



# Combining law with mediation

**Ready to broaden your skillset  
or make a career change?**



**So, you've been thinking about getting your mediation accreditation. Perhaps you've recognised the need to bring alternative dispute resolution into your toolkit to become a better lawyer. Or maybe you're thinking of a change and looking to become a full-time mediator?**

Whatever your motivation, it's likely you have a lot of questions about mediation as a discipline, and whether it's something you'd be suited to.

We've created this guide to help lawyers determine if they have the right skills and attributes to be a successful mediator. It will also help you learn where a mediation accreditation can take you.

And of course, we'll cover the steps you need to take to enter the world of mediation – and cement your new-found skills into your career.



I've been on this mediation journey for two years or so... I get to do what I love, my way. Mediation is the future for so many people experiencing conflict. It's cheaper, faster, informal, less stressful and completely confidential. And because it's self-determining for the parties, they maintain full control over the outcome. Win-win!

**Kate Grafenauer**

**Principal Mediator at Adaptive Mediation & Former Student at The College of Law**



A special thank you to **Linda Kochanski** for her insights and contribution to this guide.

Linda is a Practice Leader in Dispute Resolution at The College of Law and Secretary of the Mediators Standards Board.

# Contents



## **THE NITTY GRITTY: What is mediation?**

Everything you need to know about the profession.



## **SELF REFLECTION: Is mediation for me?**

Not everyone is cut out for mediation – have you got what it takes?



## **MAPPING IT OUT: Where can mediation take me?**

A qualification with many potential pathways, decide where mediation could take you.



## **LET'S GO: What are my next steps?**

Are you ready to make the move? We'll take you through the crucial steps.



## **COURSES & RESOURCES: Where can I learn more?**

Recommended courses and readings to help you get there.

1

## THE NITTY GRITTY: What is mediation?



**Before you dip your toes into the world of mediation, let us help you get your head around what the practice is and how it relates to the legal profession.**

### About the National Mediation Accreditation System (NMAS)

If you were to Google 'mediator Australia', you would find a whole spectrum of professionals claiming to deal with settling disputes.

The term 'mediator' paints a broad brush. However, the type of mediation we are talking about in this guide is the training or field that could lead you to the National Mediation Accreditation System (NMAS).

The foundations of NMAS were first laid in the early 1990s. Legal mediation began in the field of family law – arising out of necessity. The legal community saw the need to help clients beyond the courtroom dispute, and mediation was the logical solution.

Historically, lawyers have used mediation to bolster their existing skillset. But over the last 10 years or so, mediation has become a profession in its own right.

In fact, more and more lawyers are now making a move from litigation into mediation.

### How does mediation tie into the law?

In cases where complex issues, emotions and personal relationships are involved, there is a limit to how effective litigation can be. It rarely provides a lasting, constructive

resolution to disputes. This is particularly evident in cases such as family law and wills and estates, where heated court battles can leave lasting fractures in families.

Litigation also has limitations in employment or neighbourhood disputes where parties need to find ways to continue to co-exist constructively.

Mediation on the other hand is a quicker, cheaper and less stressful resolution process that helps parties take control of the outcomes and avoid court.

### What does a NMAS qualified mediator do?

The key to the NMAS system is self-determination. This means that the disputing parties are solving their own problems with the guidance of a qualified mediator.

They're not being forced. They're not being adjudicated. They're being guided towards solutions that they can work and live with.

In fact, a successful mediation should mean you never have repeat clients – as the ultimate goal is to teach them how to resolve their own problems. Through your guidance, clients will learn their own conflict resolution skills so that they can put them in place in future.

## Is mediation just for lawyers?

Anyone can undertake the mediation training and assessment required to achieve accreditation.

However, lawyers have a hard and soft skillset that naturally aligns with the profession. And mediation certainly lends itself well to a lawyer's toolkit, with application in a broad range of legal fields.

## Mediator, conflict coach, collaborative practice – what's the difference?

<b>NMAS mediator</b>	<b>Collaborative practice professional</b>	<b>Other conflict coaching</b>
As an NMAS mediator, you will use the principles of self-determination to help parties settle disputes out of court. The accreditation shows that you've met training and competence standards and are committed to continuous learning.	When parties resolve disputes through collaborative practice, each party is represented by a lawyer. However, the resolution is facilitated by a team of collaborative professionals, including a financial neutral coach and a conflict coach. Members of the team undertake additional training to ensure they meet the standards and requirements to be classified as a collaborative professional.	While there are several qualifications in mediation and countless professionals who call themselves 'mediators', NMAS is the recognised qualification that aligns to law and legal dispute resolution.



