

# CHOOSING A MEDIATOR

Solicitors are well placed to assess whether a particular mediator will be suited to their client.

There are many different styles of mediation, the more common are therapeutic, facilitative, transformative and evaluative. Lawyers tend to use the facilitative style in mediating compared with social workers and psychologists who tend towards the therapeutic model. Most mediators incorporate elements from these models in differing degrees, the extent to which partly depends on the training and personality of the mediator and partly on the parties and the type of dispute. The breadth of the differences is apparent when one considers the disputes which might range from neighbourhood fence disputes through family and matrimonial issues to complex commercial disputes.

When reflecting on the vast array of disputes to which the process of mediation is now applied, it becomes clear that there are many different disciplines from which mediators are drawn with their own various styles. This is illustrated by the professional history of mediators, including lawyers, social workers, psychologists, architects, engineers and many other professions, currently accredited under the national accreditation scheme.

Litigators will be aware, after attending a number of mediations, that individual mediators approach the process of mediation differently. We are all familiar with the mediator who forcefully endeavours to control the process and leans hard on parties

for a result in as short a time as possible. At the other end of the spectrum there are those mediators who prefer to remain semi-invisible and allow parties unlimited time to carefully work their way through their issues. There are also those who are seen as experts in a particular field who are able to provide assistance to the parties because of their technical knowledge of the subject matter. Other mediators, while they may not have the technical knowledge, might have impressive people skills, which is often fundamental to managing and relating to the people who are in conflict.

In some cases the choice of mediator is quite straightforward, in others this choice can have an important bearing on the parties endeavouring to reach an outcome. Selecting a mediator should not be underrated and often involves some due diligence to determine whether a mediator will be able to gain an understanding of the dispute, manage the parties to the dispute, deal with the opposing lawyers and appreciate the character of the dispute.

In many instances the choice of mediator is left by solicitors to their barrister who is often considered to be the captain of the litigation team. However, it is very important for solicitors to be involved in this process as they have carriage of the matter and clearly have a closer relationship with their client, and will

understand their needs and personality better than anyone else involved in the matter.

The solicitor will be better placed to assess whether a particular mediator will be suited to their client as well as to the nature of the dispute.

The LIV, as part of its Accredited Specialist program, accredits as specialists, mediators who are members of the LIV and who have satisfied the strict prescribed examination requirements. This qualification has been available as part of the LIV's specialisation program since the mid-1990s and is substantially more stringent than those conditions required for a mediator to be accredited nationally under the National Mediation Accreditation Scheme. In addition to those solicitors accredited as specialists by the LIV, there are a number of solicitor mediators with substantial experience in the field who are also nationally accredited.

The LIV therefore encourages its members to promote the use of solicitor mediators who are either LIV accredited specialists in mediation or are accredited under the NMAS and are listed in the LIV Mediators Directory. ●

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## LIV Limitation of Liability Scheme

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