

# Mock Mediation Manual 2019

## 1. Mock Mediation

The Mock Mediation competition provides an opportunity for students to develop, refine and practice cooperative problem-solving and conflict resolution skills.

The competition aims to:

- Recognise the opportunities for change and progress that can result from conflict and improve the ability of Australian students to manage conflict in a way that leads to a positive outcome
- Acknowledge the increasing use of mediation by courts and the community, and equip students with the skills necessary to participate in a mediation process
- Educate students about the importance of the process in tandem with constructive dialogue

Mediation is a structured problem-solving process designed to encourage the parties to identify the issues in dispute, consider options, and work towards an agreement that will meet the needs of all parties. The skills required for mediation are particularly relevant to personal development. They include active listening, self-awareness, questioning, analysing, empathising, speaking clearly and logically, and creative thinking.

Mediation is based on values such as respect for self and others, accepting difference, personal integrity, and a belief that conflict, if handled properly, can result in a change for the better.

Recognition is awarded for the schools judged to have performed at the highest level. While it may seem contradictory to encourage cooperative problem-solving in a competitive framework, it is hoped the personal rewards of skills, values and recognition gained will encourage students' enthusiastic participation.

## 2. Objectives

### Students

- Create an awareness of their responsibilities when dealing with others
- Further personal development and self-improvement
- Increase self-esteem
- Learn to manage conflict in a productive way
- Learn and enhance communication skills

### Schools

- Reduce conflict in the school environment
- Modify aggressive behaviour
- Reduce tension in the classroom environment
- Maximise the opportunity for learning for all students
- Increase recognition of diversity and tolerance

### Community

- Reduce aggressive behaviour resulting from poor conflict management skills
- Promote open communication to resolve contentious issues
- Maximise the benefits of cooperative problem-solving
- Encourage mediation and negotiation as an alternative to litigation
- Develop relevant occupational skills

## 3. Competition structure

### 3.1 Rounds

The competition is open to students enrolled in Years 9 and 10.

Each competing school will participate in three rounds. Teams are scored on each round and these three scores added together. The initial rounds must be completed on or before the date nominated by the Law Society and any team which has not completed the mediation by that time will forfeit.

The eight highest scoring teams at the end of the first three rounds will compete in the finals, commencing with the quarter-finals. Once the final eight schools are declared, they are considered equal in rank.

The finals are a knockout competition based on scores. From the eight schools in the quarter-finals, four schools with the highest scores are selected for the semi-finals and in the semi-finals the two schools with the highest scores proceed to the grand final.

*The decision of the adjudicators in each round is final and no appeals will be entertained.*

### 3.2 Teacher Supervision

A teacher should be present at all times during the mediation, including during any private meetings and any discussions by the adjudicator with students.

### 3.3 Spirit of the Competition

All participants should remember that the spirit of this competition is to increase mediation skills and their understanding of conflict-resolution principles.

### 3.4 Recognition

All teams in the competition receive a certificate of participation, a team can consist of a maximum of 9 students. The two teams who reach the grand final receive a certificate and a medal. The winning school receives a trophy.

## 4. Competition Rules

### 4.1 Costs

It will cost \$130 to register for the Mock Mediation Competition. If your school is involved in the Mock Trial Competition, you will receive a discount on registration, to make the registration fee for both competitions a total of \$250.

All schools are responsible for their own cost of travel and accommodation in attending the grand final.

### 4.2 Participants

The students should prepare for Mock Mediation with the assistance of their teacher and/or guidance officer. The competition is designed to draw from the Personal Development curriculum in use in some schools but could also be easily incorporated into the English, SOSE/Social Science, Religious Education, Business Studies or Health curricula. Each team has six students from either Year 9 or 10. Two participants act as the mediators. They are responsible for controlling the process and recording the issues, the options generated, and the agreement reached by the disputants. The remaining four students play the roles of the disputants, two are Party A and two are Party B. The performance of each of the six students will contribute to the total score of the team, and for this reason it is suggested that teams prepare up to three reserves (maximum) so that last minute stand-ins are available.

