ADR Continuum and Mediation Process

Environmental Advocacy Workshop Series
Purpose

- To increase awareness and introduce concept of the alternative dispute resolution continuum
- To outline characteristics of mediation and the IAMA model – there are also other models
- To identify skills useful for preventing and resolving conflicts
- To identify the benefits of mediation for environmental dispute and policy resolution
- To stimulate and inspire participants to follow up
## The ADR Continuum

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Negotiation

- Collaborative/Problem Solving
  - Opportunity to find mutually acceptable outcome
  - Can be long and unsatisfactory due to:
    - Combative, competitive
    - No neutral party to help move entrenchment
    - Compromising
    - Doesn’t deal well with power imbalance
What is Mediation?

- A confidential process
- Independent and neutral third party (the mediator) – no vested interest
- Mediator uses facilitation and technical skills; advises on the process of mediation
- Systematically isolates issues
- Parties, not mediator, develop options
- Negotiate and reach workable solution to meet needs
- Mediator has no advisory or determinative role re content of the dispute or the outcome of its resolution.
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Principles of Mediation

- Separate people from problem
- Focus is on interests - not positions
- Parties invent options for mutual gain
- Insist on objective criteria
- Confidential
10 Steps of Mediation – IAMA Model

Step 1
Preparation - Intake

PAST

Ground Rules
Communication
Understanding
Option Generation
Problem Solving
Agreement

FUTURE

Step 2
Introductions & setting framework

Step 3
Statement Taking and Summaries

Step 4
List/Agenda Construction

Step 5
Exploration

Step 6
Private Meetings

Step 7
Option Generation, Selection & Negotiation

Step 8
Agreement Making

Step 9
Closure

Step 10
Debriefing and Finishing
Characteristics

- Participation usually voluntary
  - parties *want* a resolution
- Limited procedural rules
- Structured process to keep focussed on resolution
- Informal discussion allows venting of emotions
- Mediator controls process - *not* content
- Parties decide content and outcome
- Flexibility of possible solutions

➤ Empowers parties
Skills

- Active listening - feedback
- Agenda - identify interests
- Define issues
- Reframe to:
  - detoxify
  - look to future direction
- Explore each other’s perspective through reversal techniques
- Generate options - get parties to do this

➤ Strategies to break impasse
Breaking Impasse

- Find areas of agreement
- Move to other issues
- Change the process
- Have parties generate options, strategies
- Put issues into broader perspective
- Create doubts about entrenched positions

➤ Take other’s perspective
Intake

- Before mediation day
- Explanation of process and role of mediator
- Assessment of parties capacity and willingness to mediate
- Background to the dispute
- Mediation and confidentiality agreements
1, 2. Prep, Intro and Setting Framework

- Welcome
- Confidentiality
- Ground rules/rules of courtesy
- Respect views of other parties
- Do not interject
- Decision-makers present
- Role of support people
- Want to reach agreement
3. Statement Taking

- Ground rules established
- Each party explains to mediator the dispute from their perspective – they have their say, uninterrupted
- Mediator summarises and checks for accuracy
Key Features

- Equal time for each party
- Interjections stopped to give each party uninterrupted opportunity
- Opportunity for venting – helps take the heat out in a controlled environment
- Summary by mediator to check understanding
4. List/Agenda Construction

- Parties in turn suggest topics
- Mediator converts to neutral language – remove blame
- List is agreed - They are the parties’ issues, not the mediators
- Priority is agreed
- Positive language is used
Step 5 - Exploration

- Key step
  - Parties choose order of items from Agenda (each party chooses one priority in turn)
- Mediator skills
  - Encourage parties to talk to each other directly – it is their dispute or issue
  - Get parties to move from blame to understanding each other’s position
  - Turn focus to interest based
  - Break difficult items down
  - Talk about past then future
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Step 10
Debriefing and Finishing
6. Separate meetings

- Confidential
- Check how parties feel about progress
- Explore options, BATNA, WATNA
10 Steps of Mediation – IAMA Model

Step 1: Preparation - Intake
- Preparation
- Intake

PAST
- Ground Rules
- Communication
- Understanding
- Option Generation
- Problem Solving
- Agreement

FUTURE
- Step 2: Introductions & setting framework
- Step 3: Statement Taking and Summaries
- Step 4: List/Agenda Construction
- Step 5: Exploration
- Step 6: Private Meetings
- Step 7: Option Generation, Selection & Negotiation
- Step 8: Agreement Making
- Step 9: Closure
- Step 10: Debriefing and Finishing

Debriefing and Finishing
7. Option Generation, Negotiation

- Brainstorm and list options using agenda
- Facilitate evaluation of options, use objective criteria
- Encourages interest-based negotiation

Some key issues have come out in the private session; the mediator cannot divulge and it is up to the parties – mediator may help clarify and test options and their consequences
What happens – step 7

- Mediator encourages parties to think of solutions
- Clarifies issues
- Keeps positive atmosphere
- Asks where to if no resolution – keeps them searching as alternatives may not be viable either
8. Agreement making

- Contract between parties
- Reality check workability of options
- Include specific details – when, where, how
- Mediator writes the agreement as dictated by the parties, based on negotiations at Step 7
- Arrange review meeting (if appropriate)
- Agree on announcement to external world (if appropriate)

Note: it may have taken more than one mediation session to get to this point
9. Closure

- Acknowledge progress
- Reaffirm confidentiality
10 Steps of Mediation – IAMA Model

1. Preparation - Intake
   - Ground Rules
   - Communication
   - Understanding
   - Option Generation
   - Problem Solving
   - Agreement

2. Introductions & setting framework
3. Statement Taking and Summaries
4. List/Agenda Construction
5. Exploration
6. Private Meetings
7. Option Generation, Selection & Negotiation
8. Agreement Making
9. Closure
10. Debriefing and Finishing
10. Debriefing and finishing

- Announcements as agreed
- Report to organisation if required
- Hold review meeting if agreed
- Attend debriefing session
Mediation Steps

- Interests
- Alternatives – BATNA
- Options
- Standards – objective criteria
- Commitment
- Communication
- People/Relationship

*The Harvard Seven Elements*
Summary of Benefits

- Quicker and cheaper than court
- Parties agree solutions rather than Court imposing – retain control
- Allows ongoing relationship between parties
- Confidential
- Mediator is independent - no vested interest in outcome
- Skilled mediators through IAMA – consistent approach in all States
“Mediation and arbitration are not just court proceedings conducted in a different place. They require distinct skills, novel approaches, different techniques and a new psychology.”

The Honourable Justice Michael Kirby AC CMG
Justice of the High Court of Australia (July 1999)
IAMA Mediators

- Independent
- Professionally trained and accredited
- Wide range of areas of expertise
  - Building, construction, architecture
  - Group title
  - Environment, science, engineering
  - Law, contracts
  - IT
  - Health
  - Workplace Relations, social sciences
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