

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

<i>Level of Intervention</i>	<i>Process</i>	<i>Comment</i>
<i>Managed without assistance</i>	Negotiation	
<i>Managed with assistance</i> <i>– No imposed decision</i>	Facilitation	<i>Consensual problem solving</i>
	Mediation	
	Expert appraisal (ENE⁸)	
	Conciliation	
<i>Managed with assistance</i> <i>– Imposed decision</i>	Expert determination	<i>Adversarial problem solving</i>
	Arbitration	
	Litigation	

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

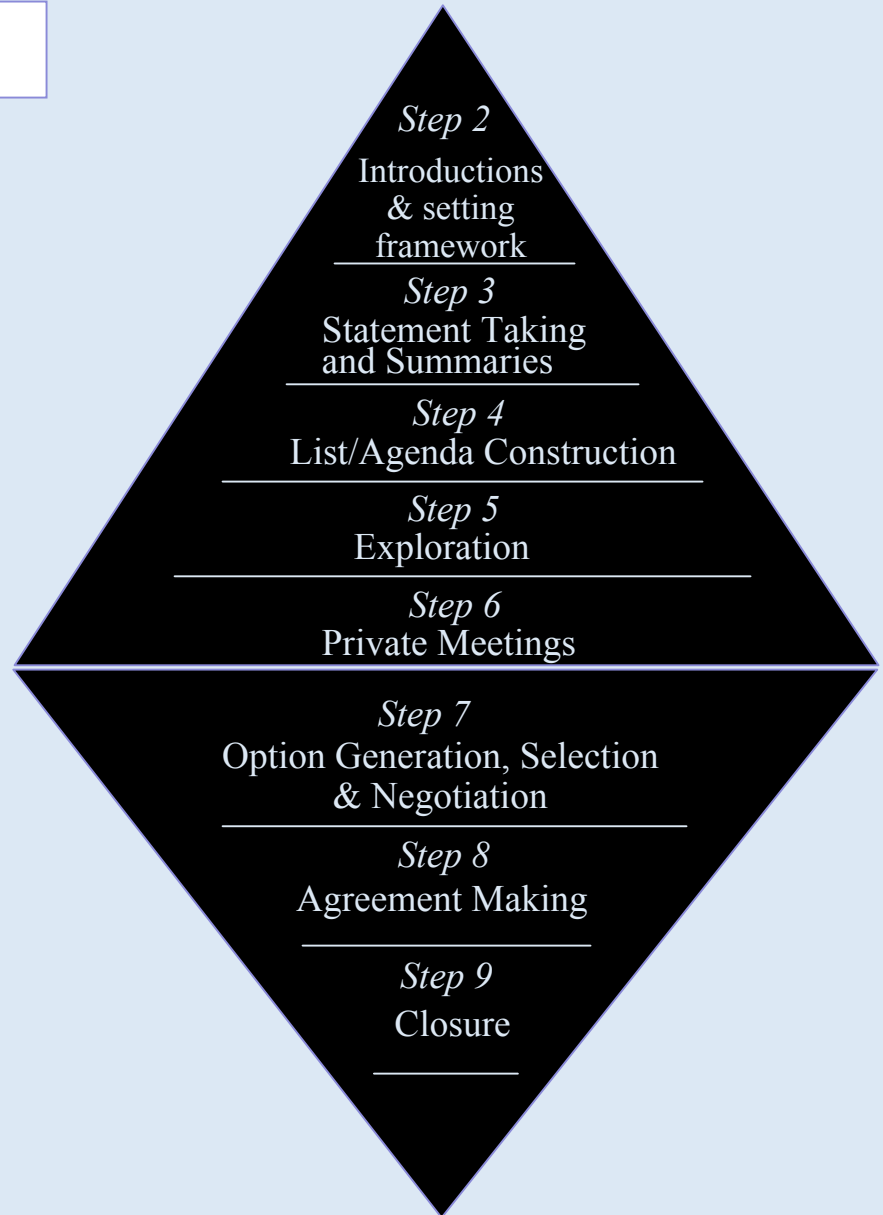
Ground Rules
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Communication
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Understanding
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Option Generation
↓
Problem Solving
↓
Agreement

