1) For the purposes of paragraph (a) of the definition of <i>family and child mediator</i> in subsection 4 (1) of the Act, a person may be approved, in writing, as a court mediator: <ul style="list-style-type: none"> (a) by the Chief Justice of the Family Court of Australia; or (b) for the purposes of the Family Court of Western Australia - by the Chief Judge of that Court. (2) The Chief Justice or Chief Judge may approve a person only if the Chief Justice or Chief Judge, as the case requires, considers that the person is suitable by reason of the person's training and experience. <p>Regulation 60 Community mediators and private mediators-qualifications, training and experience</p> <ul style="list-style-type: none"> (1) Subject to regulation 61, and except as provided by subregulation (3), a person may provide family and child mediation as a community mediator or private mediator only if the person: <ul style="list-style-type: none"> (a) has been awarded an appropriate degree, diploma or other qualification by a university, college of advanced education or other tertiary institution of an equivalent standard; and (b) has completed at least 5 days training in mediation, including at least 1 training course of a duration of at least 3 days; and (c) has engaged in at least 10 hours of supervised mediation in the 12 months immediately following completion of that training. (2) An appropriate degree, diploma or other qualification is one that represents: <ul style="list-style-type: none"> (a) a course of study that is, or is the equivalent of, at least 3 years of full time study: <ul style="list-style-type: none"> (i) in law; or 	<p>The Chief Justice of the Family Court of Australia may approve a mediator only if they have the qualifications, training and experience specified in the regulations.</p> <p>Qualifications required are specified, and include a relevant degree or diploma and at least 5 days training in mediation and at least 10 hours of supervised mediation in the 12 months following the completion of training.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(ii) in a social science (for example, psychology or social work); or (iii) that includes the equivalent of 2 full time years study in a social science; or</p> <p>(b) a course of study that is, or is the equivalent of, at least 1 year of full time study in: (i) mediation; or (ii) dispute resolution.</p> <p>(3) Subject to regulation 61, a person may provide family and child mediation if the person has provided mediation of that kind for a total of at least 150 hours since 11 June 1991, of which at least 50 hours has been provided since 11 June 1994, and: (a) the person: (i) enrolls in a course of study of a kind described in subregulation (2) before the end of 31 August 2001; and (ii) is not excluded from completing the course by reason of the person failing to pass any of its requirements; and (iii) completes the academic requirements of the course at, or before, the end of 7 academic years of the relevant institution; or (b) the person provides the mediation through a non-profit organisation: (i) that is funded wholly or partly by the Commonwealth, or by a State or Territory; and (ii) a substantial part of the functions of which is the provision of family and child mediation services.</p> <p>(4) A person described in paragraph (3) (b) must not provide family and child mediation after 31 August 2001, unless the person is otherwise eligible to provide the mediation under this regulation.</p> <p>(5) In this regulation: <i>supervised mediation</i> means mediation that is supervised by: (a) an experienced court mediator or community mediator; or (b) a person who is the regular provider of a training course of a kind described in paragraph (1) (b); or (c) a person who is: (i) an experienced dispute mediator; and (ii) a practising member of:</p>	<p>A person may provide mediation if the person has provided a total of at least 150 hours of mediation since 11 June 1991 and the person enrolls in a course of study before the end of 31 August 2001 and completes the course within seven academic years.</p> <p>Supervised mediation is defined as mediation that is supervised by an experienced court mediator or community mediator or a person who is a regular provider of training courses or a person who is an experienced dispute mediator and a practicing member of the listed organisations.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(A) the Law Society of a State or Territory; or (B) the Bar Association of a State or Territory; or (C) the Australian Psychological Society Limited; or (D) the Australian Association of Social Workers Limited.</p> <p>Regulation 61 Community mediators and private mediators – further training A person who is eligible under regulation 60 to provide family and child mediation: (a) must undertake at least 12 hours education or training in family and child mediation each calendar year; and (b) must not provide mediation services if a period longer than a year has elapsed since last undertaking training.</p> <p>Regulation 62 Community mediators and private mediators – assessment of mediation suitability</p> <p>(1) Before providing mediation under the Act, the community mediator or private mediator to whom a dispute is referred must conduct an assessment of the parties to the dispute to determine whether mediation is appropriate.</p> <p>(3) If, after considering the matters set out in subregulation (2), the mediator decides that mediation is appropriate then, subject to regulations 63 and 65, the mediator may provide mediation.</p> <p>Regulation 63 Information to be given to parties before mediation</p> <p>(1) At least 1 day before a mediation exercise is commenced under subregulation 62 (3), each party to the mediation must be given a written statement that sets out the following information: (e) that mediation is not compulsory in order to commence proceedings in the Family Court; (l) the qualifications of the mediator to be a family and child mediator;</p> <p>Regulation 65 Obligations of community mediator or private mediator – avoidance of conflicts of interests</p> <p>(1) If, in relation to a person who is a party to a dispute that is the subject of mediation, or any other party to that dispute, a community mediator or private mediator:</p>	<p>Accredited mediators must continue to undertake at least 12 hours of mediation training each calendar year.</p> <p>The mediator may only conduct a mediation after an assessment of whether mediation is appropriate for the parties.</p> <p>Parties to a mediation must be given information about the qualifications of the mediator.</p> <p>Sets out circumstance in which a mediator is disqualified from providing services.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(a) has acted previously in a professional capacity (otherwise than as a family and child mediator, a family and child counsellor or an arbitrator); or</p> <p>(b) has had a previous commercial dealing; or</p> <p>(c) is a personal acquaintance;</p> <p>the mediator may provide family and child mediation services to the person only if:</p> <p>(d) each party to the mediation agrees; and</p> <p>(e) the previous professional dealing (if any) does not relate to any issue in the dispute; and</p> <p>(f) the previous commercial dealing or acquaintance (if any) is not of a kind that could reasonably be expected to influence the mediator in the provision of his or her mediation services.</p> <p>Regulation 68 Advertising of counselling, mediation and arbitration services</p> <p>(1) For the purposes of section 19Q of the Act, a Registrar of the Family Court may determine, in writing, in respect of the particular Registry of that Court:</p> <p>(a) the form in which the following persons may advertise at the Registry:</p> <p style="padding-left: 40px;">(ii) a family and child mediator or an approved mediation organisation;</p> <p>Regulation 71 Content of advertising – family and child mediator</p> <p>(1) A family and child mediator may advertise at a Registry of the Family Court details of:</p> <p>(a) his or her professional qualifications as they relate to his or her functions as a mediator; and</p> <p>(b) his or her experience in family and child mediation, including the number of disputes he or she has mediated; and</p> <p>(c) the fees (including any hourly rate) charged by the mediator in respect of his or her mediation services.</p> <p>(2) An advertisement of a family and child mediator must not contain:</p> <p>(a) details of his or her qualifications (except as permitted under paragraph (1) (a)); or</p> <p>(b) details of the number or percentage of disputes which he or she has mediated to a successful or unsuccessful resolution; or</p> <p>(c) any comparisons in the mediation services offered by the mediator with the services</p>	<p>Mediators may advertise details of their professional qualifications, experience and fees at the Court Registry but not details of the percentage of successful disputes, testimonials or comparisons of mediation services.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>offered by other mediators; or</p> <p>(d) a testimonial or other endorsement by any person as to the quality of the mediation services offered by the mediator.</p> <p>Regulation 72 Content of advertising – approved mediation organisation</p> <p>(1) An approved mediation organisation may advertise at a Registry of the Family Court details of:</p> <p>(a) the professional qualifications of the organisation's family and child mediators as they relate to their functions as mediators; and</p> <p>(b) the organisation's experience in family and child mediation, including the number of disputes the organisation has mediated; and</p> <p>(c) the fees (including any hourly rate) charged by the organisation in respect of its mediation services.</p> <p>(2) An advertisement of an approved mediation organisation must not contain:</p> <p>(a) details of the qualifications of its mediators (except as permitted under paragraph (1) (a)); or</p> <p>(b) details of the number or percentage of disputes which the organisation has mediated to a successful or unsuccessful resolution; or</p> <p>(c) any comparisons in the mediation services offered by the organisation with the services offered by other organisations or mediators; or</p> <p>(d) a testimonial or other endorsement by any person as to the quality of the mediation services offered by the organisation.</p>	<p>Similar requirements apply to approved mediation organisations.</p>
<p><i>Family Law Rules 2004</i></p>	<p>Dictionary Mediator includes a family and child counsellor and family and child mediator, and welfare officer (see subsection 4 (1) of the Act).</p> <p>Rule 15.43 Definitions In this Part: <i>expert</i> means an independent person who has relevant specialised knowledge, based on the person's training, study or experience, but does not include:</p>	