### 4.3 Practical arrangements and preparation

Each round should take about 100 minutes. Students cannot be coached or assisted in any way during the mediation. The mediation itself will take 80 minutes with 10 minutes preparation time. 20 minutes should be allowed afterwards for the adjudicators to talk with the students about their performance and answer any questions they have.

The venue, date and time should be arranged between the adjudicator and the school.

Before the mediation, the mediators should discuss where they would like each party to sit and how the room should be set up. During the mediation, the mediators should write up what is happening. That is, they record options, shared values and the like, as well as the list of issues.

This can be conducted on butchers' paper, a white board or chalk board. The contents of either the butchers' paper or board are important and are considered by the adjudicator when making an assessment towards the final score.

## 4.4 Fact situation

The Law Society prepares the competition problem. The problem is the copyright of the Law Society and must not be amended unless instructed by the Law Society. The mediation scenario is published on the Law Society website at the beginning of each round. The scenario will allow the mediators and both parties to become familiar with the dispute. The mediator who starts the opening statement should not read out the scenario.

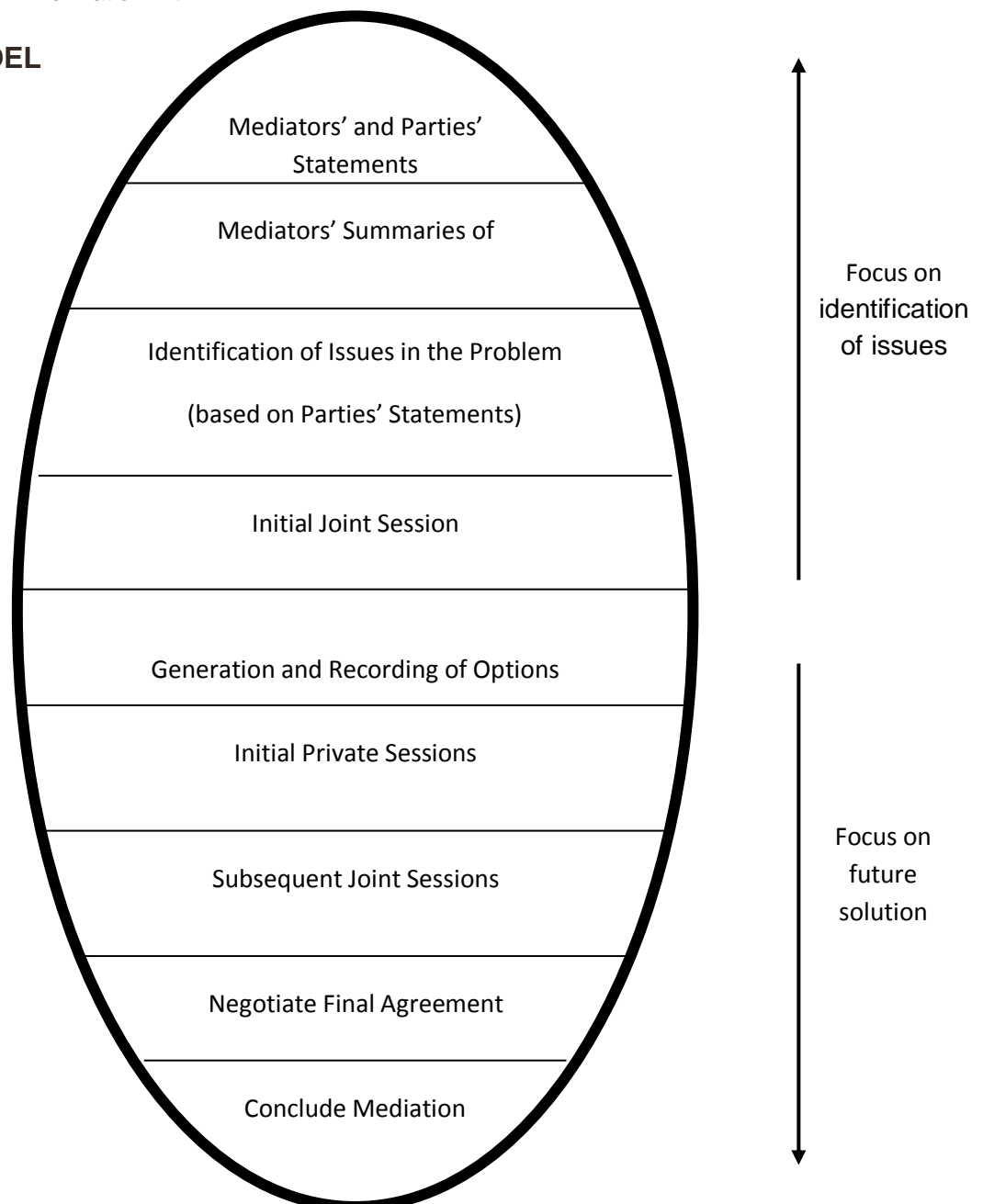
At the start of each round, each team will be provided with separate confidential facts for Party A and Party B, and will have 10 minutes to read them. Once these facts have been distributed, Party A and Party B must be kept separate. The mediators should not speak with either party until the mediation commences. Party A1 and A2 can exchange their confidential facts if they choose to, but they must not disclose them to Party B. Similarly, Party B1 and B2 may share their confidential facts but not disclose them to Party A.