I was a lawyer many moons ago, working in a low socioeconomic area in Brisbane. The reality is, many people came to me with problems that weren't simply legal issues. The court would give them an answer, but that wasn't going to resolve the conflict for them moving forward.

**Linda Kochanski**

Practice Leader in Dispute Resolution at The College of Law and Secretary of the Mediators Standards Board

## 2

# SELF REFLECTION: Is mediation for me?



Whether you're interested in making mediation your new career, or simply looking to broaden your legal toolkit, it's important to know you've got what it takes. So, let's drill down into it.

### What traits make a good mediator?

Characteristics	Skills
<ul style="list-style-type: none"><li>• Trustworthy</li><li>• Impartial</li><li>• Approachable</li><li>• Emotionally intelligent</li><li>• Adaptable</li><li>• Facilitative</li></ul>	<ul style="list-style-type: none"><li>• Active listening</li><li>• Questioning &amp; clarifying</li><li>• Summarising</li><li>• Reframing</li></ul>

### What mediation skills do lawyers often struggle with?

Lawyers are trained to assess a situation and choose a course of action, quickly and decisively. Indeed, many people are attracted to the idea of mediation because they are good problem solvers.

However, the role of the mediator is not to offer advice – but to help the parties arrive at a decision. It's a mindset shift that lawyers can struggle with. You must learn to go from being the problem solver, to creating the problem solver.

### Which legal fields tie in with mediation?

Mediation ties in well with any legal field where disputing parties are negotiating an outcome. Some of these include:

- Administrative & public law
- Banking and finance
- Business law
- Civil litigation
- Commercial litigation
- Commercial transactions
- Community law
- Corporate and commercial law
- Criminal law
- Dispute resolutions
- Employment law
- Estate planning
- Family law
- Litigation
- Personal injury law
- Property law
- Wills & estates
- Elder law



# 3

## MAPPING IT OUT: Where can mediation take me?



Undertaking a mediation course doesn't necessarily mean you need to obtain your accreditation. There are many benefits of taking the training alone. However, if you do become accredited, there are several pathways open to you.

### 1 Enhance your ability to lawyer

By undertaking the training, even without getting your accreditation, you will greatly enhance the tools in your legal arsenal.

You'll improve your ability to empathise with your clients, view complex issues from multiple perspectives – and work more collaboratively with other lawyers.

Equipped with the skills, knowledge and ethical principles of a mediator, you will learn how to:

- Ask open-ended, thought-provoking and emotionally intelligent questions
- Look beyond the surface of a dispute
- Reality-test client instructions
- Help facilitate clients to reach a win-win resolution



I would like to see mediation incorporated into every practice. There are areas of the law that are personal, emotive and have a family dynamic. Even with just the training (and no accreditation), you're able to bring in a much deeper perspective, and better help your clients.

**Ghania Dib**

Principle Solicitor and Founder of GDA Lawyers & Former College of Law Student

## 2 Bring mediation as an additional service to your practice

If after the training you decide to undertake the assessment to obtain your accreditation, you'll be able to offer mediation as an additional revenue stream to your practice.

This will allow you to provide a range of solutions to help your clients through whatever disputes they may be facing.



### Ghania's story

#### I knew there was a better way after witnessing the family court system first-hand

Mediation wasn't something I was exposed to as a junior solicitor. It wasn't part of the firm's culture and it wasn't something that we spoke about.

I completed a commercial mediation training in 2011, but didn't have the opportunity to pursue accreditation.

In 2013, I experienced first-hand how combative and distressing the family law system can be. I knew there had to be a better way; a way for people to avoid being dragged through the family court system... and the mental and financial strain at the end of the process.

I found myself reflecting on the commercial mediation skills I had learnt several years earlier. I wondered if I could utilise and build on those skills to practise family law in a more facilitative and collaborative manner.

In 2018 I completed the Family Dispute Resolution (FDR) course with The College of Law (which I then upgraded to an Applied Masters majoring in FDR and family law). After completing the first subject of my FDR course, I found out that I could complete my mediation accreditation as a separate unit.

My immediate thought was 'Great – this is my chance!'

So, I sat and passed the accreditation exam and went on to become accredited under the NMAS.

