

LAW SOCIETY OF NEW SOUTH WALES

This Agreement is provided by the Law Society as a guide only. It is the responsibility of the participants to the mediation to ensure that the agreement meets the needs of the dispute

THE AGREEMENT TO MEDIATE

(Including a Confidentiality Agreement to be signed by third parties)

During the preliminary conference the participants are asked to sign the Agreement to Mediate. The Agreement (reproduced in full below) sets out the procedure followed during the preliminary conference and mediation. The Agreement details the role of the mediator; the parties' commitment to co-operate with the mediator, the agreement to maintain confidentiality with respect to information disclosed during the mediation and agreement that certain matters will be privileged, including any settlement proposal. Participants to the mediation may agree to modify the Agreement to suit their particular circumstances.

The Agreement to Mediate

THIS AGREEMENT IS MADE ON(day)(month) (year)

BETWEEN THE FOLLOWING PARTIES (In this Agreement called "the parties")

Name of party (please print):

Address:

Name of party (please print):

Address:

Name of party (please print):

Address:

Name of party (please print):

Address:

Name of party (please print):

Address:

AND THE MEDIATOR/S (called "the mediator/s")

Name of mediator (please print): JOHN HOLLIER

Address: 4TH FLOOR, 6 BOLTON STREET, NEWCASTLE

Name of mediator (please print):

Address:

Appointment of Mediator

1. The parties appoint the mediator to mediate in accordance with the terms of this agreement the dispute between them. The dispute is briefly described in Schedule 1 to this Agreement (the “Dispute”). The mediator accepts the appointment to mediate the Dispute at a time and place agreed to by the parties and set out in Schedule 2 to this Agreement.

Role of the Mediator

2. The mediator will be neutral and impartial. The mediator will assist the parties to attempt to resolve the dispute by helping them to:
 - systematically isolate the issues in dispute;
 - develop options for the resolution of these issues;
 - explore the usefulness of these options; and
 - meet their interests and needs.
3. The mediator may meet with the parties together or separately.
4. The mediator will not:
 - give legal or other professional advice to any party; or
 - impose a result on any party; or
 - make decisions for any party.
5. The mediator will not accept an appointment or act for any party in relation to any proceedings concerning the Dispute.
6. Neither party will take action to cause the mediator to breach Clause 5.

Conflicts of Interest

7. The mediator must, prior to the commencement of the mediation, disclose to the parties to the best of the mediator’s knowledge any prior dealings with any of the parties as well as any interest in the Dispute.
8. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator’s capacity to act impartially, the mediator must immediately inform the parties of these circumstances. The parties will then decide whether the mediation will continue with that mediator or with a new mediator appointed by the parties.

Co-Operation by the Parties

9. The parties must co-operate with the mediator and each other during the mediation.

Conduct of the Preliminary Conference

10. As part of the mediation the mediator will schedule a preliminary conference at a time and venue convenient to the parties to establish a timetable for the mediation.
11. The mediator, the parties and their representatives who are to attend the mediation session must attend the preliminary conference.

Authority to Settle and Representation at the Mediation Session

12. If a party is a natural person, the party is expected to attend the preliminary conference and the mediation conference in person with authority to settle within any range that can reasonably be anticipated. If a party is not a natural person it must be represented at the preliminary conference and the mediation conference by a person with full authority to make agreements binding on it settling the Dispute.
13. At the mediation each party may have one or more other persons, including legally qualified persons, to assist and advise them.

Communication Between the Mediator and the Parties

14. Any information disclosed to a mediator in private is to be treated as confidential by the mediator unless the party making the disclosure states otherwise.

Confidentiality of the Mediation

15. The participants will not disclose to anyone not involved in the mediation any information or document given to them during the mediation unless that person has signed the prescribed confidentiality agreement in the form attached to this agreement.
16. The participants agree that subject to Clauses 20 and 21, the following will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings in respect of the Dispute:
 - 16.1 Any settlement proposal whether made by a party or the mediator.
 - 16.2 The willingness of a party to consider any such proposal.
 - 16.3 Any statement made by a party or the mediator during the mediation.
 - 16.4 Any information prepared for the mediation.