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<ul style="list-style-type: none"> (a) a mediator employed by a Family Court (including a person appointed under regulation 8 of the Regulations); or (b) an expert who has been appointed by a party for a purpose other than the giving of advice or evidence, or the preparation of a report for a case or anticipated case. 	
<p><i>Federal Court of Australia Act 1976</i></p>	<p>Section 53A Mediation and arbitration (1) Subject to the Rules of Court, the Court may by order refer the proceedings in the Court, or any part of them or any matter arising out of them, to a mediator or an arbitrator for mediation or arbitration, as the case may be, in accordance with the Rules of Court. (1A) Referrals under subsection (1) to a mediator may be made with or without the consent of the parties to the proceedings. However, referrals to an arbitrator may be made only with the consent of the parties.</p> <p>Section 53C Protection of mediators and arbitrators A mediator or an arbitrator has, in mediating or arbitrating anything referred under section 53A, the same protection and immunity as a Judge has in performing the functions of a Judge.</p> <p>Section 59 Rules of Court (1) The Judges of the Court or a majority of them may make Rules of Court making provision for the practice and procedure to be followed in the Court and for all matters and things necessary or convenient to be prescribed for the conduct of any business of the Court. (2) In particular, the Rules of Court may make provision for or in relation to: (zf) the referral of any proceedings in the Court to a mediator or an arbitrator for mediation or arbitration, as the case may be; and (zg) the procedures to be followed by a mediator or an arbitrator in mediating or arbitrating anything referred for mediation or arbitration under this Act; and (zh) the attendance by persons at conferences conducted by mediators or arbitrators for the purposes of mediating or arbitrating anything so referred; and (zi) the procedure when any such mediation or arbitration ends, both where it has resulted in an agreement or award and where it has not;</p>	<p>Court may refer proceedings to mediation, regardless of whether or not the parties consent</p> <p>A mediator has the same immunity as a judge.</p> <p>Judges of the Court may make Rules of Court about how matters are referred to mediation, the procedure to be followed in mediation, who must attend mediations and what happens when the mediation ends.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<p><i>Federal Court Rules</i></p>	<p>Order 72 Rule 3 If a judge undertakes mediation If a Judge undertakes a mediation, the Judge may give any directions with respect to the conduct of the mediation that the Judge thinks fit.</p> <p>Order 72 Rule 5 Court may terminate mediation or arbitration (1) Nothing in this Order prevents the Court from: (a) terminating a mediation or an arbitration at any time; or (b) terminating the appointment of a mediator or an arbitrator; or (c) appointing a new mediator or arbitrator to replace a mediator or an arbitrator who has died, or ceased to hold office, or whose appointment has been terminated.</p> <p>Order 72 Rule 6 Nomination of Mediator (1) As soon as practicable after a mediation order is made, the Registrar must: (a) nominate a person as the mediator; and (b) give the parties written notice: (i) of the name and address of the mediator; and (ii) of the time, date and place of mediation; and (iii) of any further documents that one or more of the parties must give direct to the mediator for the purposes of the mediation.</p>	<p>Judges may undertake mediation and make any directions necessary.</p> <p>The Court can appoint a new mediator who has died, ceased to hold office, or whose appointment has been terminated.</p> <p>Registrar will nominate a person as a mediator.</p>
<p><i>Federal Magistrates Court Rules 2001</i></p>	<p>Rule 10.04 Agreement reached by primary dispute resolution <i>Note 2</i> The Court may refer a matter (other than a family law or child support proceeding) for mediation with or without consent (see section 34 of the Act) or for arbitration with consent (see section 35 of the Act).</p> <p>Rule 23.02 Referral for mediation If the Court makes an order referring any or all of the matters in dispute in a proceeding for mediation, the Court must: (a) refer the matter directly to a primary dispute resolution provider for assessment and, if assessed as appropriate, mediation; or</p>	<p>The Federal Magistrates Court may refer a matter to mediation regardless of parties' consent except in family law or child support proceedings, where the parties must consent.</p> <p>A primary dispute resolution provider or a Primary Dispute</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(b) refer the matter to the Primary Dispute Resolution Coordinator for assessment and, if assessed as appropriate, to arrange for mediation; or</p> <p>(c) make any other order necessary to facilitate the mediation.</p> <p><i>Note</i> The Court may refer any or all matters in dispute in a family law or child support proceeding for mediation with the consent of the parties: see section 19BAA of the Family Law Act.</p> <p>Rule 27.03 Court may end mediation or arbitration</p> <p>(1) The Court may:</p> <p>(a) end a mediation or arbitration at any time; or</p> <p>(b) terminate the appointment of a mediator or an arbitrator; or</p> <p>(c) appoint a new mediator or arbitrator to replace a mediator or an arbitrator.</p> <p>Rule 27.04 Nomination of mediator</p> <p>(1) If the parties cannot reach agreement on a mediator within 14 days of an order for mediation, a Registrar must:</p> <p>(a) nominate a person as the mediator;</p>	<p>Resolution Coordinator must assess whether a dispute is suitable for mediation and arrange the mediation if the dispute is suitable.</p> <p>The Federal Magistrates Court may terminate the appointment of a mediator or appoint a new mediator to replace a mediator.</p> <p>A Registrar will appoint a mediator if the parties cannot agree on a mediator within 14 days.</p>
<i>Income Tax Assessment Act 1997</i>	<p>Section 30-75 Marriage education and family and child mediation and counselling organisations must be approved</p> <p>(1) You can deduct a gift that you make to a public fund covered by item 8.1.1 of the table in subsection 30-70(1) only if the organisation, or branch or section of the organisation, has been approved by the Attorney-General under section 9C of the <i>Marriage Act 1961</i> or section 13A or 13B of the <i>Family Law Act 1975</i>.</p>	<p>Donations to mediation organisations are tax-deductible only if they are approved organisations under the <i>Family Law Act</i> (see extract of section 13B above).</p>
<i>Industrial Relations Court Rules 1994</i>	<p>Order 72 Rule 3 If a Judge or a Judicial Registrar undertakes mediation</p> <p>If a Judge or a Judicial Registrar undertakes a mediation, the Judge or Judicial Registrar may give any directions with respect to the conduct of the mediation that he or she thinks fit.</p>	<p>Judges or Judicial Registrars in the Industrial Relations Court may undertake mediation and make any directions</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>Order 72 Rule 5 Court may terminate mediation or arbitration (1) Nothing in this Order prevents the Court from: (a) terminating a mediation or an arbitration at any time; or (b) terminating the appointment of a mediator or an arbitrator; or (c) appointing a new mediator or arbitrator to replace a mediator or an arbitrator who has died, or ceased to hold office, or whose appointment has been terminated.</p> <p>Order 72 Rule 6 Nomination of mediator (1) As soon as practicable after a mediation order is made, the Registrar must: (a) nominate a person as the mediator;</p> <p>Order 75 Rule 5 Application referred for informal mediation (1) Whether or not the parties are present at the directions hearing, a Judge, Judicial Registrar or Registrar may make an order referring the application to a person mentioned in subrule (2) for informal mediation in an attempt to settle the dispute between the parties, or any issue in the dispute, by amicable agreement. (2) An application may be referred to: (a) a Judge; or (b) a Judicial Registrar; or (c) a Registrar; or (d) a person appointed by the Court or a Registrar as the mediator.</p>	<p>necessary.</p> <p>The Industrial Relations Court may terminate the appointment of a mediator or appoint a new mediator to replace a mediator who has died or ceased to hold office.</p> <p>Registrar will nominate a person as a mediator.</p> <p>Informal mediation may be referred to a Judge, a Judicial Registrar, a Registrar or a person appointed by the Court or a Registrar as the mediator.</p>
<i>Marriage Regulations 1963</i>	<p>Schedule 1 Forms DOCUMENT OUTLINING THE OBLIGATIONS AND CONSEQUENCES OF MARRIAGE AND STATING THE AVAILABILITY OF MARRIAGE EDUCATION AND COUNSELLING Marriage counselling, education and family mediation services are approved and funded by the Commonwealth and monitored to ensure their work is of a high standard. The work of counsellors, educators and mediators is closely supervised and each must be trained and accredited before commencing work.</p>	<p>Educational pamphlets state that approved and funded [mediation] services are of a high standard and that [mediators] must be supervised, trained and accredited</p>
<i>Migration Act 1958</i>	<p>Section 318 Power to refer people to mediation If the Migration Agents Registration Authority is investigating a complaint about a person who is or was a</p>	<p>Migration Agents Registration Authority may refer a complaint</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	registered migration agent, the Authority may refer the complainant and the person to a mediator to resolve the matter complained of.	to mediation.
<i>National Health Act 1953</i>	<p>Section 82ZSAA Preliminary notification of complaint and power to examine records (2) If the Health Insurance Ombudsman decides: (a) to try to effect a settlement of a complaint concerning a registered organization by mediation under paragraph 82ZSB(1)(a); or (b) to investigate the complaint under subsection 82ZSB(2); the Health Insurance Ombudsman may, for the purposes of that mediation or investigation, request an officer of the organization to provide to the Health Insurance Ombudsman, at any time during the conduct of that mediation or investigation, with such records, or such further records, of that organization relating to the complaint as the Health Insurance Ombudsman specifies for the purpose.</p> <p>Section 82ZSB Health Insurance Ombudsman may deal with complaints (1) Subject to subsections (3) and (4) and sections 82ZSBA and 82ZSC, the Health Insurance Ombudsman may deal with a complaint by: (a) trying at any time to effect a settlement of the complaint by mediating between the complainant and the person or body against whom the complaint was made;</p>	Health Insurance Ombudsman may try to reach settlement of a complaint by mediation.
<i>Native Title Act 1993</i>	<p>Section 108 Function of the Tribunal <i>Mediation for Federal Court proceedings</i> (1A) The Tribunal has the functions in relation to Federal Court proceedings given to the Tribunal by Division 4A. <i>Assistance and mediation generally</i> (1B) The Tribunal has the functions of: (a) providing assistance, or mediating, in accordance with any provision of this Act;</p> <p>Section 123 Arrangement of business <i>President may give directions</i> (1) Subject to section 124, the President may give directions as to any of the following: (a) the arrangement of the business of the Tribunal; (b) the persons who are to conduct mediation in a particular proceeding, or to provide</p>	President of Native Title Tribunal may give directions as to the persons who are to conduct the mediation.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p style="text-align: center;">assistance in making or negotiating agreements under this Act;</p> <p>Section 131A President may engage consultants (1) The President may engage a person as a consultant in relation to any assistance or mediation that the Tribunal provides under any provision of this Act. <i>Consultants to have relevant skills or knowledge</i> (2) The President may only engage a person under subsection (1) if: (a) the person has, in the opinion of the President, particular skills or knowledge in relation to matters of substantial relevance to the assistance or mediation; and (b) so far as is reasonably practicable, the person has, in the opinion of the President, special knowledge in relation to Aboriginal or Torres Strait Islander societies.</p> <p>Section 131B Disclosure of interests <i>Consultant to disclose conflict of interest</i> (1) A person engaged under subsection 131A(1) as a consultant in relation to any assistance or mediation being provided by the Tribunal who has a conflict of interest in relation to the assistance or mediation must disclose the matters giving rise to that conflict to: (a) the President of the Tribunal; and (b) the persons to whom the Tribunal is providing the assistance or mediation. <i>Requirement for consent</i> (2) The person must not perform his or her duties as a consultant in relation to the assistance or mediation unless the President and the persons to whom the Tribunal is providing the assistance or mediation consent. <i>Meaning of conflict of interest</i> (3) For the purposes of this section, a person engaged under subsection 131A(1) as a consultant in relation to any assistance or mediation being provided by the Tribunal has a conflict of interest in relation to the assistance or mediation if the person has any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties as a consultant in relation to the assistance or mediation.</p>	<p>President to decide whether mediator has necessary skills.</p> <p>The President may engage a consultant to provide mediation but only if the person has particular skills or knowledge relevant to the issues and special knowledge in relation to Indigenous societies.</p> <p>Mediator must not act if there is a conflict of interest unless the President of the Tribunal consents.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>Section 136A Mediation conferences <i>President to direct conference to be held</i></p> <p>(1) If the Federal Court refers the whole or a part of a proceeding to the Tribunal under section 86B for mediation, the Tribunal may hold such conferences of the parties or their representatives as the Tribunal considers will help in resolving the matter.</p> <p>(7) If a consultant is engaged under subsection 131A(1) to conduct mediation in relation to a particular matter under this Division, this Division applies in relation to that matter as if the consultant were a member of the Tribunal.</p> <p>Section 136H Regulations about assistance or mediation</p> <p>(1) The regulations may make provision in relation to the way in which:</p> <p>(a) any assistance is to be provided by the NNTT under any provision of this Act; or</p> <p>(b) any mediation, that the NNTT is requested to provide, is to be provided under any provision of this Act.</p> <p>Section 203BF Dispute resolution functions</p> <p>(1) The <i>dispute resolution functions</i> of a representative body are:</p> <p>(a) to assist in promoting agreement between its constituents about:</p> <p>(i) the making of native title applications; or</p> <p>(ii) the conduct of consultations, mediations, negotiations or proceedings about native title applications, future acts, indigenous land use agreements, rights of access conferred under this Act or otherwise or about any other matter relating to native title or the operation of this Act; and</p> <p>(b) to mediate between its constituents about the making of such applications or the conduct of such consultations, mediations, negotiations or proceedings.</p> <p>Section 207A Recognised State/Territory body <i>Determination</i></p> <p>(1) The Commonwealth Minister may, in writing, determine that a court, office, tribunal or body (which court, office, tribunal or body is called the <i>body</i>) established by or under a law of a State or</p>	<p>Mediation consultants will be dealt with in certain aspects of the legislation as if the consultant were a member of the Tribunal.</p> <p>Regulations will make provisions about mediation.</p> <p>Dispute resolution function of a representative body is to mediate and negotiate.</p> <p>In order for the Commonwealth Minister to classify a court, office, tribunal or body as a recognised State/Territory</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>Territory is a <i>recognised State/Territory body</i> if the State Minister for the State, or Territory Minister for the Territory, nominates the body to the Commonwealth Minister for the purposes of this section.</p> <p><i>Criteria to be satisfied</i></p> <p>(2) In order to ensure that there is a nationally consistent approach to the recognition and protection of native title, the Commonwealth Minister must not make the determination unless the Commonwealth Minister is satisfied that:</p> <p style="padding-left: 40px;">(e) the body will, under the law of the State or Territory, be able to mediate matters in appropriate cases;</p> <p>Section 31 Normal negotiation procedure <i>Arbitral body to assist in negotiations</i></p> <p>(3) If any of the negotiation parties requests the arbitral body to do so, the arbitral body must mediate among the parties to assist in obtaining their agreement.</p> <p>Section 4 Overview of Act <i>Role of Federal Court and National Native Title Tribunal</i></p> <p>(7) This Act also:</p> <p style="padding-left: 40px;">(a) provides for the Federal Court to make determinations of native title and compensation; and</p> <p style="padding-left: 40px;">(b) establishes a National Native Title Tribunal with power to:</p> <p style="padding-left: 80px;">(i) make determinations about whether certain future acts can be done and whether certain agreements concerning native title are to be covered by the Act; and</p> <p style="padding-left: 80px;">(ii) provide assistance or undertake mediation in other matters relating to native title; and</p> <p style="padding-left: 40px;">(c) deals with other matters such as the keeping of registers and the role of representative Aboriginal/Torres Strait Islander bodies.</p> <p>Section 44F Request for mediation</p> <p>If all of the persons involved in any dispute about a right conferred by subsection 44B(1) agree, they may request the NNTT or a recognised State/Territory body to mediate in the dispute.</p>	<p>body, body should be able to mediate matters.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>Section 44G Other mediation, arbitration and agreements not excluded by Subdivision Nothing in this Subdivision prevents: (a) mediation or arbitration by any person or body of any matter arising in relation to a right conferred by subsection 44B(1);</p> <p>Section 86B Referral of matters to NNTT for mediation <i>Federal Court must refer applications to mediation</i> (1) Unless an order is made under subsection (2) that there be no mediation, the Federal Court must refer every application under section 61 to the NNTT for mediation, including the ascertaining of agreed facts, as soon as practicable after the end of the period specified in the notice under section 66. <i>Court may order no mediation</i> (2) The Court may, on application by a party to the proceeding, or of its own motion, make an order that there be no mediation in relation to the whole of the proceeding or a part of the proceeding.</p>	
<p><i>Telecommunications (Arbitration) Regulations 1997</i></p>	<p>Regulation 11 ACCC may direct parties to engage in negotiations in good faith (1) If the ACCC suspects that a person who is or was a party is not engaging or has not engaged in negotiations in good faith, the ACCC may, to facilitate the negotiations, give the person a written procedural direction requiring the person to do, or refrain from doing, a stated act or thing relating to the conduct of those negotiations.</p> <p>(4) The following are examples of the kinds of procedural directions that may be given under subregulation (1): (e) a direction requiring a party, or a representative of a party, to attend a mediation conference;</p>	<p>The ACCC may give procedural directions to attend mediation</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<p><i>Trade Practices (Industry Codes-Franchising) Regulations 1998</i></p>	<p>Regulation 25 Mediation adviser A mediation adviser is to be appointed for this Part by the Minister.</p> <p>Regulation 29 Procedure (3) For mediation under a franchise agreement: (a) if the parties cannot agree under subclause (2) within 3 weeks, either party may refer the matter to mediator; and (b) if the parties cannot agree about who should be the mediator, either party may ask the mediation adviser to appoint a mediator. (4) For mediation under this code, either party may ask the mediation adviser to appoint a mediator.</p>	<p>The Minister appoints a mediation adviser.</p> <p>The mediation adviser may appoint a mediator at the request of either party, or if the parties cannot agree about who should be the mediator.</p>
<p><i>Trade Practices Act 1974</i></p>	<p>Section 152BBA Commission may give directions in relation to negotiations (2) If the following parties: (a) the carrier or carriage service provider, as the case requires; (b) the access seeker; propose to negotiate, or are negotiating, with a view to agreeing on terms and conditions as mentioned in paragraph 152AY(2)(a), the Commission may, for the purposes of facilitating those negotiations, if requested in writing to do so by either party, give a party a written procedural direction requiring the party to do, or refrain from doing, a specified act or thing relating to the conduct of those negotiations. (3) The following are examples of the kinds of procedural directions that may be given under subsection (2): (e) a direction requiring a party, or a representative of a party, to attend a mediation conference;</p> <p>Section 152BBC Commission's role in negotiations (5) A member of the Commission is not disqualified from constituting the Commission (with other members) for the purposes of an arbitration under Division 8 of a dispute about a particular matter, merely because the member or another person attended, or mediated at, negotiations in relation to the matter in accordance with a request under this section.</p> <p>Sectin 152CT Commission may give directions in relation to negotiations (1) If the Commission considers that it would be likely to facilitate negotiations relating to an access dispute if a person who is or was a party to the arbitration of the access dispute were to be given a direction under</p>	<p>The Commission may give a direction to attend a mediation. A member of the Commission is not disqualified from arbitrating a matter where they have been involved in a mediation.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>this subsection, the Commission may, for the purposes of facilitating those negotiations, give the person a written procedural direction requiring the person to do, or refrain from doing, a specified act or thing relating to the conduct of those negotiations.</p> <p>(2) The following are examples of the kinds of procedural directions that may be given under subsection (1):</p> <ul style="list-style-type: none"> (e) a direction requiring a party, or a representative of a party, to attend a mediation conference; (f) a direction requiring a party, or a representative of a party, to attend a conciliation conference. 	
<i>Workplace Relations Act 1996</i>	<p>Section 520 Dispute resolution provisions</p> <p>(1) If an employment agreement does not contain provisions that set out procedures to be followed to prevent or settle claims, disputes or grievances that arise during the currency of the agreement, the agreement is taken to include the provision mentioned in subsection (2).</p> <p>(2) The provision is that any dispute or grievance that arises must be dealt with in the following manner:</p> <ul style="list-style-type: none"> (c) if the matter is not resolved, it must be submitted to the Commission or an agreed mediator for the purposes of conciliation or mediation; <p>(3) If an employment agreement does contain provisions of the kind mentioned in subsection (1) and those provisions refer to conciliation or mediation by the Employee Relations Commission of Victoria, the reference is taken for the purposes of this Act to be a reference to conciliation by the Australian Industrial Relations Commission.</p>	<p>Disputes or grievances must be submitted to AIRC (or, in defined circumstances, the Employee Relations Commission of Victoria) for conciliation or mediation.</p>
<i>Workplace Relations Regulations 1996</i>	<p>Schedule 9 Prescribed model dispute resolution procedure</p> <p>In relation to any matter that may be in dispute between the parties to this AWA (<i>the matter</i>), the parties:</p> <ul style="list-style-type: none"> (c) agree to allow either party to refer the matter to mediation if the matter cannot be resolved at the workplace level; and (d) agree that if either party refers the matter to mediation, both parties will participate in the mediation process in good faith; and (e) acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to the mediation process; 	<p>Either party may refer matter to mediation and, if so, both parties will participate in good faith, but may appoint another person to act for him/her.</p>