The confidential facts are designed to give the parties an opportunity to play their role in a realistic way, and will allow the mediators to display their listening and questioning skills. While both parties can disclose all their confidential facts immediately should they choose, this would minimise the total number of points that can be scored by the team because it will mask the level of conflict that usually arises in the mediation. The confidential facts will allow options that were not obvious from the scenario to be generated. For this reason preparation should focus on the skills and processes of the team, rather than the substance of the dispute.

## 5. Mediation processes

There are many mediation models and your school is encouraged to find out more about them. Please use the following model based on material found in The Law Society of New South Wales Mediation Information Kit.

### MEDIATION MODEL



## 5.1 Time Management

The mediation is limited by time. Teams can score well by exhibiting good skills in the early part of the process. Total agreement is not essential, however, some scores are allocated to a partial or complete agreement and the mediators will only be given scores for this section if this stage of the process is reached.

## 5.2 Private Sessions

Private Sessions are held to consider any new information, discuss options raised, explore future options and think about whether a potential agreement would work (ie reality testing).

## 5.3 Mediation Conclusion

- Writing up the agreement, for the conclusion of the mediation, if an agreement is reached. Alternatively, writing up the agreement to reflect the stage reached at the mediation session.
- Bringing the mediation or session to a close.

## 5.4 After the Mediation

It is important when the mediation is completed that the students are given an opportunity to talk amongst themselves, guided by their teacher, to identify what they did well during the mediation and what they could have done differently. One way to do this is for the teacher to ask each student to introduce themselves to each other by their real names and to say something they personally think about the dispute, which is different from what their characters would have said.



## 6. Role of Team Members

The team comprises six students (with a maximum of three reserves) with varied functions.

### 6.1 Mediators

The role of the mediators is a neutral one. They must not take sides or give their opinion and they are not responsible for making any decisions. They facilitate the mediation process by acknowledging emotions, creating clear communication channels, using careful questioning to get all the hidden facts on the table, helping the parties to generate options, work towards agreements and then check that any agreement is workable. The role of the mediator is a shared role. They should cooperate with each other, so one mediator might be asking questions of the parties while the other mediator might be noting the issues raised or the options generated.

Care should be taken to ensure both mediators contribute in all sections of the mediation so they can achieve maximum scores. At the same time, one of the core concepts of mediation which needs to be observed is that the parties talk directly to each other. At all times throughout the mediation process the mediators need to encourage the parties to have the courage to take responsibility for the form of the resolution reached.

### 6.2 The Parties

Two students play Party A and two play Party B.

Each team member should make an opening statement. The two students in Party A should form a cohesive unit, as should the two students in Party B. However, individual team members often have different interests that need to be identified and met. Maximum scores are obtained when all four students contribute equally to the mediation. The contribution needs to be in keeping with the character of the party.

The parties should restrict themselves to the fact situation prepared. They will score points for their characterisation and authenticity. Too much rehearsal will make it difficult for the parties to incorporate their confidential facts. They should display any emotions called for by the role-play such as confusion, anger, grief, bitterness, disbelief or reluctance to speak. The mediators should be given the opportunity to display skills and intervene to acknowledge the emotion and encourage the party to participate positively. The interplay between the parties and the mediators should not give an impression that the preparation and team work has been scripted.