Documentation

- 17 The Mediator will return/destroy (delete as applicable) all documentation other than the mediation agreement and any terms of settlement.

Suspension or Termination of the Mediation

- 18.1. A party may terminate the mediation at any time after consultation with the mediator.
- 18.2 The mediator has a discretion to terminate or suspend the process at anytime.
- 18.3 The mediator may terminate the mediator's involvement in the mediation if, after consultation with the parties, the mediator feels unable to assist the parties to achieve resolution of the Dispute.

Settlement of the Dispute

19. If agreement is reached at the mediation, the terms of the agreement must be written down and signed by the parties before they leave the mediation.

Enforcement of the Settlement Agreement

20. Any party may enforce the terms of the settlement agreement by judicial proceedings.

21.1 For the purposes of Clause 20, any party may call evidence of the settlement agreement including evidence from the mediator and any other person engaged in the mediation.

21.2 All costs associated with this mediation to be paid for by (insert names) ALL PARTIES IN EQUAL SHARES.....
or as otherwise ordered by the Court.

Exclusion of Liability and Indemnity

22. The mediator will not be liable to a party for any act or omission in the performance of the mediator’s obligations under this agreement unless the act or omission is fraudulent.

23. The parties together and separately indemnify the mediator against any claim for any act or omission in the performance of the mediator’s obligations under this agreement unless the act or omission is fraudulent.

The Cost of the Mediation

24. The parties together and separately will be liable to the mediator for the mediator’s fees described in Schedule 3. The parties will share equally all the other costs of the mediation described in Schedule 3.

25. ~~If the mediation does not result in an agreement to resolve the dispute, the costs of the mediation will be costs in the cause, i.e. costs of the mediation (including those of the legal representatives to attend the mediation) will be treated as part of the overall costs in subsequent court proceedings which are generally payable by the losing party.~~

Schedule 1: Description of the Dispute

The Dispute is the subject of proceedings:

No: of in the Court ; and/or

(Insert brief description of the Dispute)

.....
.....

Schedule 2: Date and Venue of Mediation Conference

The mediation of the Dispute will be held on:

TBA. (day) (month) (year)

at

TBA.

(Venue of mediation)

Schedule 3: Costs of the Mediation

1. Mediator's Fees and Expenses: For the preliminary conference, all preparation time and the first 3 hours of the mediation session:	\$330 per party (including GST)
Additional time: (time beyond the first 3 hours of the mediation session)	As agreed at or before Preliminary Conference
2. The Law Society's Administration Fee:	N/A
3. Room Hire:	At cost.

Signing of the Agreement to Mediate

The parties,¹ legal representatives and the mediator have signed this Agreement to Mediate

as follows:

Date: . . . (day) . . . (month) (year)

.....
 (Name of party. Please print) (Signature)

.....
 (Name of legal representative. Please print) (Signature)

.....
 (Name of party. Please print) (Signature)

.....
 (Name of legal representative. Please print) (Signature)

JOHN HOLLIER. x.
 (Name of mediator. Please print) (Signature)

¹ Where a party is an authorized representative of a company and that party signs a mediation and or confidentiality agreement that party binds all servants and agents of the company.

Confidentiality Agreement

Name of participant present at the mediation.

.....
 (Please print)

I UNDERTAKE to the parties to the mediation that, in exchange for being permitted by them to participate at the mediation:

1. I will not disclose to anyone any information received by me during the mediation, unless required by law to make such a disclosure.
2. I will not disclose to anyone involved in the mediation any information received by me during the mediation from a party to the mediation unless expressly authorised by the disclosing party to do so.

3. To the extent that I am required to disclose any information either by law or otherwise I will immediately notify the other participants of this requirement.

.....
(Signature of participant) (Date)

.....
(Address)