Australian Capital Territory

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Administrative Appeals Tribunal Act 1989</i>	<p>Section 3 Interpretation for Act <i>registered mediator</i>—see the <i>Mediation Act 1997</i>, dictionary.</p> <p>Section 33A Mediation generally (1) If an application is made to the tribunal for a review of a decision, the president may, if the president considers it is desirable to do so and the parties consent, direct that the proceeding or any part of it, or any matter arising out of the proceeding, be referred to a registered mediator for mediation.</p> <p>Section 49D Mediation for land, planning and environment applications (1) (b) if the tribunal considers the application is suitable for mediation and that it is reasonably likely that the application may be resolved by mediation—may, on its own initiative, refer the application to a registered mediator and direct the parties to the application to attend the mediation.</p>	Referral of applications to a 'registered mediator' defined in the <i>Mediation Act 1997</i> .
<i>Civil Law (Wrongs) Act 2002</i>	<p>Section 193 Who can be a mediator A person can be a mediator if the person— (a) is a registered mediator under the <i>Mediation Act 1997</i>; and (b) is appointed by a court or tribunal as a mediator.</p>	A mediator is a 'registered mediator' under the <i>Mediation Act 1997</i> or is appointed by a court or tribunal as a mediator.
<i>Commercial Arbitration Act 1986</i>	<p>27 Settlement of disputes otherwise than by arbitration (1) Parties to an arbitration agreement— (b) may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them</p>	Parties may authorise an arbitrator or umpire to act as a mediator.
<i>Community Title Regulations 2002</i>	<p>Section 7 Management statements—Act, s 7 (j) A management statement for a community title scheme must include— (b) provision for the appointment of a conciliator or mediator, if necessary or convenient, to</p>	Management statement to include provision for appointment of mediator.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	assist in the resolution of disputes between members of the body corporate; and	
<i>Cooperatives Act 2002</i>	<p>Section 99 General powers of Supreme Court about proceedings brought etc with leave</p> <p>(1) The Supreme Court may make any orders, and give any directions, it considers just in relation to a proceeding brought or intervened in with leave under section 95, or in relation to an application under this division for leave, including—</p> <p>(b) directions about the conduct of the proceeding (including requiring mediation)</p>	Supreme Court may make orders about mediation.
<i>Domestic Relationships Act 1994</i>	<p>Section 8 Referral of matters for mediation or arbitration</p> <p>(1) A court may refer all or any of the matters in dispute in proceedings before it to a mediator.</p>	Court may refer matter to mediation.
<i>Leases (Commercial and Retail) Act 2001</i>	<p>Section 52 Market rent—rent reviews, options and renewals</p> <p>(4) On request under subsection (2) or (3), the Magistrates Court must—</p> <p>(a) if the court considers that mediation would not be productive or if the parties agree—after consultation with the parties, appoint a valuer to work out the market rent; or</p> <p>(b) refer the dispute to a mediator for mediation.</p> <p><i>Note 1</i> For the making of appointments (including acting appointments), see <i>Legislation Act 2001</i>, pt 19.3. [ed: only refers to procedural requirements e.g. appointment to be in writing]</p>	Magistrates Court must refer the dispute to a mediator.
<i>Mediation Act 1997</i>	<p>Section 4 Declarations about competency standards and approved agencies</p> <p>(1) The Minister may, in writing, declare standards of competency required for the registration of a person under section 5.</p> <p>(2) The Minister may, in writing, declare an entity to be an approved agency for this Act.</p> <p>(3) A declaration under this section is a disallowable instrument.</p> <p>Section 5 Registration of mediators</p> <p>(1) Subject to subsection (6), a person may apply in writing to an approved agency for registration</p>	The Minister may declare the standards of competency required for the registration of a mediator.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>under this section. (2) An approved agency shall approve an application and register the applicant if— (a) any fee determined by the agency to be payable to it in relation to an application under this section has been paid to it; and (b) it is satisfied that the applicant has achieved the standards of competency prescribed for section 4; and (c) the applicant satisfies any requirements of the agency that relate to mediators.</p> <p>Section 6 Duration of registration Subject to section 8, the registration of a registered mediator ends 3 years after the day when he or she was registered or when his or her registration was last renewed, as the case requires.</p> <p>Dictionary <i>registered mediator</i> means a person who is registered under section 5 as a mediator (Registration of mediators).</p>	
<i>Protection Orders Act 2001</i>	<p>Section 39 Recommendations for counselling etc The Magistrates Court may recommend that the respondent, the aggrieved person or another relevant person take part in a program of counselling, training, mediation, rehabilitation or assessment.</p>	The Magistrates Court may recommend mediation.
<i>Residential Tenancies Act 1997</i>	<p>Section 3 Interpretation <i>approved mediator</i> means a mediator who is registered under the <i>Mediation Act 1997</i>.</p>	An 'approved mediator' is one who is registered under the <i>Mediation Act 1997</i> .

New South Wales

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<p><i>Aboriginal Land Rights Act 1983 No 42</i></p>	<p>Section 106 Functions of the Council (1) The functions of the New South Wales Aboriginal Land Council are as follows: (j) to mediate, conciliate and arbitrate disputes relating to the operation of this Act between Aboriginal Land Councils, between those Councils and individuals, or between individual members of those Councils and to refer such disputes to the Registrar or independent mediators, conciliators and arbitrators</p> <p>Section 165 Functions of Registrar (g) to mediate, conciliate or arbitrate disputes relating to the administration of Aboriginal Land Councils or to refer such disputes to independent mediators, conciliators or arbitrators.</p>	<p>Council and Registrar to mediate or to refer to independent mediator.</p>
<p><i>Administrative Decisions Tribunal Act 1997</i></p>	<p>Section 100 Definitions <i>mediator</i> means a person to whom the Tribunal refers a matter for mediation under this Part.</p> <p>Section 106 Mediators and neutral evaluators: (1) The President may compile a list or lists of persons considered by the President to be suitable to be mediators for the purposes of this Part... (4) A person may be included in a list under this section only if: (a) the person consents to being included in the list, and (b) the person agrees to comply with the provisions of this Part and of any regulations or rules of the Tribunal made for the purposes of this Part. (7) Nothing in this Act or any other law prevents an assessor from being included in a list compiled under this section or being appointed as a mediator or neutral evaluator.</p>	<p>President compiles list of mediators whom he/she considers to be suitable.</p>
<p><i>Agricultural Tenancies Act 1990 No 64</i></p>	<p>Section 26B Referral for mediation (1) The Director-General may, at any time before referring a dispute or matter to arbitration, refer it for mediation if:</p>	<p>Director-General to refer dispute to mediation. Parties agree as to mediator.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>a) the Director-General considers it appropriate in the circumstances, and b) the parties consent to the referral, and c) the parties agree as to who is to be the mediator.</p> <p>(2)The mediator may, but need not be, a person whose name is on a list compiled by the Director-General for the purposes of this Part.</p> <p>Section 26E Mediators (3) A person may be included in a list of mediators only if: (a) the person consents to be included in the list, and (b) the person agrees to comply with this Division and any regulations made for the purposes of this Division.</p>	<p>Mediator may or may not be on list of mediators under the Act.</p>
<i>Architects Act 2003 No 89</i>	<p>Section 40 Proceedings before Board in respect of complaints (3)The Board may be assisted by any person that it considers has relevant expertise in mediation or alternative dispute resolution in any such attempt to resolve a complaint.</p>	<p>Board may be assisted by mediator.</p> <p>Mediator should be a person the board considers to have relevant expertise in mediation or ADR.</p>
<i>Associations Incorporation Regulation 1999</i>	<p>Schedule 1 Model Rules: Section 10 Resolution of internal disputes (1)Disputes between members (in their capacity as members) of the association, and disputes between members and the association, are to be referred to a community justice centre for mediation in accordance with the <i>Community Justice Centres Act 1983</i>. (see below)</p>	<p>See <i>Community Justices Centres Act 1983</i>.</p>
<i>Children and Young Persons (Care and Protection) Act 1998 No 157</i>	<p>Section 22 Director-General's response to requests for assistance and reports If a person seeks assistance from the Director-General under this Part (whether or not a child or young person is suspected of being in need of care and protection), the Director-General must: (a) provide whatever advice or material assistance, or make such referral as, the Director-General considers necessary, or (b) take whatever other action the Director-General considers necessary,</p>	<p>Director-General may provide mediation services or refer a person to a government department or community organisation providing mediation services.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>to safeguard or promote the safety, welfare and well-being of the child or young person. Note: The Director-General, in responding to a request for assistance or a report, can provide services or arrange for other government departments and agencies, or community organisations, to provide services to assist children, young persons and their families. Some of the services that may be available include: • mediation</p>	
<i>Co-operatives Act 1992 No 18</i>	<p>Section 105E General powers of the Court (1)The Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including: (b) directions about the conduct of the proceedings, including requiring mediation,</p>	The Court may order mediation.
<i>Commercial Arbitration Act 1984 No 160</i>	<p>Section 27 Settlement of disputes otherwise than by arbitration (1)Parties to an arbitration agreement: (a) may seek settlement of a dispute between them by mediation, conciliation or similar means, or (b) may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them (whether or not involving a conference to be conducted by the arbitrator or umpire)</p>	Parties to an arbitration agreement may authorise an arbitrator or umpire to act as mediator.
<i>Community Justice Centres Act 1983 No 127</i>	<p>Section 4: Definitions "mediator" in relation to a Community Justice Centre, means: (a) the Director, or (b) any person for the time being accredited under section 11 as a mediator for the Centre.</p> <p>Section 11 Mediators (1)The Minister may, on the recommendation of the Director made subject to and in accordance with the policy guidelines determined by, and any directions of, the Council, accredit a person (other than the Director) as a mediator for a Community Justice Centre and may revoke any such accreditation. (2) Accreditation is to be for a term, not exceeding 3 years, specified in the instrument of accreditation,</p>	<p>A mediator should be the Director of the Community Justice Centre</p> <p>-OR-</p> <p>be accredited by the Minister on the recommendation of the Director and in accordance with the policy guidelines</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	and may be renewed in the same manner as the initial accreditation.	determined by the Council.
<i>Community Land Management Act 1989 No 202</i>	<p>Section 65 Definitions <i>mediator</i> means the Director-General or any person approved by the Director-General in writing to be a mediator for the purposes of this Division.</p>	A mediator is the Director-General or a person approved by the Director-General.
<i>Community Land Management Regulation 2000</i>	<p>Section 12 Directions of Commissioner The Commissioner may give directions for regulating and prescribing the practice and procedure to be followed in connection with a mediation session, including the preparation and service of documents.</p>	The Commissioner may regulate the practice of a mediation centre.
<i>Consumer, Trader and Tenancy Tribunal Act 2001 No 82</i>	<p>Section 58 Appointment of mediators and neutral evaluators (1)The Chairperson may appoint any person whose name is on the list compiled under Schedule 5 as a mediator or neutral evaluator for the purpose of particular proceedings in the Tribunal.</p> <p>Section 59 Referral by Tribunal (1)The Tribunal may, by order, refer a matter arising in any proceedings for mediation or neutral evaluation if the Tribunal considers the circumstances appropriate. (2)The mediator or neutral evaluator may, but need not be, a person whose name is on a list compiled under Schedule 5.</p> <p>Schedule 5 Section 2 Lists of persons eligible for appointment as mediators or neutral evaluators (1)The Chairperson may compile a list or lists of persons considered by the Chairperson to be suitable to be appointed as mediators or neutral evaluators. (2)Different lists may be compiled for different types of matters or to take account of any other factors. (3)A person may be included in a list under this clause only if the person consents to being included in the list. (4)The Chairperson may amend or cancel any list compiled under this clause for any reason that the Chairperson considers appropriate. (5)The Chairperson is to review at least annually any list compiled under this clause.</p>	<p>A Chairperson may appoint person listed as a mediator for particular proceedings in a tribunal.</p> <p>The Tribunal may appoint a mediator for mediation who may but need not be a person on the list.</p> <p>The Chairperson may compile a list of persons the Chairperson considers to be suitable to be appointed as a mediator.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Criminal Procedure Act 1986 No 209</i>	<p>Section 203 Additional powers to adjourn summary proceedings A court may adjourn summary proceedings before or at any stage of proceedings to enable the matter to be the subject of a mediation session under the <i>Community Justice Centres Act 1983</i>.</p>	<p>Mediation is regulated by the <i>Community Justice Centres Act 1983</i>.</p>
<i>District Court Act 1973 No 9</i>	<p>Section 164A Referral by the Court (2) The mediation or neutral evaluation is to be undertaken by a mediator or evaluator agreed to by the parties or, if the parties cannot agree, by a mediator or evaluator appointed by the Court, who (in either case) may, but need not, be a person whose name is on a list compiled under this Part.</p> <p>Section 164E Mediators and evaluators (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Part. (2) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be evaluators for the purposes of this Part. (3) Different lists may be compiled for different types of matters or to take account of any other factors. (4) A person may be included in a list under this section only if: (a) the person consents to being included in the list, and (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.</p>	<p>The Chief Judge may compile a list of persons considered by the Chief Judge to be suitable to be mediators.</p> <p>The mediator should either be agreed upon by the parties or appointed by the Court from a compiled list.</p>
<i>Dust Diseases Tribunal Act 1989 No 63</i>	<p>Section 32J Referral by Tribunal (2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.</p> <p>32N Mediators and evaluators (1) The President may compile a list or lists of persons considered by the President to be suitable to be mediators for the purposes of this Part. (3) Different lists may be compiled for different types of matters or to take account of any other factors. (4) A person may be included in a list under this section only if: (a) the person consents to being included in the list, and</p>	<p>The President may compile a list of persons considered to suitable to be mediators.</p> <p>A mediator may or may not be a person on a compiled list.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	(b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.	
<i>Farm Debt Mediation Act 1994 No 91</i>	<p>12A Farmer to nominate mediator (1) If a farmer and creditor agree to enter into mediation in respect of a farm debt, the farmer must nominate a mediator. (2) A creditor cannot nominate a mediator but must accept or reject the mediator nominated by a farmer. (3) If a creditor rejects the mediator nominated by a farmer, the farmer must nominate a panel of at least 3 other mediators. The creditor must choose from the panel one mediator to mediate between the farmer and the creditor.</p>	The mediator is chosen by a farmer. If the creditor refuses that mediator, he must then choose a mediator from a panel of 3 possible mediators nominated by the farmer.
<i>Home Building Legislation Amendment Act 2001 No 51</i>	<p>46D Tribunal may attempt to resolve dispute (6) Nothing in this section prevents the Tribunal from referring a building dispute for mediation or neutral evaluation under the <i>Fair Trading Tribunal Act 1998</i>.</p>	The Tribunal may refer a dispute to mediation.
<i>Land and Environment Court Act 1979 No 204</i>	<p>61D Referral by Tribunal (2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.</p> <p>61H Mediators and evaluators (1) The Chief Judge may compile a list or lists of persons considered by the Chief Judge to be suitable to be mediators for the purposes of this Part. (3) Different lists may be compiled for different types of matters or to take account of any other factors. (4) A person may be included in a list under this section only if: (a) the person consents to being included in the list, and (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part.</p>	<p>The Chief Judge may compile a list of persons considered to be suitable to be mediators.</p> <p>A mediator may or may not be a person on a compiled list.</p>
<i>Land and Environment Court Rules 1996</i>	<p>Part 18 Section 1 (2) A mediation session may be conducted by the Registrar, Assistant Registrar or another mediator, to</p>	Mediator may be the Registrar, Assistant Registrar or another