My FDRP and mediator training with The College of Law gave me the confidence to explore other forms of alternative dispute resolution practice.

I've been conducting mediations over the past two to three years and it's become an integral aspect of my practice.

My legal practice focuses on family law, wills and estates and litigation. About a third of what I do is mediation. I love to mediate and have found it to be a highly worthwhile pursuit that aligns with my desire for less adversarial legal processes.

Assisting separating parties and their children avoid the emotionally and financially taxing court process is very rewarding.

I'm looking forward to a future where mediation is at the core of all family law disputes.



### 3 Reshape your practice and its model – or start your own practice

Once you've achieved your accreditation, you may want to go further than simply offering mediation as a service.

You may decide it's the perfect launching pad to take your firm – and its branding – in a new direction.

In personal and emotive areas of the law (such as family law, wills and estates), many clients are searching for a less confrontational, more empowering way to settle disputes. By realigning your branding to recognise that their struggle is not just a legal matter, but a highly personal one, you can truly appeal to this audience and illustrate that you have their best intentions at heart.





## Zinta's story

### Mediation has helped me create my niche practice

After obtaining my mediation accreditation and completing my training in collaborative practice, I decided to create a niche business that helps clients manage the legal fallout after a loved one dies.

By combining my legal experience with my dispute resolution skills, I've found I can give wise counsel to my clients at their most difficult time. Around 60% of our work is alternative resolution of inheritance disputes.

What's more, as a dual accredited specialist in succession law and business law, my practice is the perfect blend of my skills and passions. Not only can my team help clients resolve contested estates, we can also take care of post-death estate administration work.

But how did I get here? Let's backtrack a little – to my early days as a legal graduate.

The very first trial I was involved in was a bitter estate dispute. This was my earliest glimpse into how awful litigation can be for all parties, and how an estate can be gouged by huge legal costs in the process. To make matters worse, it was sad to see how dissatisfied the client was at the end even after 'winning' her case.

At that point I didn't know how to change the system, I just accepted that it was the system. But even then, I was thinking there had to be a better way. No doubt it was this first experience that made me the type of lawyer that would try to

encourage settlements for clients wherever possible.

However, through most of my career I was taking what lawyers would call 'a commercial approach' to dispute resolution. When you achieve a resolution on a commercial basis, all you're doing is bargaining on figures to achieve a settlement. You don't fix the underlying issues behind a family's dispute – so nothing ultimately gets resolved for that family to move on with their lives constructively.

It was only about three years ago that my dissatisfaction with this approach prompted me to look around at what people in other jurisdictions were doing. I learned about the collaborative practice model used in divorce matters and discovered that it wasn't readily available for inheritance matters. This led me to my new purpose: introducing collaborative practice to wills and estates.

With my accreditation in mediation, I can now help clients resolve disputes over inheritance without destroying family relationships and going to court. I *always* encourage them to go down a resolution pathway. But if this isn't possible, I can also help them navigate a settlement within the more traditional litigation framework.

As lawyers, we often assume that it's all about fighting for what for our clients are entitled to. But if we stop to ask questions about what they really want or need for their future, their answers can be very different.

## 4 Become a full-time mediator

This is a smart and natural option if you've decided the practising law is no longer for you. Once you're accredited, there are tools and resources available to help you promote yourself and find work through the NMAS.

Like any career change, be aware that you will need hard work and determination to be successful.



### Kate's story

#### I left the law to forge a new career in mediation

The reality of my day to day legal career always felt at odds with why I chose law in the first place. I wanted to be a lawyer to help people solve problems they couldn't resolve themselves. But right from the start of my career, something felt off.

As my career progressed, I found that being a lawyer wasn't as glamorous or exciting as the TV shows implied. Long hours, time pressures, taxing KPIs, no time for much else. The niggling in my brain continued.

Don't get me wrong, there were some great times. I made fantastic, lifelong connections in law. And there were some wins of course, which felt good. Really good. But it wasn't enough.

After around 10 years, I considered going to the Bar. I thought this might be my saving grace. Working for myself. Helping people get good results. So I saved like mad to set myself up in chambers and cover my expenses in the initial months. But the doubt remained. Did I really want to do this?

I ended up getting married and put the money towards a house instead; the home we now share with our two gorgeous kids. I started working part-time, seeking roles that enabled me to work more flexibly and remotely. But I felt limited in how much I could help my clients.

