

MEDIATION GUIDELINES

These Guidelines set out the steps of a mediation organised under the Mediation Service provided by the Arts Law Centre of Australia (**Arts Law's Mediation Service**).

What is mediation?

Mediation is a voluntary process of assisted dispute resolution in which an impartial third party – the mediator – helps the parties to isolate the issues in dispute between them, to develop possible settlement options, and to negotiate a resolution which is acceptable to them. The mediator does not decide how the parties' dispute (**Dispute**) should be resolved but rather facilitates a process by which the parties can reach their own solution. If the parties do reach agreement, the mediator helps the parties to record their solution in a legally binding written agreement.

The mediators on Arts Law's Mediation Panel are all trained or experienced in mediation. There is no mandatory accreditation or registration system for mediators however most of our mediators are accredited by LEADR or have extensive experience. Many but not all of our mediators are also lawyers. We endeavour to find the right mediator for each Dispute. For further information about mediation as a method of dispute resolution, please refer to Arts Law's information sheet on mediation, available at

<http://www.artslaw.com.au/info-sheets/info-sheet/mediation-service/>

Accessing Arts Law's Mediation Service

There are two ways to access this service which is designed for parties who are not represented by lawyers at the mediation.

Contract: The parties may already have agreed to submit their Dispute to mediation under Arts Law's Mediation Service. For example, many contracts including a number of Arts Law's template agreements contain a clause in which the parties agree that in the event of a dispute they will try mediation before starting court proceedings. When a Dispute arises under a contract containing a mediation clause, and the parties agree to use the Arts Law Mediation Service, the following process applies.

1. At least one of the parties to the contract must be an Arts Law subscriber. If neither party has subscribed and the parties cannot reach agreement as to who should subscribe, then each party must pay Arts law a fee of \$100 in order to access the mediation service (**Mediation Service Fee**).
2. One of the parties to the Dispute sends a written request for mediation to Arts Law specifying:

- a. The names of the parties and their contact details;
 - b. A copy of the contract containing the mediation clause;
 - c. A brief description of the Dispute; and
 - d. Either :
 - i. The name of the party or parties which are current Arts Law subscribers;
 - ii. An application for subscription and accompanying payment; or
 - iii. If neither party is, or wishes to become, a subscriber, payment of that party's \$100 Mediation Service Fee.
3. Within 7 calendar days of receiving the request, Arts Law will:
 - a. Confirm receipt of the request for mediation to the requesting party in writing;
 - b. Notify the other parties to the contract of the Dispute and that the requesting subscriber is relying on the mediation clause and proposes that the Dispute be mediated;
 - c. Where applicable, request payment of the \$100 Mediation Service Fee by the other parties;
 - d. Subject to payment of any outstanding Mediation Service Fee, provide the parties with a copy of Arts Law's Mediation Information Sheet and these Guidelines and a list of two possible mediators for the Dispute together with a brief description of their fees and qualifications; and
 - e. Request the parties to notify Arts Law in writing within 7 days:
 - i. if they have any objections to those mediators; and
 - ii. if there are any dates within the next 30 days on which they are unavailable to attend mediation.
 4. If objections are received to both of the mediators nominated by Arts Law, Arts Law will choose a third mediator for the Dispute and will notify the parties accordingly.

Agreement: The Arts Law Mediation Service is also available to any subscriber as a means of resolution of an arts-related dispute. (Our mediation service is not appropriate for other types of disputes such as family law matters). If you are a subscriber and believe that mediation might be appropriate in your Dispute, you can access the Arts Law Mediation Service as follows.

1. The Arts Law subscriber (being one of the parties to the Dispute) sends a written request for mediation to Arts Law specifying:
 - a. The names of all the parties and their contact details; and
 - b. A brief description of the Dispute.
2. Within 7 calendar days of receiving the request, Arts Law will:
 - a. Confirm receipt of the request for mediation to the requesting subscriber in writing;
 - b. Notify the other party (or parties) to the contract of the Dispute and that the requesting subscriber proposes that the Dispute be mediated;
 - c. Provide the parties with a copy of Arts Law's Mediation Information Sheet and these Guidelines; and
 - d. Request the other party to confirm in writing within 14 days whether they agree to submit the Dispute to mediation under the Arts Law Guidelines.
3. If the other party does not consent in writing to mediation, Arts Law will notify the subscriber

and take no further action.