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	whom the Court refers a matter under Part 5A of the Act. <i>[Ed. Part 5A of the Act is Mediation and Neutral Evaluation]</i>	mediator to whom the matter is referred.
<i>Legal Profession Act 1987 No 109</i>	<p>Section 146 (1)The Commissioner is to maintain a list of mediators who are available to attempt a mediation of a consumer dispute. (2)The Commissioner is to consult the Councils and may consult any other relevant body about the selection and training of mediators.</p>	<p>The Commissioner is to maintain a list of mediators.</p> <p>The Commissioner is to consult the councils, or other bodies, about the selection of mediators.</p>
<i>Legal Profession Regulation 2002</i>	<p>Section 20 Scope of practice of foreign law: section 48ZS (1) (b) and (d) (2) For the purposes of section 48ZS (1) (d) of the Act, a locally registered foreign lawyer may provide legal services in relation to all kinds of conciliation, mediation and other forms of consensual dispute resolution, including but not limited to the following: (b) services relating to mediation and neutral evaluation undertaken in accordance with the following provisions: (i) Part 4A of the <i>Compensation Court Act 1984</i>, (ii) Part 3A of the <i>District Court Act 1973</i>, (iii) Part 5A of the <i>Land and Environment Court Act 1979</i>, (iv) Part 3C of the <i>Local Courts (Civil Claims) Act 1970</i>, (v) Part 7B of the <i>Supreme Court Act 1970</i>.</p>	<p>See legislation referred to. If it is not listed within this table it will not have references within it to mediator accreditation.</p>
<i>Local Courts (Civil Claims) Act 1970 No 11</i>	<p>Section 21L Referral by Court (2)The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Part.</p> <p>Section 21P Mediators and evaluators (1)The Chief Magistrate may compile a list or lists of persons considered by the Chief Magistrate to be suitable to be mediators for the purposes of this Part. (3)Different lists may be compiled for different types of matters or to take account of any other factors.</p>	<p>The Chief Magistrate may compile a list of persons considered to suitable to be mediators.</p> <p>A mediator may or may not be a person on a compiled list.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(4)A person may be included in a list under this section only if:</p> <ul style="list-style-type: none"> (a) the person consents to being included in the list, and (b) the person agrees to comply with the provisions of this Part and of any regulations or rules made for the purposes of this Part. 	
<p><i>Local Courts (Criminal and Applications Procedure) Rule 2003</i></p>	<p>Section 28 Management Powers</p> <p>(1)In application proceedings, the Court or registrar may make any orders the Court or registrar thinks fit for the just, efficient, effective and timely management of proceedings before the Court.</p> <p>(2)Without limiting subclause (1), the Court or registrar may make any of the following orders:</p> <ul style="list-style-type: none"> (b) an order adjourning the proceedings to enable the matter of the application to be the subject of a mediation session under the <i>Community Justice Centres Act 1983</i> 	<p>Mediation is regulated by the <i>Community Justice Centres Act 1983</i>.</p>
<p><i>National Parks and Wildlife Act 1974 No 80</i></p>	<p>Section 71K Referral of disagreements between Aboriginal negotiating panel and Aboriginal Land Councils to mediation</p> <p>(1)Any disagreement between an Aboriginal negotiating panel and an Aboriginal Land Council or Councils concerning negotiations under this Division that cannot be resolved otherwise is to be referred to a mediator selected by, and acceptable to, the Aboriginal negotiating panel and the Aboriginal Land Council or Councils for resolution.</p>	<p>Mediator should be selected by the Aboriginal negotiating panel and the Aboriginal Land Council or Councils.</p>
<p><i>Real Property Act 1900 No 25</i></p>	<p>Section 135 Registrar-General may Settle Claims</p> <p>(1)The Registrar-General may settle any claim for payment of compensation from the Torrens Assurance Fund, whether in the course of litigation to enforce the claim or otherwise.</p> <p>(2)For the purpose of settling such a claim, the Registrar-General may participate in proceedings in the nature of mediation or neutral evaluation.</p>	<p>The Registrar-General may participate in mediation.</p>
<p><i>Residential Parks Act 1998 No 142</i></p>	<p>Section 91 Tribunal may refer certain matters for alternative dispute resolution</p> <p>(1)The Tribunal may, with the consent of the parties, refer a matter arising in proceedings before it relating to a residential park for alternative dispute resolution if the Tribunal considers the circumstances appropriate.</p> <p>(2)The Tribunal's reference must specify one of the following persons or bodies as the person or body</p>	<p>ADR referral to:</p> <ul style="list-style-type: none"> (a) the Park Disputes Committee (b) the Park Liaison Committee

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>to whom the matter is referred, being a person or body that the Tribunal considers to be suitable:</p> <ul style="list-style-type: none"> (a) the Park Disputes Committee for the residential park concerned (whether or not a Committee has been convened at the time of the referral), (b) the Park Liaison Committee for the residential park concerned, (c) the Department of Fair Trading's Mediation Unit, (d) a community justice centre under the <i>Community Justice Centres Act 1983</i>, (e) any other person or body with experience in dispute resolution. 	<ul style="list-style-type: none"> (c) the Department of Fair Trading's Mediation Unit, (d) a community justice centre under the <i>Community Justice Centres Act 1983</i>, (e) any other person or body with experience in dispute resolution.
<i>Retail Leases Act 1994 No 46</i>	<p>Section 65 Functions of Registrar (1) The Registrar has the following functions:</p> <ul style="list-style-type: none"> (a) to make arrangements to facilitate the resolution by mediation of retail tenancy disputes (whether or not a dispute has been formally referred to the Registrar under this Act), (a1) to make arrangements to facilitate the resolution by mediation of disputes or applications under section 19 (3), 19A (3), 31 (3) or 31A (3) or the subject, or possible subject, of a claim under section 62B, 	The Registrar may facilitate mediation.
<i>Rural Lands Protection Act 1998 No 143</i>	<p>Section 234 Resolution of board disputes (1) The State Council may resolve any dispute to which this section applies by mediation, arbitration or any other procedure the State Council considers appropriate.</p>	Council may resolve dispute by mediation.
<i>Strata Schemes Management Regulation 1997</i>	<p>Section 20 Directions of Commissioner The Commissioner may give directions for regulating and prescribing the practice and procedure to be followed in connection with a mediation session, including the preparation and service of documents.</p>	The Commissioner may regulate mediation.
<i>Supreme Court Act 1970 No 52</i>	<p>Section 110K Referral by Court (2) The mediation is to be undertaken by a mediator agreed to by the parties or, if the parties cannot agree, by a mediator appointed by the Court, who may, but need not, be a person nominated and appointed in accordance with the provisions of a practice note issued under section 110O.</p>	Mediator to be agreed upon by the parties –OR –

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>Section 1100 Nomination and appointment of mediators (1) The Chief Justice may issue a practice note on behalf of the Court with respect to the nomination and appointment of suitable persons to be mediators for the purposes of this Part. (2) Without limiting subsection (1), any such practice note may include any of the following kinds of provisions: (a) provisions that give effect to any protocol or other arrangement concerning the nomination or appointment of mediators that has been agreed to by the Court, (b) provisions relating to the persons or bodies that may nominate persons for appointment as mediators by the Court, (c) provisions relating to other matters of procedure to be followed in obtaining and making such nominations or appointments.</p>	<p>Appointed by the Court in accordance with a practice note issued by the Chief Justice – OR –</p> <p>Appointed by the Court not in accordance with that practice note.</p> <p>Practice Note 102: See N.S.W Schedule 1</p>
<i>Supreme Court Rules 1970</i>	<p>Part 72C Mediation Section 1 Directions The Court may give directions for regulating and prescribing the practice and procedure to be followed in a mediation, including the preparation and service of documents.</p>	<p>The Court may regulate mediation.</p>
<i>Veterinary Practice Act 2003 No 87</i>	<p>Section 43 Proceedings before Board in respect of complaints (3) The Board may be assisted by any person that it considers has relevant expertise in mediation or alternative dispute resolution in any such attempt to resolve a complaint.</p>	<p>Board may be assisted by any person that it considers to have relevant expertise in mediation or ADR.</p>
<i>Water Act 1912 No 44</i>	<p>Section 170B Compulsory mediation session (2) A mediation session is to be conducted, by a person appointed by the Ministerial Corporation as chairperson of the mediation session, in accordance with the procedures determined by the Ministerial Corporation.</p>	<p>Ministerial Corporation to appoint a chairperson of mediation in accordance with their procedures.</p>
<i>Water Management Act 2000 No 92</i>	<p>Section 62 Objections to granting of access licences (6) For the purpose of reaching such an agreement, the Minister may propose that the matters raised by the objection be dealt with by way of mediation or neutral evaluation involving an independent</p>	<p>Mediator to be selected by agreement between the</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	mediator or evaluator selected by agreement between the applicant, the objector and the Minister.	applicant, the objector and the Minister.
<i>Workers Compensation Commission Rules 2003</i>	<p>Section 10 Registers (1) The Registry is to maintain the following: (c) a register of arbitrators and mediators,</p>	Registry to maintain a register of mediators.
<i>Workplace Injury Management and Workers Compensation Act 1998 No 86</i>	<p>Section 318F Appointment of mediators (1) The President is, in accordance with criteria developed by the Minister, to appoint persons to be mediators for the purposes of this Act to mediate on claims for work injury damages as and when required to do so by the Registrar. (2) Mediators are in the exercise of their functions subject to the general control and direction of the Registrar.</p>	Mediators to be appointed by the President in accordance with criteria developed by the minister.

N.S.W Schedule 1

PRACTICE NOTE No 102 MEDIATORS AND EVALUATORS - COMPILING LISTS

Chief Justice SPIGELMAN

2 There will be one list of mediators.

4 Members of the New South Wales Bar Association or of the Law Society of New South Wales should obtain the endorsement of their professional association. Alternatively, they may apply directly, and should show reasons why that endorsement is not available. Persons who are not members of those associations may apply directly. I may decide to accept endorsements from other professional associations or bodies.

5 Persons should apply by sending information in the appropriate Form of Application to their professional associations. Those who apply directly should send the Form of Application to the Chief Executive Officer. Professional associations should provide summarised information for the persons whom they endorse.

6 After the lists are first compiled new applications will be considered from time to time as they are made.

7 Each person must bring to attention any circumstances relevant to my consideration, including any adverse circumstances. Professional associations must bring any adverse circumstances to attention. These obligations will continue while the lists have effect. Professional associations should also bring deaths and withdrawals to attention.

8 Annual reviews will be conducted under s110O(6) but will not require collection of extensive information unless some particular matter requires attention. The annual review will ordinarily be based on a statement by the professional association that the mediator or evaluator continues to act as such, continues to be in good professional standing, and wishes to remain on the list. More detailed attention will be given where circumstances require it.

9 I may obtain recommendations from a committee of Judges and officers on compiling lists, new applications, removals, complaints and any matters outside ordinary routine as they arise. The committee's recommendations will not be conclusive.