The parties need to display their communication, option-generating, problem-solving, negotiation and assertiveness skills. These skills may be shown to evolve with the encouragement and facilitation of the mediators. It is often difficult to find the fine line between being too compliant, offering no resistance and being too stubborn which prevents the other students from engaging in productive discussion. Students can remain authentic to their character by participating in the various stages of the mediation process and clearly showing changes they experience as the mediation progresses.

## 7. Hints

### 7.1 Parties

Parties should stay in character as much as possible, but should do so in a balanced way. They need to provide challenges to mediators, but as the session progresses should not make it so difficult that the mediators spend all their time controlling parties rather than being given opportunities to display skills/strategies. It may be within the role for the party to remain quiet and subdued. Adjudicators should be aware that if this is the case the party should not be penalised when being scored.

### 7.2 Private Sessions

Party A and Party B should each have a private session of equal time. Mediators should be responsive to the needs of individual parties when proposing to move to private sessions. The mediators must stay together when speaking with each party.

### 7.3 Agenda Setting

Issues/concerns/discussion topics should be identified by mediators from the parties' opening statements and should be written up as promptly as possible. Time can be lost by over-consultation on what was or was not an issue, promoting arguments on what should be listed. The idea is to identify and list the issues (with appropriate consultation) and then clarify and explore the issues during the following stages.

### 7.4 Issue Exploration

Parties should be encouraged by the mediators to clarify and discuss their issues for example by asking each other questions. Both mediators should facilitate the discussion of the issues and share the conduct of the mediation.

### 7.5 Involvement of all Parties

Mediators should try to ensure, as much as possible, that all parties are involved in the conversations. If one party, or a person from a particular side, is tending to dominate (as they play out their particular character), it is valid to encourage some input from the quieter participants.

The scoring system is designed to reward the demonstration of communication skills and an understanding of conflict, rather than reaching an agreement at all costs. This means if all six students are working well but do not reach an agreement, they may score better than a team which quickly arrives at an agreement and fails to really demonstrate dispute resolution skills. Naturally, most teams will want to reach an agreement, yet it is the journey as much as the destination that makes up an excellent mock mediation.

The agreement is a way of concluding the mediation session. It may be an agreement dealing with all issues in dispute and demonstrate a final resolution or it may be an

agreement which shows the stage achieved at the mediation session and recognizes that further discussion is required.

## 8. Guidelines for Adjudicators

### 8.1 Materials

A score sheet, a copy of the scenario and a set of confidential facts for the role-players will be forwarded to you before the round. You should not release the copies of the confidential facts. These should be given to the role-players 10 minutes before the mediation is to start. Once the confidential facts have been distributed, Party A and Party B should be kept separate to ensure that the confidential facts are not simply handed over to the other side. Party A1 and A2 can exchange their confidential facts if they choose to, but they must not disclose them to Party B. Similarly, Party B1 and B2 may share their confidential facts but not disclose them to Party A. There is no additional information for the mediators. The way each team deals with the confidential facts and the communication skills of the mediators will be taken into account when assessing their performance.

### 8.2 Scoring

Below is a list of criteria adjudicators use to judge the performance of students. The adjudicator should circle whether the feature is or is not present during the mediation. This will help formulate a score for the team. Adjudicators should return the feedback sheet to the Law Society who will total the scores. Please tell the school its score as well as any feedback you have for the students.

Y = Yes, skill was shown throughout

N = No, skill was not shown

### 8.3 Feedback

At the end of the mediation please talk to the students about their performance. Students are always extremely keen to obtain your feedback. You might ask them how they felt about the problem, what went well and what they could do differently. You could identify three things you thought they did well and should continue to incorporate in their mediations. Try to use the words used by the students, or find specific instances of good work. You might comment on three new things they might like to try or improve. These should be specific suggestions which can be easily adopted by the students. The experience for the students should, wherever possible, be a positive learning experience. Obviously, there is a limit to the amount of feedback (positive or negative) that a person can absorb, and many students will learn through experience rather than being told by others. Your feedback should be tailored to the criteria on the assessment sheet.