Clients would rarely tell me their full story – afraid to pick up the phone lest they be

charged. And they were seldom happy with a win because it had cost them so much time and money, and sometimes their marriage or business too. I had to get off the train.

So I quit.

I spoke to several colleagues and they all independently suggested I look into becoming a mediator. Was I prepared to start over? After much deliberation, off I went, back to school.

Within the first few hours of my mediation training, a wave of relief and joy washed over me. I had found my place. This is what I was meant to be doing! I absolutely loved it.

Mediation is a complete flip on litigation. If I could adjust my thinking and retrain my approach to conflict, this was the way forward. I could actually help people, without the cost, stress and time involved in litigation.

I've only been on this new journey for two years or so, mediating in several areas – including family, estate, workplace, commercial and neighbourhood disputes.

There have been ups and downs. But I get to do what I love, *my way*. Mediation is the future for so many people experiencing conflict. It's cheaper, faster, informal, less stressful, completely confidential. Plus it's self-determining for the parties as they maintain full control over the outcome.

Win-win! Mediate, don't litigate!



## 5 Become a Family Dispute Resolution Practitioner (FDRP)

FDRPs are independent parties who help people resolve their disputes when going through separation or divorce. They enable and empower families to make difficult decisions around their financial and parenting arrangements – either through mediation or the court system.

Around 97% of separated parents endeavour to avoid the courts when determining custody. For families that do need or decide to go to court, you will be able to issue the prerequisite form (a Section 60I Certificate) that will enable them to file a court application.

To become an FDRP, you'll need to undertake additional training on top of your mediation accreditation. However, you will still rely heavily on the skills that you acquired from your mediation training.

You may even be able to incorporate your mediation course as a credit towards your FDR accreditation. (This is what Ghania did, whose story is on page 9.)

# 4

## LET'S GO: What are my next steps?

If you're ready to start on your path to mediation accreditation, here's the simple five-step process. From there, it's up to you to decide how you're going to utilise your new-found skills.

1

### **Nationally accredited mediator training**

You must first complete a mediation training program that meets the requirements set out in 2.3 of the [NMAS](#).

2

### **A recognised mediation assessment**

Next, you need to complete an assessment that meets the requirements set out in 2.4 of the NMAS. You'll have the option to complete it online or face-to-face.

3

### **Other approval requirements**

Be sure you meet all the other approval requirements – including professional indemnity insurance and character references – as set out in section 2.1 of the NMAS.

4

### **Application to a Recognised Mediator Accreditation Body (RMAB)**

Once you have received your completion certificate and documents from your training provider, you need to register with a [Recognised Mediator Accreditation Body \(RMAB\)](#) of your choice.

You have six months from the completion date of your mediation assessment to do this.

5

### **Listing on the RMAB**

Once you are NMAS accredited with an RMAB, you will be listed on the [Mediation Standards Board National Register](#).

You will then be able to promote yourself as an NMAS accredited mediator, and the public will be able to verify your accreditation by referring to the National Register.

### **A closer look at these steps**

You can [learn more about these steps](#) on The Australian Mediator Standards Board website. It contains downloadable PDFs and short animated videos.



## 5

## COURSES & RESOURCES: Where can I learn more?



Ready to enrol, or want to do a little more research first? We've got you covered.

### Getting your mediation accreditation

The College of Law Nationally Accredited Mediator Training Program is a four-day intensive workshop conducted via video conference.

With pre-reading materials and the guidance of accredited mediation professionals, you will develop mediation skills through role-play and practice. The program outline is as follows:

DAY 1	DAY 2	DAY 3	DAY 4
Introduction to mediation, breakdown of mediation models and theory	Morning of mediation review and Q&A, followed by full day of mediation role-plays	Morning of mediation theory review and Q&A, followed by full day of mediation role-plays	Morning of mediation review and Q&A, followed by full day of mediation role-play, feedback and next steps

FIND A PROGRAM 

DOWNLOAD TRAINING HANDBOOK 

If you are seeking formal Nationally Accredited Mediator status, you will also need to complete the National Mediation Assessment after completing the training course.

### Further readings

Read our guide on where [a career in dispute resolution](#) can take you.



# Contact us

Visit [collaw.edu.au](http://collaw.edu.au)

## Australia

1300 856 111

8am - 5pm (AEST)

## Overseas

+61 2 9965 7000

8am - 5pm (AEST)

Current as at 4/12/20