Northern Territory

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Adoption Of Children Act</i>	<p>Section 86 Mediation (1) Where an order for the adoption of a child has been made and there is an arrangement in place in respect of access to the child by, or the giving and receiving of information about the child to, the relinquishing parent or parents and a dispute arises between the relinquishing parent or parents and the adoptive parent or parents concerning the access to the child or the giving and receiving of information, one or more of those parents may request the Minister to provide counselling or mediation for the purposes of resolving the dispute. (2) On receipt of a request under subsection (1), the Minister shall take steps to comply with the request.</p>	Minister can be requested to provide mediation.
<i>Commercial Arbitration Act</i>	<p>Section 27 Settlement of disputes otherwise than by arbitration (1) Parties to an arbitration agreement – (b) may authorize an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them</p>	Parties may authorise an arbitrator or umpire to act as a mediator.
<i>Co-Operatives Act</i>	<p>Section 99 General powers of Supreme Court (1) The Supreme Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including – (b) directions about the conduct of the proceedings, including requiring mediation;</p>	Supreme Court may make orders about mediation.
<i>Cullen Bay Marina Act</i>	<p>Section 12E Powers of court to resolve dispute (2) A court may in respect of an application under section 12B do one or more of the following: (a) attempt to settle the proceedings between the parties by the processes of mediation and arbitration</p>	Court may use mediation to settle dispute.
<i>Health Practitioners Act 2004</i>	<p>Section 59 Mediation (1) The relevant Board may refer the complaint to mediation if the health practitioner who is the subject of the complaint and the complainant agree.</p>	The relevant board should appoint the mediator to act.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	(2) If subsection (1) applies, the Board must appoint a person to be the mediator and refer the complaint to the mediator.	
<i>Information Act</i>	<p>Section 111 Mediation is pre-condition to hearing</p> <p>(2) A mediation may be conducted by –</p> <ul style="list-style-type: none"> (a) the Commissioner if the Commissioner considers that by doing so the matter is more likely to be resolved by mediation; or (b) if paragraph (a) does not apply – <ul style="list-style-type: none"> (i) a person agreed to by the complainant and the respondent; or (ii) if they cannot agree – a person appointed by the Commissioner. 	<p>Mediator may be:-</p> <p>The Commissioner – or –</p> <p>A person agreed to by the parties – OR –</p> <p>A person appointed by the Commissioner.</p>
<i>Lands Acquisition Act</i>	<p>Section 37 Consultation and mediation</p> <p>(5) For the purposes of subsections (4) and (4A) –</p> <ul style="list-style-type: none"> (a) the parties may agree on the appointment of a mediator; or (b) if the parties agree to mediation under subsection (4) but cannot agree on the mediator or one of the parties refers the matter to mediation under subsection (4A) but the parties cannot agree on the mediator – either party may apply to the Tribunal for the appointment of a mediator under section 36 of the <i>Lands and Mining Tribunal Act</i>. 	<p>Mediator may be:</p> <p>A person agreed to by the parties – OR –</p> <p>An appointed mediator under section 36 of the <i>Lands and Mining Tribunal Act</i>.</p>
<i>Lands and Mining Tribunal Act</i>	<p>36. Tribunal may appoint mediator</p> <p>(1) Where under a prescribed provision the parties in a matter have agreed to refer the matter to mediation, either party may apply to the Tribunal for the appointment of a mediator to conduct the mediation.</p> <p>(2) On receipt of an application under subsection (1), the Registrar must choose from the panel referred to in subsection (3) a person to mediate in the matter.</p> <p>(3) The Chairperson must appoint in writing a panel of persons who are willing to act as mediators for the purposes of a prescribed provision.</p> <p>(4) The persons who may be appointed under subsection (3) include but are not limited to members of the Tribunal.</p>	<p>The Chairperson may appoint a panel of people willing to act as mediators.</p> <p>The Registrar may choose from the panel a person to mediate.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Local Court Act</i>	<p>21. Rules and procedures (2) Without limiting the generality of subsection (1), the Rules may – (j) provide for the referral of proceedings in the Court, or part of such proceedings or a matter arising out of such proceedings, to a mediator or an arbitrator for mediation or arbitration;</p>	Rules may provide for the referral of Court proceedings to mediation.
<i>Local Court Rules</i>	<p>32.08 Mediators (1) In this rule, "mediator" does not include a Judicial Registrar or Registrar. (2) The Court may keep a list of persons who are, in the Chief Magistrate's opinion, suitably qualified to act as mediators under this Part and who are willing to do so.</p>	The Court may keep a list of people considered to be suitably qualified to act as mediators.
<i>Mining Act</i>	<p>140G. Consultation and mediation (5) For the purposes of subsection (4) – (a) the parties may agree on the appointment of a mediator; or (b) if the parties cannot agree on the mediator either party may apply to the Tribunal for the appointment of a mediator under section 36 of the <i>Lands and Mining Tribunal Act</i>.</p>	Mediator may be: Agreed to by the parties –OR– Appointed by Tribunal under s36 of the <i>Lands and Mining Tribunal Act</i> .
<i>Personal Injuries (Civil Claims) Act 2003</i>	<p>14. Subject matter of Rules (1) Without limiting section 13, the Rules may provide for any of the following matters: (i) the referral of the parties to information sessions or mediation</p>	Rules may allow for the referral of matters to mediation.
<i>Petroleum Act</i>	<p>57H.Consultation and mediation (5) For the purposes of subsection (4) – (a) the parties may agree on the appointment of a mediator; or (b) if the parties cannot agree on the mediator – either party may apply to the Tribunal for the appointment of a mediator under section 36 of the <i>Lands and Mining Tribunal Act</i>.</p>	Mediator may be: Agreed to by the parties –OR– Appointed by Tribunal under s36 of the <i>Lands and Mining Tribunal Act</i> .
<i>Small Claims Rules</i>	<p>18.04Procedure at pre-hearing conference (2) At a pre-hearing conference, the Court may – (a) give the directions that it considers necessary for the expeditious determination of the proceeding; (b) refer the parties to a mediation conference;</p>	Court may refer parties to a mediation conference.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Supreme Court Rules</i>	<p>48.13 Mediation (2) The mediator is to be appointed from the list kept under sub-rule (9) and may be appointed by the Judge, the Master or the parties. (9) The Master must keep a list of persons who, in the opinion of a Judge or the Master, are suitably qualified and willing to act as mediators. (10) The list kept under sub-rule (9) is to include details of the following: (a) the qualifications and experience of each mediator listed; (b) the kinds of matters each mediator listed is willing to mediate.</p>	<p>The Master must keep a list of persons considered by the Judge or Master to be suitably qualified to act as mediator. The mediator is to be appointed from this list.</p> <p>The list is to include the details of the qualifications and experience of the mediators.</p>
<i>Unit Titles Act</i>	<p>106. Resolution of disputes, &c. (4) The Court may, in respect of an application under this section, do one or more of the following: (a) attempt to settle the proceedings between the parties by the processes of mediation and arbitration</p>	<p>The Court may attempt to settle a dispute by mediation.</p>
<i>Unit Titles Regulations</i>	<p>Model Dispute Resolution Procedure 1. Panel of persons willing to act as Referee (1) There is to be a panel of persons who are willing to act as Referee in a dispute. (2) The members of the panel are to be appointed by – (a) the President of the Law Society Northern Territory; or (b) the Chief Executive Officer of the Agency administering the <i>Unit Titles Act</i>. (3) A person may only be appointed to the panel if the person – (a) is a local legal practitioner, or an interstate legal practitioner, within the meaning of section 6 of the <i>Legal Practitioners Act</i>; and (b) holds appropriate qualifications, or has relevant experience, as a conciliator or mediator.</p>	<p>A Referee is to be a legal practitioner and is to hold appropriate qualification or have relevant experience as a mediator.</p>
<i>Work Health Act</i>	<p>103C. Mediators (1) The Minister may appoint a person to be a mediator.</p>	<p>The Minister may appoint a mediator.</p>

Queensland

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Aboriginal Cultural Heritage Act 2003</i>	<p>Section 106 Mediation (2) The consultation party may ask the tribunal to provide mediation of the dispute. (3) If in the opinion of a presiding member of the tribunal the dispute is suitable for mediation the tribunal may provide the mediation. (4) Referral of the dispute to mediation may extend the consultation period only to the extent agreed to in writing by all the consultation parties.</p> <p>Section 116 Tribunal's hearing (4) The tribunal may order mediation before the hearing if the tribunal considers mediation may successfully resolve any dispute about the cultural heritage management plan.</p>	The Tribunal may provide mediation.
<i>Body Corporate and Community Management Act 1997</i>	<p>Section 208 Conditions for recommending specialist mediation It is open to the commissioner to recommend that an application be the subject of specialist mediation only if—</p> <ul style="list-style-type: none"> (a) the parties agree on a person who is to be a mediator for the application; and (b) the commissioner considers that the person agreed on has the qualifications, experience or standing appropriate for acting as a mediator for the application; and 	A mediator is to be agreed upon by the parties – AND – to be considered by the Commissioner to have the appropriate qualifications and experience.
<i>Building Units and Group Titles Act 1994</i>	<p>Section 183 Mediation by referee (1) If an application is made to a referee, the referee may mediate between the parties in an attempt to resolve the issues in dispute by agreement.</p>	The referee may mediate.
<i>Chicken Meat Industry Committee Act</i>	<p>Section 23 Mediation (2) The mediation must be conducted by—</p> <ul style="list-style-type: none"> (a) a person agreed to by the parties; or (b) if the parties can not agree on a mediator—the chairperson or a person appointed by the 	A mediator is a person agreed to by the parties – OR – a person considered by the chairperson to have the

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>chairperson. (3) The chairperson may appoint a mediator under subsection (2)(b) only if the person has the qualifications or experience the chairperson considers appropriate to mediate the dispute.</p>	<p>qualifications or experience to mediate the dispute.</p>
<p><i>Commercial Arbitration Act 1990</i></p>	<p>Section 27 Settlement of disputes otherwise than by arbitration (1) Parties to an arbitration agreement— (b) may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them (whether or not involving a conference to be conducted by the arbitrator or umpire);</p>	<p>Parties may authorise an arbitrator or umpire to act as a mediator.</p>
<p><i>Commercial and Consumer Tribunal Act 2003</i></p>	<p>Section 117 Tribunal may appoint mediator (1) If the tribunal considers a proceeding is suitable for mediation, the tribunal may appoint a mediator or mediators to try to achieve a negotiated settlement of the proceeding. (8) The tribunal may appoint a person as mediator only if the tribunal considers the person has suitable qualifications and experience to be a mediator.</p>	<p>The Tribunal may appoint a mediator if it considers the person has appropriate qualifications and experience.</p>
<p><i>Cooperatives Act 1997</i></p>	<p>Section 98 General powers of the Supreme Court (1) The Supreme Court may make any order, and give any direction, it thinks just in relation to a proceeding brought or intervened in with leave, or in relation to an application for leave, including— (b) directions about the conduct of the proceeding, including requiring mediation</p>	<p>The Supreme Court may make an order for mediation.</p>
<p><i>Dispute Resolution Centres Act 1990</i></p>	<p>Section 2 Interpretation "mediator" in relation to a dispute resolution centre, means— (a) the director of the centre; or (b) any person for the time being accredited under section 19 as a mediator for the centre.</p> <p>Section 19 Mediators The chief executive may accredit a person, other than a director, as a mediator for a dispute resolution centre and may revoke any such accreditation.</p>	<p>A mediator is: The Director of the centre – OR – A person accredited as a mediator for the centre.</p> <p>The Chief Executive may accredit a person.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>District Court of Queensland Act 1967</i>	<p>Section 3 Definitions “mediator” means a mediator approved under section 93 or a mediator within the meaning of the <i>Dispute Resolution Centres Act 1990</i>.</p> <p>Section 93 Approval of mediators The Chief Judge may approve, or refuse to approve, a person as a mediator.</p>	“mediator” means a mediator approved under section 93 or a mediator within the meaning of the <i>Dispute Resolution Centres Act 1990</i> .
<i>Electricity Act 1994</i>	<p>Section 217 Review panels, arbitration and mediation (2) Without limiting subsection (1), a regulation may make provision about— (d) the appointment of mediators and arbitrators;</p>	Regulations may be made about the appointment of mediators.
<i>Freedom of Information Act 1992</i>	<p>Section 80 Mediation (1) The Commissioner may, at any time during a review, try to effect a settlement between the participants.</p>	The Commissioner may try to effect settlement.
<i>Gas Supply Act 2003</i>	<p>Section 263 Further referral to energy mediator or arbitrator (1) The regulator must refer the dispute to an energy mediator if the customer requests the referral.</p>	A dispute may be referred to an energy mediator by the regulator.
<i>Gas Supply Regulation 2003</i>	<p>Section 18 Dispute resolution (1) A person who is a party to a dispute about compliance with the code may give each other party to the dispute a written notice stating— (b) that the dispute is to be referred to mediation. (2) If a notice mentioned in subsection (1) is given, the dispute must be referred to mediation as required under the code (22.2)</p>	A dispute may be referred to mediation.
<i>Industrial Relations ACT 1999, Act No. 33 of 1999</i>	<p>Section 231 Mediation by commission The commission may act as mediator in an industrial cause, whether or not it is within the jurisdiction of the commission— (a) on the request of the parties directly involved in the cause; or (b) if the commissioner is satisfied mediation is desirable in the public interest.</p>	The commission may act as mediator.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Industrial Court Rules 1997</i>	<p>Section 90 Mediation conference (1) For section 24245 of the Act, a commissioner or magistrate may confer with the parties to an industrial dispute and take whatever necessary steps— (a) to help the parties resolve the dispute;</p>	A commissioner or magistrate may act as mediator.
<i>Industrial Relations (Tribunals) Rules 2000</i>	<p>Section 151 Mediation by commission (1) The steps the commission may take as mediator in an industrial cause include conferring with the parties to the cause to the extent necessary— (a) to help the parties resolve the dispute;</p>	The Commission may act as mediator.
<i>Justices Act 1886</i>	<p>Section 53A Power, after summons issued, to order mediation (1) If a summons has been issued under section 53, the clerk of the court for the place where the defendant is required to appear may order the complainant to submit the matter to mediation under the <i>Dispute Resolution Centres Act 1990</i> (an “order to mediate”). (2) The clerk of the court may make an order to mediate if— (a) the clerk considers that the matter would be better resolved by mediation than by proceeding on the summons; or (b) the complainant consents to the order.</p>	The Clerk may make an order to mediate.
<i>Land and Resources Tribunal Act 1999, Act No. 7 of 1999</i>	<p>Section 71 Application of div 5 This division applies to persons (“mediation participants”)— (a) for whom the tribunal conducts or provides mediation in relation to a matter; or (b) for whom mediation is provided in relation to a matter by a mediator chosen by the tribunal.</p> <p>Section 16 Appointment of non-presiding members (1) An appointed non-presiding member is to be appointed by the Governor in Council. (2) A referee non-presiding member is to be appointed as follows— (a) by the Governor in Council; (b) on the basis of full-time employment; (c) as a mining referee, a mediation referee or an indigenous issues referee.</p>	The Governor in Council may appoint a mediator – OR – the tribunal may conduct a mediation.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Legal Profession Act 2003</i>	<p>Section 175 Complaints made over 3 years after conduct concerned (2) The commissioner may— (a) refer the complaint to mediation; or</p>	The Commissioner may refer a complaint to mediation.
<i>Magistrates Courts Act 1921</i>	<p>Section 2 Definitions “mediator” means a mediator approved under section 25 or a mediator within the meaning of the <i>Dispute Resolution Centres Act 1990</i>.</p> <p>Section 25 Approval of mediators The Chief Magistrate may approve, or refuse to approve, a person as a mediator.</p>	Mediator is defined by the <i>Dispute Resolution Centres Act 1990</i> .
<i>Mineral Resources Act 1989</i>	<p>Section 662 Request for mediation (2) If a consultation and negotiation party asks for mediation under subsection (1), mediation— (a) must be conducted by— (i) a mediator chosen by the consultation and negotiation parties; or (ii) if the consultation and negotiation parties are not able to agree on a mediator and the party asks the tribunal to provide the mediation—the tribunal, or a mediator chosen by the tribunal;</p>	A mediator must be chosen by the consultation parties – OR – if they are unable to agree the Tribunal may act as mediator or choose a mediator.
<i>Native Title (Queensland) Act 1993</i>	<p>Section 41 Mediation conference to be held (1) If an accepted application is not an unopposed application, the President must direct the holding of a conference (the “mediation conference”) of the parties or their representatives to help in resolving the matter.</p>	The President may direct the holding of a mediation conference.
<i>Peace And Good Behaviour Act 1982</i>	<p>Section 4 Complaint in respect of breach of the peace (3) If the justice before whom the complaint mentioned in subsection (2) is made considers that the matter would be better resolved by mediation than by proceedings before a Magistrates Court, the justice may, with the complainant’s consent, order the complainant to submit the matter to mediation under the <i>Dispute Resolution Centres Act 1990</i>.</p>	The Justice may refer the matter to mediation under the <i>Dispute Resolution Centres Act 1990</i>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Peaceful Assembly Act 1992</i>	<p>Section 4 Definitions “mediation session” has the meaning given by section 1.3 of the <i>Dispute Resolution Centres Act 1990</i></p>	<p>Mediation is defined by the <i>Dispute Resolution Centres Act 1990</i></p>
<i>Personal Injuries Proceedings Act 2002</i>	<p>Section 38 Procedure at conference (3) The mediator must be a person independent of the parties— (a) agreed to by the parties; or (b) nominated by the registrar of the court on application under subsection (4). (4) If the parties are unable to agree on the appointment of a mediator within 30 days after the day for the compulsory conference is fixed, any party may apply to the registrar of the court for the nomination of a mediator.</p>	<p>The mediator should be agreed to by the parties – OR – Nominated by the Registrar.</p>
<i>Queensland Building Services Authority Act 1991</i>	<p>Section 96 Mediation (1) The Tribunal may appoint a mediator or mediators to endeavour to achieve a negotiated settlement of a domestic building dispute. (2) An inspector is eligible for appointment as a mediator.</p>	<p>The Tribunal may appoint a mediator, who may be an inspector.</p>
<i>Queensland Building Tribunal Act 2000, Act No. 10 Of 2000</i>	<p>Section 123 Tribunal may appoint mediator (1) If the tribunal considers a proceeding relating to a building dispute or a review of the authority's decision is suitable for mediation, the tribunal may appoint a mediator or mediators to try to achieve a negotiated settlement of the proceeding. (2) If all the parties to a proceeding request the tribunal to appoint a particular mediator, the tribunal may appoint that mediator. (3) The powers of the tribunal under subsection (1) or (2) may be exercised by the registrar. (7) The tribunal may appoint a person as mediator only if the tribunal considers the person has suitable qualifications and experience to be a mediator. <i>Example of 'suitable qualifications and experience'—</i> Successful completion of a recognised training course in mediation and experience in a business or profession relevant to the proceeding the subject of the mediation.</p>	<p>The Tribunal or Registrar may appoint a mediator if it considers that the person has suitable qualifications and experience as a mediator –OR– The parties may request the appointment of a particular mediator.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Queensland Law Society Act 1952</i>	<p>Section 51 Council may facilitate mediation process if parties agree (1) If the council considers that the matter of a complaint is capable of resolution by mediation, the council may suggest to the complainant and the person complained about (the "parties") that they enter into a process of mediation to resolve the matter of the complaint. (2) If the parties agree to enter into a mediation process, the council may facilitate the mediation to the extent it considers appropriate.</p>	The Council may facilitate a mediation.
<i>Racing Act 2002</i>	<p>Section 17 Chief executive must call meeting of all approval applicants (2) The chief executive may arrange for a suitably qualified person to be the mediator at the meeting.</p>	A mediator should be a suitably qualified person chosen by the Chief Executive
<i>Residential Tenancies Act 1994</i>	<p>Section 235 Action to be taken on mediation notice As soon as practicable after a mediation notice is given but, within 7 days after the notice is given, the Authority must— (a) nominate a mediator to mediate the tenancy dispute;</p> <p>Schedule 3 Dictionary "mediator" means a person who is accredited under section 2.17 (Mediators) of the <i>Dispute Resolution Centres Act 1990</i> as a mediator for a Dispute Resolution Centre.</p>	"mediator" means a person who is accredited under section 2.17 (Mediators) of the <i>Dispute Resolution Centres Act 1990</i> as a mediator for a Dispute Resolution Centre.
<i>Retail Shop Leases Act 1994</i>	<p>Section 95 Mediators The Minister may appoint the number of persons the Minister considers necessary to be mediators.</p>	The Minister may appoint a mediator.
<i>Retirement Villages Act 1999, Act No. 71 Of 1999</i>	<p>Section 158 Chief executive to act on dispute notice (1) Within 14 days after receiving the dispute notice, the chief executive must— (a) appoint a mediator to mediate the retirement village dispute;</p> <p>Schedule 2 Dictionary "mediator" means a person who is— (a) accredited as a mediator under the <i>Dispute Resolution Centres Act 1990</i>, section 19;34 or (b) approved as a mediator under the <i>Uniform Civil Procedure Rules 1999</i>; or (c) approved as a mediator by the Bar Association of Queensland or the Queensland Law Society</p>	"mediator" means a person who is— (a) accredited as a mediator under the <i>Dispute Resolution Centres Act 1990</i> , section 19;34 or (b) approved as a mediator under the <i>Uniform Civil Procedure Rules 1999</i> ; or