4. Within 7 days of receiving the other party's consent to mediation, Arts Law will:
 - a. Provide the parties with the name of one possible mediator for the Dispute and a brief description of his or her fees and qualifications; and
 - b. Request the parties to notify Arts Law in writing within 7 days:
 - i. if they consent to the appointment of that mediator; and
 - ii. if there are any dates within the next 30 days on which they are unavailable to attend mediation.
5. If either party objects to the mediator nominated by Arts Law, Arts Law will identify a further mediator within 7 days of receiving that party's objection. If either party objects to that mediator, Arts Law will inform both parties in writing that it is unable to arrange a mediation due to the inability to locate a mediator acceptable to both parties. If the parties are able to locate and agree on a mediator themselves, they can request Arts Law to forward to them the Arts Law mediation agreement and are free to conduct their mediation in accordance with that agreement and these Guidelines; however Arts Law will not play any further role in arranging the mediation.

The Mediation Process

Once the parties have agreed to mediate the Dispute and a mediator is identified, the process is the same whether or not the Dispute arises out of a contract with a formal mediation clause or relates to other circumstances.

1. Arts Law will provide the mediator with the following:
 - a. Contact details for the parties and any dates on which they are unavailable;
 - b. A description of the Dispute and, if applicable, a copy of the contract containing the mediation clause;
 - c. A copy of Arts Law's Mediation Information Sheet and these guidelines; and
 - d. the Arts Law Mediation Agreement.
2. The Mediator will provide the parties with a copy of the Arts Law Mediation Agreement and accompanying Explanatory Notes. Arts Law subscribers may also be entitled to a legal advice session with Arts Law to explain the meaning of the agreement.
3. The Mediator will contact the parties within 7 days to arrange a date and time for the mediation. Arts Law will, if requested, try to arrange a suitable venue at no cost. However, Arts Law cannot guarantee that a venue will be available.
4. The mediator will notify Arts Law of the date and venue arranged for the mediation conference. The parties and the Mediator must sign the Mediation Agreement before they proceed with the mediation conference.
5. The preparatory procedures for the mediation can vary depending on the nature of the Dispute and the circumstances of the parties. This is something that the Mediator will work out with the parties; however an example of the preparatory steps might be as follows:
 - a. The Mediator will contact the parties separately to confirm dates and a venue and may arrange a preliminary telephone conference call or meeting;
 - b. In that preliminary joint discussion, the Mediator may confirm arrangements, confirm who will be attending the mediation, briefly explain the terms of the mediation agreement, and make any directions that might be necessary for the parties to prepare and exchange

- statements of issues and any other relevant documents;
- c. Several days before the mediation conference, the parties may be asked to serve a Statement of Issues on the Mediator and each other party.
 6. At the mediation conference, if the parties reach an agreement to settle their Dispute, the Mediator will formalise that agreement in writing and the parties should sign that agreement before the mediation conference ends. A settlement agreement is intended to be legally enforceable. As a result, a party can make a claim for breach of contract if the other party does not comply with its terms.
 7. If the parties are unable to reach an agreement, they may agree to meet again on another day to continue the mediation. Alternatively, they can terminate the mediation and explore other methods to resolve the Dispute including litigation.
 8. After the mediation, the Mediator will advise Arts Law that the mediation has been completed. Arts Law is not notified whether or not the mediation was successful or the terms of any agreement. Arts Law will send an evaluation form to the parties. This assists us to improve our Mediation Service.

Cost of the mediation process

For subscribers, there is no fee to access Arts Law's Mediation Service. If neither party to the dispute is a subscriber, there is a \$100 administration fee for each party which must be paid prior to the commencement of the mediation conference.

Members of Arts Law's panel of mediators have agreed to cap their fees at \$200 per hour (exclusive of GST) for disputes involving two parties. This charge is borne equally by the parties. The hourly rate may be higher if there are more than 2 parties involved however the cost will still equate to a maximum rate of \$100 per hour (plus GST) for each party. There are a small number of pro bono mediators which may be available to parties in significant financial distress. Whilst it is impossible to know how much time a mediation conference will take, between 3 and 5 hours is common. Some mediators also charge for preparation time. Therefore parties should be prepared for the mediation to cost in the vicinity of \$300 - \$500 (plus GST) each.

The parties and Mediator may agree on a fee for a predetermined period for the mediation to be paid at the start of the mediation, and then renegotiate if they wish to continue in the event that settlement is not reached in the agreed time.

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the Arts Law website (www.artslaw.com.au) for more articles and information sheets.

Disclaimer

The information in this information sheet is general. It does not constitute, and should not be relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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