PAST



FUTURE

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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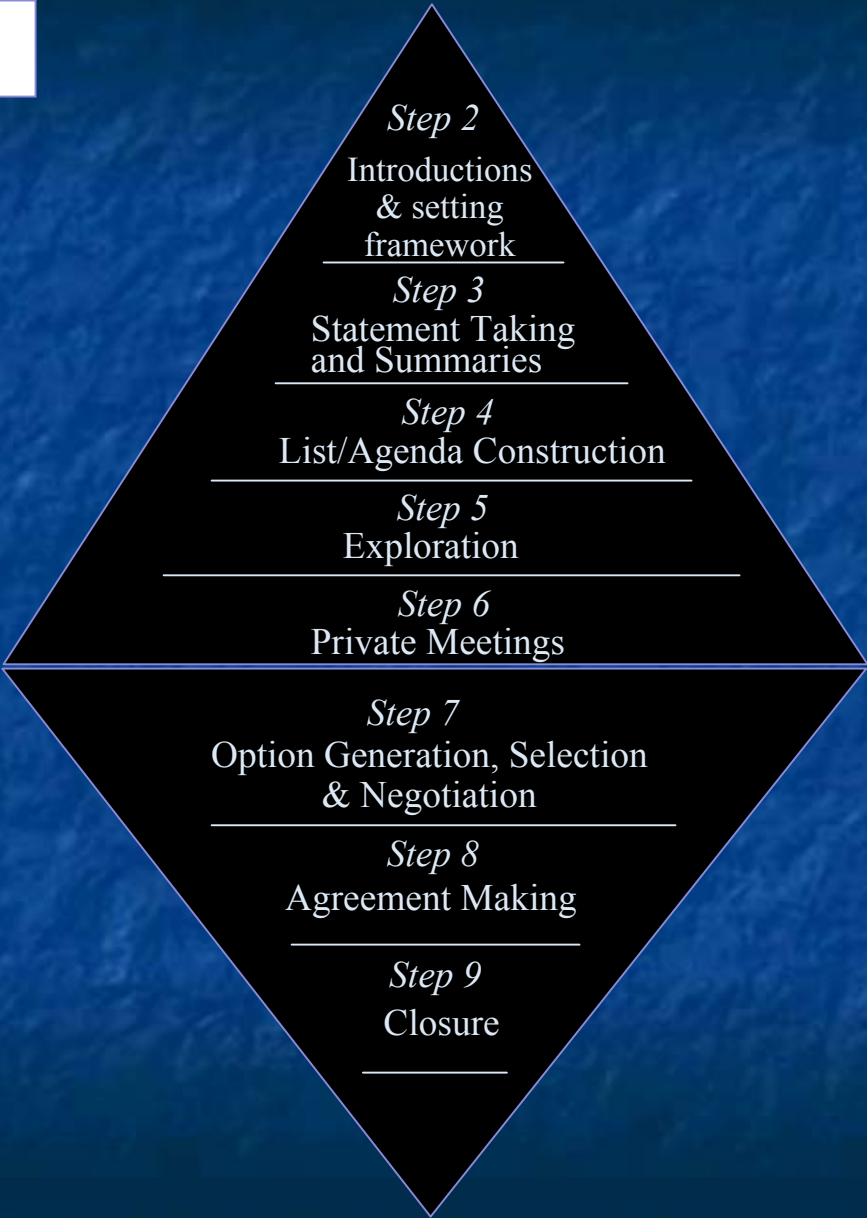
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6. Separate meetings

- Confidential
- Check how parties feel about progress
- Explore options, BATNA, WATNA

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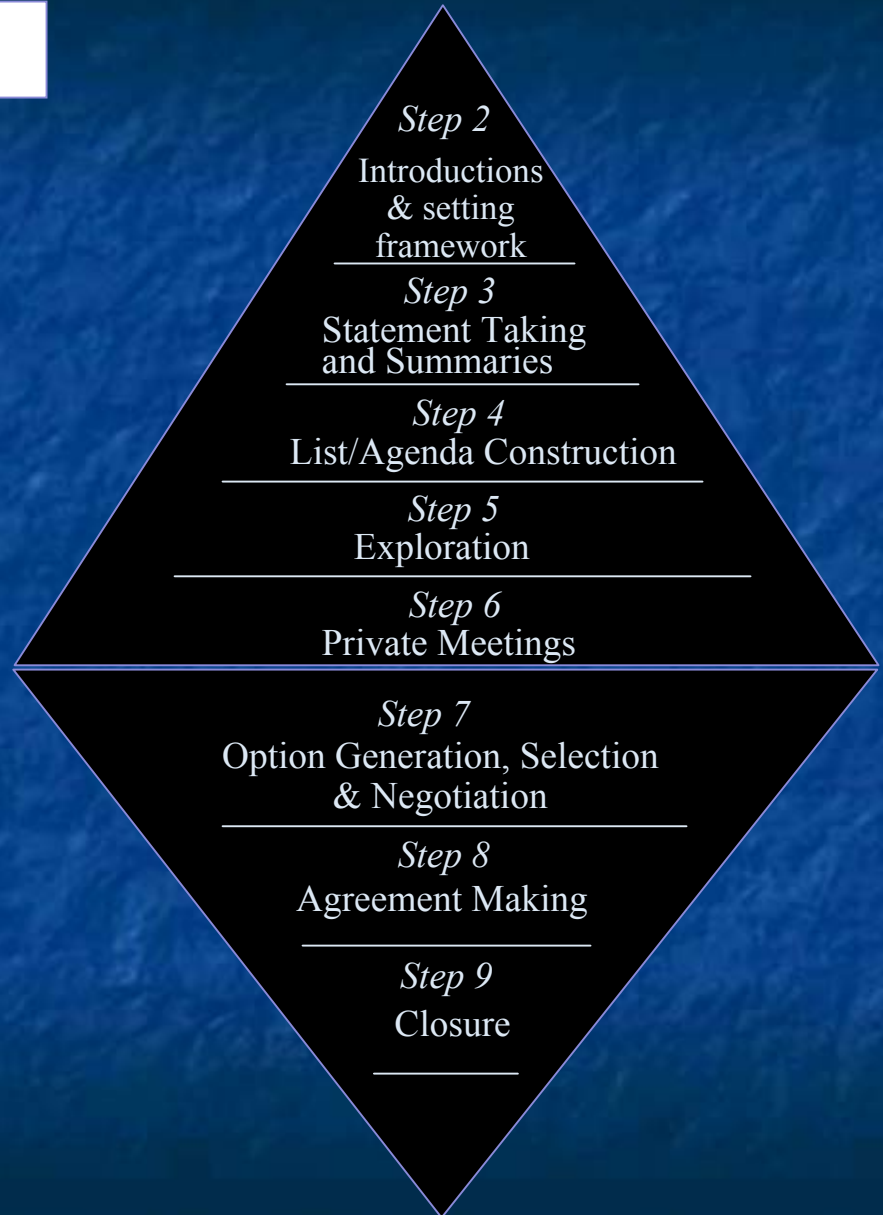
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7. Option Generation, Negotiation