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	Incorporated.	(c) approved as a mediator by the Bar Association of Queensland or the Queensland Law Society Incorporated.
<i>Sugar Industry Act 1999, Act No. 51 Of 1999</i>	<p>Section 48 Individual agreement—stopping or cancelling. (4) The mediator must be— (a) a person agreed to by the parties to the mediation; or (b) if the parties can not agree—the commissioner or a person nominated by the commissioner. (5) A person nominated by the commissioner under subsection (4)(b) must have appropriate qualifications or experience for the mediation.</p> <p>Section 200 Commissioner’s power to delegate (3) The commissioner may delegate the commissioner’s power to mediate in disputes about the exercise of an access right under section 71(9)49 to— (a) the chairperson of the cane production board established for a mill that is or is proposed to be supplied with cane through the use of the access right; or (b) an appropriately qualified mediator.</p>	A mediator must be agreed to by the parties – OR – The Commissioner or nominee. The nominee must have appropriate qualifications or experience for the mediation.
<i>Torres Strait Islander Cultural Heritage Act 2003</i>	<p>Section 106 Mediation (2) The consultation party may ask the tribunal to provide mediation of the dispute. (3) If in the opinion of a presiding member of the tribunal the dispute is suitable for mediation the tribunal may provide the mediation.</p>	The Tribunal may provide mediation.
<i>Uniform Civil Procedure Rules 1999</i>	<p>Section 314 Approval as mediator (1) A person seeking approval as a mediator must— (a) apply in the approved form; and (b) pay the prescribed fee; and (c) satisfy the appropriate senior judicial officer of the court of which</p>	The appropriate senior judicial officer of the court of which the person is seeking to become a mediator should be satisfied that the person is suitable for

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>the person is seeking to become a mediator that the person is a suitable person to be approved as a mediator.</p> <p>Section 323 Referral of dispute to appointed mediator (1) A referring order for a mediation must— (a) appoint as mediator— (i) a specified mediator; or (ii) a mediator to be selected by the parties; or (iii) if all parties agree, a person who is not a mediator; and</p>	<p>approval.</p>
<p><i>Water Resources (Shire of Gayndah) Regulation 1994</i></p>	<p>Schedule Part 15(1) Dispute Resolution (6) If the parties agree to mediation of the dispute or part of the dispute, the mediator must be agreed between the parties or failing such agreement, must be appointed by the Principal Executive Officer of LEADR (Lawyers Engaged in Alternative Dispute Resolution), Level 7, 44 Martin Place, Sydney, New South Wales (Telephone: (02) 210–4200; Facsimile: (02) 236–2711) or its successor in accordance with the then current procedures adopted by LEADR for the appointment.</p>	<p>The mediator should be agreed upon by the parties -OR- Appointed by the Principal Executive Officer of LEADR.</p>
<p><i>Water Resources (Transfield Collinsville Pty Ltd and Nrgenerating Holdings (No. 1) B.V.) Agreement Approval Regulation 1996</i></p>	<p>Schedule Part 11 Dispute Resolution (b) If the chief executive officers have failed to resolve a dispute within 7 days either party may serve a notice on the other pursuant to this clause 11 requiring the parties within 14 days of the date of the notice to refer the matter to alternative dispute resolution and, in the absence of agreement to the appropriate methodology, the dispute shall be referred to mediation, which shall be conducted in accordance with the rules of the Australian Commercial Disputes Centre Limited.</p>	<p>Mediation conducted in accordance with the rules of the Australian Commercial Disputes Centre Limited.</p>
<p><i>Workers Compensation and Rehabilitation Act 2003</i></p>	<p>Section 290 Procedure at conference (3) The mediator must be a person independent of the parties— (a) agreed to by the parties; or (b) nominated by the registrar of the court on application under subsection (4). (4) If the parties are unable to agree on the appointment of a mediator within 30 days after the date for the compulsory conference is fixed, either party may apply to the registrar of the court for the</p>	<p>A mediator must be: Independent of the parties & Agreed to by the parties –OR– Nominated by the Registrar.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	nomination of a mediator.	
<i>Workplace Relations Act 1997</i>	<p>Section 242 Mediation by commissioner or magistrate A commissioner or magistrate may act as mediator in an industrial cause, whether or not it is within the jurisdiction of the commission or a magistrate—</p> <ul style="list-style-type: none"> (a) on the request of the parties directly involved in the cause; or (b) if it appears mediation is desirable in the public interest. 	A commissioner or magistrate may act as a mediator.

South Australia

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Chicken Meat Industry Act 2003 [Act]</i>	<p>Section 26</p> <p>(3) The mediation must be conducted by—</p> <p>(a) a person agreed to by the parties; or</p> <p>(b) if the parties cannot agree on a mediator, the Registrar or some other person appointed by the Registrar who is, in the opinion of the Registrar, suitably qualified to mediate the dispute.</p>	<p>Mediator may be :</p> <p>Agreed to by the Parties</p> <p>Appointed by the Registrar or his agent as someone suitably qualified to mediate.</p>
<i>Cooperatives Act 1997 [Act]</i>	<p>Section 99 General powers of the Supreme Court</p> <p>(1) The Supreme Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including—</p> <p>(b) directions about the conduct of the proceedings, including requiring mediation;</p>	<p>The Supreme Court may require mediation.</p>
<i>District Court Act 1991 [Act]</i>	<p>Section 32 Mediation and conciliation</p> <p>(1) Subject to and in accordance with the rules, the Court constituted of a Judge (whether sitting with assessors or not) may, with or without the consent of the parties, and a Master or the Registrar may, with the consent of the parties, appoint a mediator and refer an action or any issues arising in an action for mediation by the mediator.</p>	<p>The Court constituted of a judge and a Master or the Registrar may appoint a mediator.</p> <p><u>Supreme Court Practice Direction No. 55 – See schedule 1.</u></p>
<i>Electricity Act 1996 [Act]</i>	<p>Section 55F Conduct of proceedings</p> <p>(8) The Technical Regulator may—</p> <p>(f) appoint a mediator to facilitate resolution of the dispute by conciliation;</p>	<p>The Technical Regulator may appoint a mediator.</p>
<i>Environment, Resources and Development Court Act 1993 [Act]</i>	<p>Section 28B Mediation and conciliation</p> <p>(1) If it appears to the Court at the commencement or during the course of proceedings, or to the member of the Court presiding at a conference under section 16, that there would be a reasonable likelihood of settling matters in dispute between the parties by doing so, the Court or member may, with the consent of the parties, appoint a mediator to endeavour to achieve a negotiated settlement of the matters.</p>	<p>The Court or a member of the Court may appoint a mediator.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Guardianship and Administration Act 1993 [Act]</i>	<p>Section 15A Mediation (1) The Registrar may, on his or her own initiative, provide preliminary assistance in resolving any proceedings before the Board, including— (2) Before or during the hearing of any proceedings before the Board, the Board, the President or a Deputy President may, with or without the consent of the parties to the proceedings, refer the proceedings or any issues arising in the proceedings to the Registrar for mediation.</p>	The Board, the President or a Deputy President may refer the proceedings to the Registrar for mediation.
<i>Industrial and Employee Relations Act 1994</i>	<p>Section 197 Commission's power of mediation (1) The Commission may mediate between the parties to an industrial dispute for the purpose of resolving the dispute. (2) The Commission may mediate between persons who may become involved in an industrial dispute for the purpose of preventing an industrial dispute.</p>	The Commission may mediate.
<i>Local Government Act 1999 [Act]</i>	<p>Section 271 Mediation and neutral evaluation (2) A scheme made under this section must provide for the constitution of panels of persons who are available to act as mediators and evaluators, and for the selection of an appropriate mediator or evaluator if a dispute is to be dealt with under this section</p>	A scheme should provide for the constitution of a panel of persons available to act as mediators, and how selection should occur from that panel.
<i>Magistrates Court Act 1991 [Act]</i>	<p>Section 27 Mediation and conciliation (1) Subject to and in accordance with the rules, the Court constituted of a Magistrate (whether sitting with assessors or not) may, with or without the consent of the parties, and any other judicial officer or a Registrar may, with the consent of the parties, appoint a mediator and refer an action or any issues arising in an action for mediation by the mediator.</p>	The Court may appoint a mediator.
<i>Rail Safety Regulations 1998 [Regs]</i>	<p>Section 6 Dispute resolution (1) The following procedures are prescribed for the purposes of section 20(1) of the Act. (3) The Minister must, on receipt of an application under sub-regulation (2), after consultation with the applicant and the Adminstrating Authority, appoint a suitable person to act as a conciliator or mediator.</p>	The Minister must appoint a suitable person to act as mediator after consultation with the applicant and the Adminstrating Authority.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Residential Tenancies Act 1995 [Act]</i>	<p>Mediation 34. (1) If before or during the hearing of proceedings it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of settling the matters in dispute between the parties, the person constituting the Tribunal may—</p> <p>(a) appoint, with the consent of the parties, a mediator to achieve a negotiated settlement; or</p>	<p>The Tribunal may appoint with the consent of the parties a mediator.</p>
<i>Retail and Commercial Leases Act 1995 [Act]</i>	<p>Fair dealing between lessor and lessee in regard to renewal of lease 20H. (2) If a notice of dispute is lodged with the Commissioner under subsection (1)(a)—</p> <p>(a) the Commissioner (or a mediator appointed by the Commissioner) will attempt to resolve the dispute by conciliation</p>	<p>The Commissioner or a mediator appointed by the Commissioner will attempt to resolve the dispute.</p>
<i>SA Cooperative and Community Housing (General) Regs 1992 [Regs]</i>	<p>Section 17A Appeals A mediation or conciliation process conducted by any of the following bodies or organisations is a prescribed mediation or conciliation process for the purposes of section 84(3) of the Act: (a) an incorporated community legal service; (b) a person approved by the Authority to act as a mediator.</p>	<p>Mediation may be undertaken by: an incorporated community legal service – OR – A person approved by the Authority to act as a mediator.</p>
<i>Supreme Court Act 1935 [Act]</i>	<p>Section 65 Mediation and conciliation (1) Subject to and in accordance with the rules of court, the court constituted of a judge may, with or without the consent of the parties, and a master or the registrar may, with the consent of the parties, appoint a mediator and refer a civil proceeding or any issues arising in a civil proceeding for mediation by the mediator.</p>	<p>A judge, master or registrar may appoint a mediator.</p> <p><u>Supreme Court Practice</u> <u>Direction No. 55 – See schedule 1.</u></p>
<i>Training and Skills Development Act 2003 [Act]</i>	<p>Section 19 Establishment of Grievances and Disputes Mediation Committee (4) The Grievances and Disputes Mediation Committee will be constituted of the member appointed to chair meetings of the Committee and at least 2 but not more than 4 other persons selected in accordance with Schedule 1.</p>	<p>The Minister must establish a panel of max. 7 persons which will be the <i>Grievances and</i></p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>Schedule 1—Grievances and Disputes Mediation committee</p> <p>1. For the purpose of constituting the Grievances and Disputes Mediation Committee to hear a grievance under Part 3, the Minister must, on the advice of the Commission, establish a panel of not more than 7 persons.</p> <p>2. For the purpose of constituting the Grievances and Disputes Mediation Committee to hear a dispute or grievance under Part 4, the Minister must—</p> <p style="padding-left: 40px;">(a) on the advice of the Commission and after consultation with State employer associations, establish a panel of not more than 4 persons; and</p> <p style="padding-left: 40px;">(b) on the advice of the Commission and after consultation with the United Trades and Labor Council, establish a panel of not more than 4 persons.</p> <p>3. Membership of a panel—</p> <p style="padding-left: 40px;">(a) under clause 1 will include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Grievances and Disputes Mediation Committee's functions under Part 3;</p> <p style="padding-left: 40px;">(b) under clause 2 will include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Committee's functions under Part 4.</p>	<p><i>Disputes Mediation Committee.</i></p> <p>These people should, in the Minister's opinion, have the ability and experience for the effective function of their duties.</p>

SCHEDULE 1: SUPREME COURT OF S.A. PRACTICE DIRECTION No. 55

2(1) The President of the Law Society of S.A., the President of the Bar Association of S.A. and the President of the Institute of Arbitrators and Mediators Australia will establish, and review at least annually, a panel of suitable persons to whom the Courts may refer mediations.

