

LEGL2012

MEDIATION PRACTICE AND PROCEDURE

Comprehensive HD Study Notes

Modules 1–6 | Theory • Practice • Ethics • Role-play application • Revision tools

Independent study guide: These notes are an original synthesis of the LEGL2012 unit structure, user-supplied study materials, practicum learning and prescribed concepts. They are not official Southern Cross University materials and do not reproduce the official slides or textbook.

Best use: Learn the structure first, then practise explaining the purpose of each intervention in plain language. High-level performance comes from connecting theory to mediator judgment, not from reciting scripts.

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Course map

Module	Core question	High-value concepts
1. AMDRAS, Process and Mediator Role	What is facilitative mediation and what is the mediator allowed to do?	Self-determination; facilitative model; AMDRAS; mediator role; reflective practice
2. Communication, Cultural Dynamics and Engagement	How do we create a process parties can safely and meaningfully enter?	Intake; suitability; rapport; trust; communication; culture; power; emotion
3. Managing the Mediation Process	How does the mediator move the parties through the top half of the model?	Opening; party statements; agenda; exploration; process control; procedural fairness
4. Diagnosing Conflict and Designing Strategies	What is actually driving the conflict and what intervention fits?	Conflict mapping; needs; interests; power; escalation; emotion; theory-informed strategy
5. Facilitating Negotiations and Encouraging Settlement	How do parties move from understanding to workable options and negotiated outcomes?	Interest-based negotiation; options; BATNA/WATNA/MLATNA; ZOPA; reality testing; drafting
6. Variation and Ethics	How does the mediator adapt ethically without losing the facilitative model?	Variations; confidentiality; impartiality; power; termination; enforceability; legal relations; mediator wellbeing

The nine-stage SCU facilitative mediation model

Stage	Purpose	Mediator mindset
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Stage	Purpose	Mediator mindset
Pre-mediation	Prepare, screen and assess suitability	Is this process safe, fair, informed and workable for these people?
1. Mediator opening	Build confidence in the process	Explain enough to create safety and informed participation.
2. Party openings	Hear what each party wants discussed	Listen; do not solve.
3. Common ground + agenda	Create neutral mutual discussion topics	Mutualise; neutralise; avoid outcomes on the agenda.
4. Exploration	Increase understanding	Interests, needs, impacts, emotion, context; parties talk to each other.
5. Private sessions	Reflect, reality-test and prepare	Confidential coaching without advice or pressure.
6. Option generation	Create possibilities	Generate first; evaluate later.
7. Evaluation / negotiation	Test workability and negotiate	Parties assess and bargain; mediator facilitates.
8. Agreement drafting	Turn agreement into an action plan	Who? What? When? How? Contingencies? Legal intention?
9. Closing	Conclude clearly and respectfully	Confirm outcome, next steps and any required follow-up.

Memory line: AGENDA = neutral + mutual. EXPLORATION = understand. OPTIONS = possible. EVALUATION = negotiable. AGREEMENT = negotiated.

MODULE 1

AMDRAS, Mediation Process and the Mediator's Role

Foundations, models, accreditation, self-determination and reflective practice

HD focus: Do not just memorise definitions. Explain why the concept matters, what the mediator does with it, and how it protects self-determination, fairness and a workable process.

1.1 What mediation is

Mediation is a structured dispute resolution process in which an independent third person facilitates communication and decision-making. In the facilitative model, the mediator manages the process but the parties retain control of the substantive outcome.

- The mediator is not a judge, arbitrator, advocate or legal adviser.
- The mediator has process authority: timing, turn-taking, stages, breaks, separate sessions, behavioural boundaries and procedural management.
- The parties have outcome authority: whether to agree, what to agree to, and whether a proposal meets their interests.
- Settlement is not the only measure of success. Better understanding, clarified issues, informed choices and narrowed disagreement can also be valuable outcomes.

HD insight: Self-determination is not simply “the parties decide”. It depends on informed participation, realistic opportunity to speak, adequate information, voluntariness in decision-making and freedom from mediator pressure.

1.2 Dispute resolution spectrum

Process	Who controls outcome?	Typical features
Negotiation	Parties	Direct bargaining; no neutral third party.
Mediation	Parties	Third party facilitates process and communication.
Conciliation	Usually parties, but conciliator may be more advisory	May provide information, suggestions or expert input depending on scheme.
Arbitration	Arbitrator	Evidence/argument followed by binding or agreed determination.
Court/tribunal	Judge/member	Rights-based, determinative process with imposed legal outcome.

1.3 Mediation models

Model	Primary aim	Mediator style	Risk / limitation
Facilitative	Understanding, interests and party-generated outcome	Structures process; asks; reframes; summarises; supports negotiation	Can be slower than settlement bargaining but protects party ownership.
Settlement	Reach compromise / settlement	May push movement between positions	Can create pressure and insufficient exploration.
Evaluative	Assess legal/technical merits	May give views on likely outcomes	Can blur role boundaries and reduce self-determination.
Transformative	Empowerment and recognition	Less directive; relationship/interaction focus	Settlement may be secondary.
Narrative	Re-author conflict stories	Explores dominant narratives and alternative meanings	Requires specialised practice and may not suit every context.

1.4 AMDRAS – why it matters

The Australian Mediator and Dispute Resolution Accreditation Standards provide the national benchmark for mediator accreditation, competency and ethical practice. LEGL2012 is structured to develop the knowledge, professional skills and ethical attitudes required for facilitative practice.

- Knowledge: conflict, negotiation, power, violence, culture, intake, suitability, communication and relevant legal/ethical context.
- Skills: listening, questioning, acknowledging, reframing, summarising, process management, separate sessions, option generation, negotiation support, reality testing and outcome recording.
- Ethical attitudes: competence, integrity, accountability, impartiality, confidentiality, safety, fairness, self-determination and appropriate termination.