- 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

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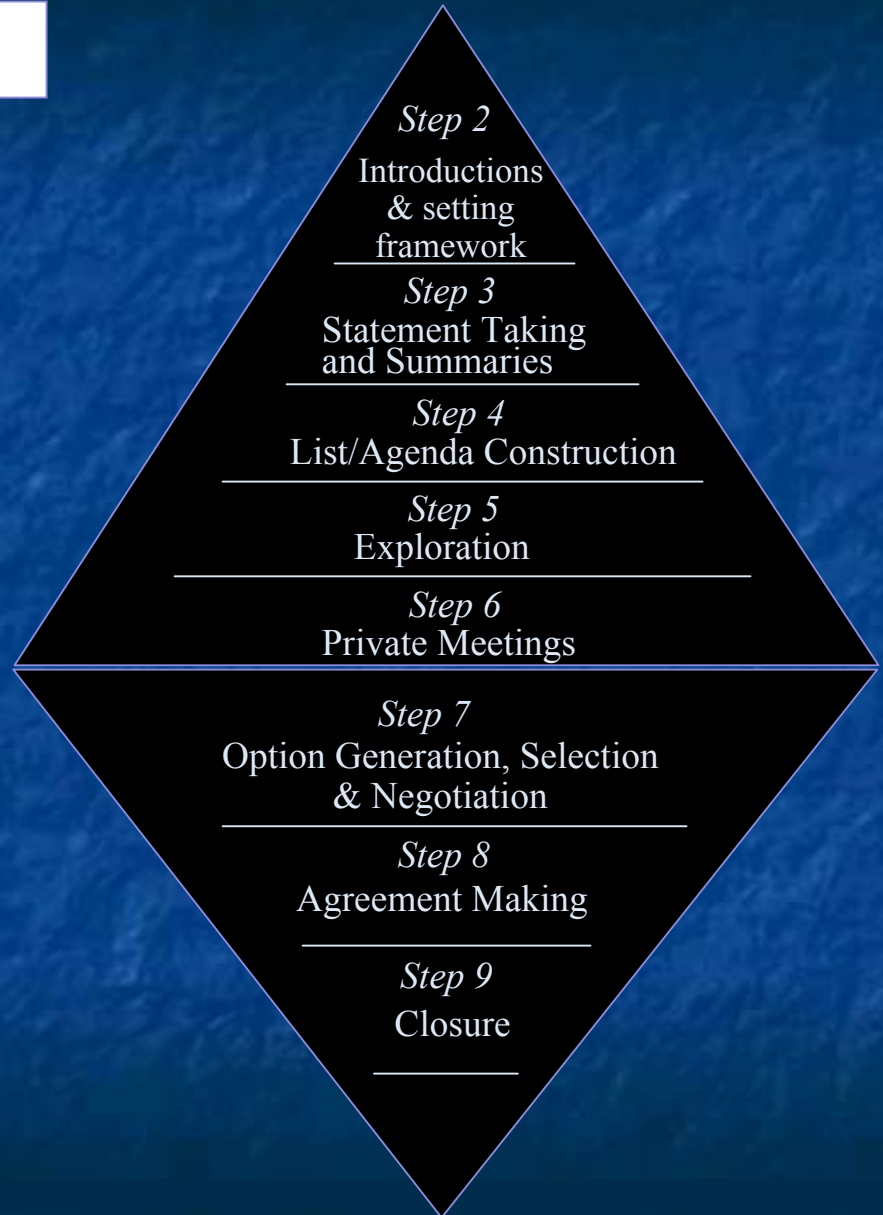
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Debriefing and Finishing



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

Contact IAMA

- President of Qld Chapter:
Judge Eric Pratt QC
- Manager
Jennifer Winzar
- Phone: **07 322 02122**