2(2) Persons may be admitted to the Panel if they:

- (a) have applied to it; and
- (b) are suitable to be appointed under section 65 of the Supreme Court Act or section 32 of the District Court Act; and either:
 - i. have undertaken a course approved by the Chief Justice and the Chief Judge as set out in **Appendix A** and can demonstrate experience as mediators; or
 - ii. have established substantial practical experience in the conduct of mediations such that it is appropriate for them to be admitted to the Panel without having undertaken an approved course; or
 - iii. are former Judges of the Supreme Court of or the District Court.

Appendix A

1. An approved course is one that meets the following minimum criteria:
 - a. The course comprises at least 3 days of training;
 - b. The course includes a theoretical background to mediation and negotiation as well as practical training sessions;
 - c. The course provides the opportunity for each participant to undertake at least two simulated exercises as mediator, with one of those exercises being assessed by a trained mediator who provides direct written feedback to the mediator on their performances;
 - d. The course has been approved by the chief Justice or nominee.
2. Currently approved courses are offered by the following institutions:
 - a. University of South Australia
 - Graduate Certificate in Mediation (Family)
 - Graduate Certificate in Mediation (Workplace Relations)
 - Graduate Diploma in Conflict Management
 - Master of Conflict Management
 - b. Adelaide University in Conjunction with IAMA
 - Three day Basic Mediation Workshop and Mediation Accreditation session (as an adjunct to the Professional Certificate in Arbitration and Mediation)
 - c. LEADR (leading Edge Alternate Dispute Resolvers)
 - Four day mediation workshop
 - d. Bond University
 - Three day Basic Mediation Course
 - e. The Accord Group
 - Four day Commercial Mediation Training Course
 - f. The Institute of Arbitrators and Mediators
 - National Mediation and Conciliation Course
 - g. Harvard Law School – Mediation Workshop
3. Mediators who have previously undertaken courses that were approved by the Law Society of South Australia for the purposes of the Law Society establishing a list of members who wished to act as mediators will be eligible to be admitted to the Panel.

Tasmania

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Alternative Dispute Resolution Act 2001</i>	<p>Section 5 Referral by court</p> <p>(1) A court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if the court considers the circumstances appropriate and whether or not the parties to the proceedings consent to the referral.</p> <p>(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Act.</p> <p>(3) The parties to the proceedings may agree as to who is to be the mediator or evaluator for the matter but, in default of agreement, the mediator or evaluator is to be the registrar or his or her nominee.</p> <p>Section 9 Mediators and evaluators</p> <p>(1) The Chief Justice and the Chief Magistrate may compile a list or lists of persons considered to be suitable to be mediators for the purposes of this Act.</p> <p>(3) Different lists may be compiled for different types of matters or to take account of any other factors.</p> <p>(4) A person may be included in a list under this section only if –</p> <ul style="list-style-type: none"> (a) the person consents to being included in the list; and (b) the person agrees to comply with this Act. 	<p>The Chief Justice and Chief Magistrate may compile a list of persons considered to be suitable as mediators.</p> <p>The mediator may or may not be a person on the list.</p> <p>In default of agreement between the parties as to who will be mediator, the mediator shall be the registrar or his/her nominee.</p>
<i>Commercial Arbitration Act 1986</i>	<p>Section 27 Settlement of disputes otherwise than by arbitration</p> <p>(1) Parties to an arbitration agreement –</p> <ul style="list-style-type: none"> (a) may seek settlement of a dispute between them by mediation, conciliation or similar means; or (b) may authorize an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them 	<p>Parties to an arbitration agreement may authorise an arbitrator or umpire to act as a mediation.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Cooperatives Act 1999</i>	<p>Section 97 General powers of the Supreme Court (1) The Supreme Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including – (b) directions about the conduct of the proceedings, including requiring mediation</p>	The Supreme Court may order mediation.
<i>Electricity Supply Industry Act 1995</i>	<p>Section 98 Reference of application for mediation (1) The Regulator may refer an application for administrative review to a mediator.</p>	The Regulator may refer an application to a mediator.
<i>Gas Act 2000</i>	<p>Section 49 Disputes (1) If a dispute arises as to the activities of a gas entity, a party to the dispute may request the Director of Gas or the Director of Gas Safety to mediate in the dispute.</p> <p>Section 107 Reference of application for mediation (1) The appropriate authority may refer an application for administrative review to a mediator.</p>	A party may request the Director of Gas or Director of Gas Safety to act as mediator.
<i>Land Use Planning and Approvals Act 1993</i>	<p>Section 57A Mediation (4) If 2 or all parties agree that mediation should be conducted in relation to an application for a permit under section 57, the parties must agree on the person who is to conduct the mediation and on any other terms or conditions in relation to the conduct of the mediation.</p>	The parties must agree on the mediator.
<i>Magistrates Court (Civil Division) Act 1992</i>	<p>Section 39B Rules of court The rules of court may, without limiting the generality of the Magistrates Rule Committee's powers, make provision for or with respect to all or any of the following: (b) mediation and conciliation conferences, including – (i) the appointment of mediators and conciliators; and</p>	The Rules of Court may provide for the appointment of mediators.
<i>Magistrates Court (Civil Division) Rules 1998 (S.R. 1998, No. 25)</i>	<p>"conciliator" means a person appointed under rule 80A to conduct conciliation conferences and mediation conferences</p> <p>Section 80A Appointment of conciliators (1) For the purpose of this Part, the Chief Magistrate may appoint one or more persons as a conciliator.</p>	The Chief Magistrate may appoint a conciliator. A conciliator may conduct a mediation conference.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Magistrates Court Act 1987</i>	<p>Section 15AE Committee may make rules of court</p> <p>(1) The Magistrates Rule Committee may make rules of court for all or any of the following:</p> <p>(2) Rules made under subsection (1) for any court, division of a court or special proceedings may, subject to any relevant enactment –</p> <p>(c) make provision for or in relation to mediation and conciliation conferences including, but not limited to, the following matters:</p> <p>(i) the appointment of mediators and conciliators and their powers and functions;</p> <p>(ii) the conduct of such conferences and associated procedures;</p> <p>(iii) the consequences of such conferences or the failure of such conferences;</p>	<p>The Magistrates Rule Committee may appoint mediators.</p>
<i>Rail Safety Regulations 1999</i>	<p>Section 6 Dispute resolution</p> <p>(1) The following scheme is prescribed for the purposes of section 20(1) of the Act.</p> <p>(2) An application for a matter to be dealt with by conciliation or mediation is to –</p> <p>(a) be made in writing to the Minister in a manner determined by the Minister; and</p> <p>(b) contain information about the matter and the grounds on which the application is made.</p> <p>(3) The Minister is to, on receipt of an application under subregulation (2), after consultation with the applicant and the Administrating Authority, appoint a suitable person to act as a conciliator or mediator.</p>	<p>The Minister may appoint a suitable person to act as mediator in consultation with the applicant and the Administrating Authority.</p>
<i>Resource Management and Planning Appeal Tribunal Act 1993</i>	<p>Section 16A Mediation</p> <p>(1) Before hearing an appeal, the Appeal Tribunal –</p> <p>(b) may, on its own motion or on the motion of a party to the appeal, direct the parties to the appeal to mediation using the services of a mediator approved by the Appeal Tribunal.</p>	<p>The Appeals Tribunal may approve a mediator.</p> <p><i>No requirements as to mediator accreditation</i></p>
<i>Rules of Practice 1994</i>	<p>Section 9 Restrictions relating to mediation and arbitration</p> <p>(1) A practitioner must not hold himself or herself out, or allow himself or herself to be held out, directly or indirectly, as being prepared to perform work as a mediator or an arbitrator or as both a mediator and an arbitrator without the approval of the Society.</p> <p>(2) A practitioner may apply to the Society for approval to practise as a mediator or an arbitrator or a mediator and an arbitrator.</p> <p>(3) The Society may –</p> <p>(a) grant the approval with or without conditions; or</p>	<p>A practitioner may apply to the Society to practise as a mediator.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(b) refuse to grant the approval.</p> <p>(4) An application for approval is to be –</p> <p>(a) in writing; and</p> <p>(b) lodged with the Executive Director.</p> <p>(5) A condition of an approval may require the practitioner to comply with any rules of practice or guidelines –</p> <p>(a) approved by the Society in respect of the practice of mediation; or</p> <p>(b) approved by the Australian Institute of Arbitrators in respect of the practice of arbitration.</p> <p>(6) The Society may withdraw an approval at any time.</p>	
<i>Supreme Court Rules 2000</i>	<p>Section 518 Reference to mediation</p> <p>(1) At any stage in a proceeding a judge, with or without the consent of any party, may order that the proceeding or any part of it be referred for mediation.</p> <p>(2) If a matter is referred to mediation, the mediator is to be –</p> <p>(a) the Principal Registrar; or</p> <p>(b) a suitable person appointed by the Principal Registrar.</p>	<p>A mediator is the Principal Registrar or a suitable person appointed by the Principal Registrar.</p>

Victoria

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Associations Incorporation Regulations 1998</i>	<p>Schedule 5 Section 8 Disputes and mediation</p> <p>(4) The mediator must be—</p> <ul style="list-style-type: none"> (a) a person chosen by agreement between the parties; or (b) in the absence of agreement— <ul style="list-style-type: none"> (i) in the case of a dispute between a member and another member, a person appointed by the committee of the Association; or (ii) in the case of a dispute between a member and the Association, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice). <p>(5) A member of the Association can be a mediator.</p> <p>(6) The mediator cannot be a member who is a party to the dispute.</p>	<p>A mediator is a person chosen by the parties – OR – Appointed by the committee of the Association – OR – Appointed or employed by the Dispute Settlement Centre of Victoria.</p>
<i>Commercial Arbitration Act 1984</i>	<p>Section 27 Settlement of disputes otherwise than by arbitration</p> <p>(1) Parties to an arbitration agreement—</p> <ul style="list-style-type: none"> (a) may seek settlement of a dispute between them by mediation, conciliation or similar means; or (b) may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them. 	<p>Parties may authorise an arbitrator or umpire to act as a mediator.</p>
<i>Co-operatives Act 1996</i>	<p>Section 104 General powers of the Supreme Court</p> <p>(1) The Supreme Court may make any orders, and give any directions, that it thinks just in relation to proceedings brought or intervened in with leave, or in relation to an application for leave, including—</p> <ul style="list-style-type: none"> (b) directions about the conduct of the proceedings, including requiring mediation 	<p>The Supreme Court may require mediation.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>County Court Act 1958</i>	<p>Section 47A Power to refer civil proceedings to mediation or arbitration Subject to and in accordance with the rules, the court may, with or without the consent of the parties, refer the whole or any part of a civil proceeding to mediation or arbitration.</p>	The Court may refer parties to mediation.
<i>County Court Rules of Procedure in Civil Proceedings 1999</i>	<p>Section 34A.21 Mediation or arbitration At a directions hearing the Court may with or without the consent of any party refer the whole or any part of the proceeding to— (a) mediation in accordance with Rule 50.07; (no reference in Rule 50.07 to accreditation)</p>	The Court may refer the parties to mediation.
<i>Estate Agents (Contracts) Regulations 1997</i>	<p>Section 12.1 Mediation of Dispute Except for a claim under GC 11.2, if a dispute arises out of or relates to this contract (including any dispute as to breach or termination of the contract) a party to the contract may not commence any court proceedings relating to the dispute unless it has complied with this clause except where the party seeks urgent interlocutory relief— (c) The parties must jointly appoint a mediator and agree on the mediator's remuneration. If the parties fail to agree on the appointment and remuneration within 5 days of service of the notice or any other time that the parties agree to in writing, either party may apply to the President of the body known as the Law Institute of Victoria or the President's nominee to appoint a mediator and determine the mediator's remuneration.</p>	The parties may jointly appoint a mediator – OR – May apply to the President of the Law Institute of Victoria or his nominee to appoint a mediator.
<i>Evidence Act 1958</i>	<p>Section 21I Definitions (1) In this Division— "family mediator" means a person who is— (a) a marriage counsellor under the Family Law Act 1975 of the Commonwealth as amended and in force for the time being; or (b) declared a family mediator under sub-section (2). (2) The Secretary to the Department of Justice may declare a person to be a family mediator by notice published in the Government Gazette.</p>	A Family mediator is a marriage Counsellor under the Commonwealth Family Law Act – OR – A person declared to be a family mediator by the Secretary to the Department of Justice.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>General Rules of Procedure in Civil Proceedings 1996</i>	50.07 Reference to mediator (1) At any stage of a proceeding the Court may with or without the consent of any party order that the proceeding or any part of the proceeding be referred to a mediator.	The Court may refer a matter to a mediator.
<i>Grain Handling and Storage Act 1995</i>	Section 24B Commission may give directions in relation to a dispute (1) The Commission, for the purposes of facilitating negotiations or determining a dispute under Division 2, may require a person who is or was a party to the dispute to do, or refrain from doing, something, including— (e) requiring a person, or a representative of a person, to attend a mediation conference.	The Commission may require mediation.
<i>Information Privacy Act 2000</i>	Section 43 What may the Tribunal decide? (1) After hearing the evidence and representations that the parties to a complaint desire to adduce or make, the Tribunal may— (iv) if the act or practice the subject of the complaint is subject to an approved code of practice, an order that the code administrator take specified steps in the matter, which may include using conciliation or mediation, securing an apology or undertaking as to future conduct from the respondent or the payment of compensation, not exceeding \$100 000, by the respondent;	The Tribunal may order the code administrator to take steps in the matter, including mediation.
<i>Legal Practice Act 1996</i>	Section 63U Scope of practice (1) A registered foreign practitioner may only provide any or all of the following— (d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in Victoria of a kind prescribed by the regulations;	A registered foreign practitioner may provide legal services in relation to mediation.
<i>Magistrates' Court Act 1989</i>	Section 16 Civil rules of court (1) The Chief Magistrate together with 2 or more Deputy Chief Magistrates may jointly make rules of court for or with respect to the following— (fa) the reference of any civil proceeding or of any part of a civil proceeding to mediation..	The Chief Magistrate together with two Deputy Magistrates may make rules with respect to mediation.
<i>Port Services Act 1995</i>	Section 63AB Commission may give directions in relation to a dispute (1) The Commission, for the purposes of facilitating negotiations or determining a dispute under this Division, may require a person who is or was a party to the dispute to do, or refrain from doing,	The Commission may require attendance at mediation.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	something, including— (e) requiring a person, or a representative of a person, to attend a mediation conference.	
<i>Retail Leases Act 2003</i>	Section 86 Referral of retail tenancy disputes for alternative dispute resolution (3) The Commissioner must arrange for each retail tenancy dispute referred in accordance with this section to be the subject of— (a) mediation by a mediator; or (b) another appropriate form of alternative dispute resolution by a suitably qualified person.	A Commissioner shall ensure that a dispute be subject to mediation by a mediator.
<i>Supreme Court Act 1986</i>	Section 25 Power to make Rules (1) The Judges of the Court (not including any Judge who has made an election under section 80A(1) or has been appointed under section 80A(3A) of the Constitution Act 1975) may make Rules of Court for or with respect to the following: (ea) The reference of any proceeding or of any part of a proceeding to mediation or arbitration;	The Judges of the Court may make Rules about mediation.
<i>Supreme Court (General Civil Procedure) Rules 1996</i>	Section 50.07 Reference to mediator (1) At any stage of a proceeding the Court may with or without the consent of any party order that the proceeding or any part of the proceeding be referred to a mediator.	The Court may refer a matter to a mediator.
<i>Victorian Civil and Administrative Tribunal Act 1998</i>	Section 88 Mediation (1) The Tribunal or the principal registrar may refer a proceeding or any part of it for mediation by a person nominated by the Tribunal or principal registrar (as the case requires). (2) A referral may be made under sub-section (1) with or without the consent of the parties.	The Tribunal or principal registrar may nominate a person to conduct a mediation.
<i>Victorian Civil and Administrative Tribunal Rules 1998</i>	Section 6.05 Additional functions of principal registrar (2) In addition to his or her other functions, the principal registrar has the following functions in relation to proceedings under the Equal Opportunity Act 1995— (b) to act as mediator in a proceeding, if nominated under section 88(1) of the Act.	The Principal Registrar may act as mediator if nominated.

Western Australia

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<p><i>Adoption Regulations</i></p>	<p>Section 105 Contact and mediation agencies to be licensed (1) A person, other than the Director-General, is not to act on behalf of another person; (a) for the purpose of contacting a party to an adoption in relation to the adoption; or (b) in negotiations as to contact between any parties to an adoption, except under and in accordance with a licence under this Division to do so. (2) A person, not being a contact and mediation licensee, is not to hold himself, herself or itself out as being, or pretend to be, or make use of any words or letters or any name, title, abbreviation, or description that implies or tends to encourage the belief that he, she or it is a contact and mediation licensee.</p> <p>Section 61 How to apply for licence An application for a licence is to be made to the Director-General in a form approved by the Director-General and is to be accompanied by: a) either: (i) a copy of a document which is evidence of the applicant's tertiary qualification in social work or psychology; or (ii) a statutory declaration of a person (who the Director-General thinks is appropriate) to the effect that: (I) the applicant has had at least 2 years' full-time counselling experience in relation to adoption with such individual or body as is specified in the declaration; and (II) the counselling was of a high quality and conducted in a manner consistent with any code of practice in effect at the time of the application; (b) a certificate of completion of a training course in relation to providing services where the course has been approved by the Director-General;</p>	<p>A contact and mediation licensee should have: A tertiary qualification in social work or psychology – OR –</p> <p>At least two years full-time high quality counselling experience in the area – AND –</p> <p>References attesting to their capabilities.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(c) police certificate evidence to establish that the applicant has not been convicted, within the 10 year period immediately before the application is made:</p> <ul style="list-style-type: none"> (i) of an offence against the law of any State or a Territory or of the Commonwealth; or (ii) of an offence against the law of any overseas country where the applicant lived within that period, but only if specifically requested by the Director-General; <p>(d) the names and contact details of 3 persons, 2 of whom are to provide references in relation to the applicant's professional capabilities and conduct and the other of whom is to provide a character reference in relation to the applicant;</p> <p>(e) details as to each address from which the applicant intends to conduct services;</p> <p>(f) evidence as to the arrangements that the applicant has made to ensure the security and confidentiality of records in relation to services; and</p> <p>(g) any other information relating to the applicant that may be required by the Director-General for making a decision in relation to the application.</p>	
<p><i>Agricultural Practices (Disputes) Act 1995</i></p>	<p>Section 11 Functions of the Board (2) Without prejudice to the generality of subsection (1), the Board is</p> <ul style="list-style-type: none"> (b) to inquire into, and where practicable mediate in, disputes to which this Act applies; (c) to conduct proceedings in respect of any dispute that is not resolved by mediation, or in which mediation can not be used, and to make determinations as to the issues in dispute and the cause of the dispute; <p>Section 4 Mediation proceedings (1) The Registrar shall refer any dispute for mediation if any of the parties so requests, and may do so even if not so requested. (2) The Registrar, in consultation with the Chairperson, is to make arrangements as to who is to be the mediator to deal with a particular dispute referred for mediation, but the mediator is not required to be a person who is a member.</p>	<p>The Board may mediate. The Registrar, in consultation with the Chairperson may make arrangements as to who will be the mediator.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Builders Registration Act 1939</i>	<p>Section 34B Chairperson or deputy chairperson may refer a matter to mediation (1) After an application or complaint is made to the Disputes Tribunal under this Act or the <i>Home Building Contracts Act 1991</i> the chairperson or a deputy chairperson may:</p> <ul style="list-style-type: none"> (a) appoint a mediator from the panel of persons referred to in section 34D(1) to attempt to achieve a negotiated settlement of the matters in dispute (in this section and section 34C referred to as the dispute; and <p>Section 34D Qualifications and remuneration of mediators (1) The Board is to establish a panel of persons who are, in the opinion of the Board, suitably qualified to be mediators.</p>	<p>The Chairperson or Deputy Chairperson may appoint a mediator from a panel of persons under the Act.</p> <p>The Board is to establish a panel of persons who it considers to be suitably qualified to act as mediators.</p>
<i>Commercial Arbitration Act 1985</i>	<p>27. Settlement of disputes otherwise than by arbitration (1) Parties to an arbitration agreement:</p> <ul style="list-style-type: none"> (a) may seek settlement of a dispute between them by mediation, conciliation or similar means; or (b) may authorise an arbitrator or umpire to act as a mediator, conciliator or other non-arbitral intermediary between them (whether or not involving a conference to be conducted by the arbitrator or umpire) 	<p>Parties may authorise an arbitrator or umpire to act as mediator.</p>
<i>Commercial Tenancy (Retail Shops) Agreements Act 1985</i>	<p>Section 16 Reference of questions to Registrar (1) Subject to section 11(5), a party to a retail shop lease may refer to the Registrar any question between the parties which he believes to be a question arising under the lease and the Registrar shall:</p> <ul style="list-style-type: none"> (a) determine whether or not the question referred to him is a question arising under the lease; and (b) if it is such a question, hear the question with a view to achieving a solution acceptable to the parties to the lease. 	<p>The Registrar may hear a question with a view to achieving a solution acceptable to the parties.</p>
<i>Commercial Tenancy (Retail Shops) Agreements Regulations 1985</i>	<p>Schedule The Act sets out an informal dispute resolution procedure before the Registrar, as a mediator, to achieve solutions that are quick and inexpensive to the parties (s.16). The Registrar can determine, for example, rent reviews (s.11) and shop relocation agreements (s.13).</p>	<p>The Registrar may act as mediator.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Exotic Diseases Animals Act 1993</i>	<p>Section 53 Settlement (3) Nothing in this Division prevents the making or operation of an agreement between the Crown and a person claiming compensation under this Act for the submission of any dispute to arbitration or mediation, where a mutually acceptable agreement so to do has been made within 45 days of the lodging of a claim under section 51.</p>	Allows submission of a dispute to mediation.
<i>Fair Trading (Retirement Villages Code) Regulations 2003</i>	<p>Section 6.3 Mediation of dispute (3) Within 10 working days after receiving the application, the Commissioner must (a) give written reasons for any decision made to refuse to accept the application; or (b) appoint a mediator to mediate the dispute and give written notice to the parties to the dispute of: (i) the appointed mediator;</p> <p>(7) If the Commissioner is notified by any party that the mediator appointed under subclause 3(b) is not the preferred mediator, the Commissioner may: (a) appoint another mediator who is acceptable to all the parties; and (b) issue an amended notice under subclause 3(b).</p>	The Commission must appoint a mediator acceptable to all parties.
<i>Family Court Act 1997</i>	<p>Section 5 Definitions In this Act, unless the contrary intention appears: “family and child mediator” means: (a) a person employed or engaged by the Family Court of Australia or the Court to provide family and child mediation services; (b) a person authorised by an approved mediation organization to offer family and child mediation on behalf of the organization; or (c) a person, other than a person mentioned in paragraph (a) or (b), who offers family and child mediation;</p> <p>Section 245 Regulations (1) The Governor may make regulations, not inconsistent with this Act or the Family Law Act, prescribing all matters that are required or permitted by this Act to be prescribed by regulations or are necessary or convenient to be prescribed by regulations for giving effect to the purposes of this Act.</p>	A “family and child mediator” is a person employed by the Court to provide such services – OR – A person authorised by an approved mediation organisation to offer such services – OR – A person who offers such services. The Governor may make regulations about the manner

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>(2) Without limiting the generality of subsection (1) the regulations may make provision for or in relation to:</p> <p>(c) the manner of approving persons as court mediators and the matters to be taken into account when approving persons as court mediators;</p> <p>(d) the requirements to be complied with by a person who is, or wishes to become, a family and child mediator in relation to the family and child mediation services provided, or proposed to be provided, by the person;</p>	<p>of approving persons to act as court mediators and the requirements to become a family and child mediator.</p>
<i>Legal Practice Act 2003</i>	<p>Section 114 Scope of practice allowed</p> <p>(1) A registered foreign lawyer may only provide any or all of the following legal services</p> <p>(d) legal services in relation to conciliation, mediation and other forms of consensual dispute resolution in this State of a kind prescribed by the regulations;</p>	<p>A registered foreign lawyer may provide mediation services.</p>
<i>Native Title (State Provisions Act) 1999</i>	<p>NOTES</p> <p>2.24. Involvement of Commission, including mediation</p> <p>(1) If any of the consultation parties requests the Commission to do so, the Commission must mediate among the parties to assist in resolving the differences between them on the relevant matters mentioned in section 2.23.</p> <p>3.23. Involvement of Commission, including mediation</p> <p>(1) If any of the negotiation parties requests the Commission to do so, the Commission must mediate among the parties to assist in resolving the differences between them.</p> <p>4.19. Involvement of Commission, including mediation</p> <p>(1) If any of the consultation parties requests the Commission to do so, the Commission must mediate among the parties to assist in resolving the differences between them on the relevant matters mentioned in section 4.18.</p>	<p>The Commission must mediate to resolve disputes.</p>
<i>Professional Standards Act 1997</i>	<p>Section 12 Functions of the Council</p> <p>(1) The functions of the Council are:</p> <p>(d) to encourage and assist in the development of self-regulation of occupational associations, including the giving of advice and assistance concerning:</p> <p>(vi) voluntary mediation services</p>	<p>The Council may give advice in relation to voluntary mediation services.</p>

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
<i>Public Sector Management Act 1994</i>	<p>Section 97 Functions of Commissioner concerning relief in respect of breach of public sector standards</p> <p>(1) The functions of the Commissioner under this Part are:</p> <p>(a) to make recommendations to the Minister on the making, amendment or repeal of regulations prescribing procedures, whether by way of appeal, review, conciliation, arbitration, mediation or otherwise, for employees and other persons to obtain relief in respect of the breaching of public sector standards;</p>	The Commissioner may make recommendations to the Minister by way of mediation.
<i>Rail Safety Act 1998</i>	<p>Section 20 Dispute resolution</p> <p>(1) A person:</p> <p>may:</p> <p>(d) apply for the matter to be dealt with by conciliation or mediation in accordance with the scheme prescribed;</p>	A dispute may be dealt with by mediation.
<i>Rail Safety Regulations 1999</i>	<p>Section 7 Dispute resolution</p> <p>(1) The scheme in this regulation is prescribed under section 20(1)(d) of the Act.</p> <p>(3) The Director General, after consultation with the applicant for conciliation or mediation, is to appoint a suitable person to act as a conciliator or a mediator.</p>	The Director-General may appoint a suitable person to act as mediator.
<i>Railways (Access) Code 2000</i>	<p>Section 23 Availability of mediation etc.</p> <p>Nothing in this Part limits the application of section 27 of the <i>Commercial Arbitration Act 1985</i> to a dispute to which this Division applies.</p>	Apply section 27 of the <i>Commercial Arbitration Act 1985</i> to a dispute.
<i>Rules of the Supreme Court 1971</i>	<p>Section 1 Interpretation</p> <p>In this Order, unless the contrary intention appears:</p> <p>“Mediation Registrar” means a Registrar appointed by the Chief Justice under Rule 2(r)(i);</p> <p>“mediator” means a person approved by the Chief Justice under Rule 2(r)(ii);</p> <p>Section 2 Court may review any case</p> <p>(1) In any proceedings the Court may at any time of its own motion on notice to the parties or upon the hearing of a summons for directions or other application review the progress of the proceedings and make such orders or give such directions to lead to their efficient and timely disposal as it may consider</p>	The Chief Justice may appoint a Registrar to be the mediation registrar – OR – Appoint a person to be a mediator.

Legislative treatment of mediation: who refers to, or conducts, mediation?

Statutory provision	Who may refer to, or conduct, mediation?	Summary
	<p>just and expedient and, without limiting the generality of that power, may:</p> <p>(q) on any terms suitable, direct at any time that the parties confer on a without prejudice basis for the purpose of resolving or narrowing the points of difference between them;</p> <p>(r) direct that a:</p> <ul style="list-style-type: none"> (i) Registrar appointed by the Chief Justice to be the Mediation Registrar; or (ii) person approved by the Chief Justice to be a mediator, may conduct the conference. 	
<i>Sentencing Act 1995</i>	<p>Section 29 Mediation report: preparation</p> <p>The CEO is to ensure that:</p> <ul style="list-style-type: none"> (a) appropriate people are appointed to be mediators; and (b) any mediation between offenders and victims occurs, and a report is made, as soon as practicable after a mediation report is ordered. 	A CEO should ensure that an appointed mediator is appropriate.
<i>Supreme Court Act 1935</i>	<p>Section 69 Interpretation</p> <p>In this Part, unless the contrary intention appears:</p> <p>“mediator” means:</p> <ul style="list-style-type: none"> (a) a Registrar appointed by the Chief Justice to be a Mediation Registrar under the Rules of Court; (b) a person approved by the Chief Justice to be a mediator under the Rules of Court; or (c) a person agreed by the parties. 	<p>“mediator” means:</p> <ul style="list-style-type: none"> (a) a Registrar appointed by the Chief Justice (b) a person approved by the Chief Justice; or (c) a person agreed by the parties.
<i>Town Planning and Development Act 1928</i>	<p>74. Rules</p> <p>(1) The President is to make such rules under this Act regulating:</p> <ul style="list-style-type: none"> (c) the practice and procedure to be followed in the mediation and conciliation of an appeal, and other matters related to mediation and conciliation 	The President may make rules regulating mediation.