

## **XXIV FIG International Congress 2010**

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### The use of “Alternate Dispute Resolution” in resolving disputes

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### When the Dispute Arises Negotiate First

- Disputes arise when we don't get what we want.
- They occur in our every day life.
- They are a natural outcome; when we reject another persons opinion.
- Disputes are frequently associated with a communication breakdown
- They start with a difference of opinion.
- Disputes escalate when we refuse to give ground.

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## Having a difference of opinion is not a “dispute”



- Where are we going to put the tent?
- How would you know buddy.
- I’m the expert.
- You can’t moor the boat there.
- It’s an offence & you will get fined.

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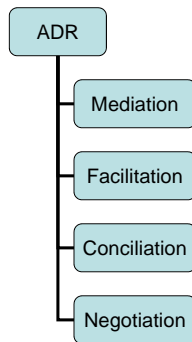
## Why we have difficulty negotiating

- We are not trained to listen.
- We think we are always right.
- We refuse to contemplate an alternative view.
- We become polarised.
- We like to win, regardless of the result (costs).
- Ongoing relationships are irrelevant.



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## About selecting the appropriate ADR Process



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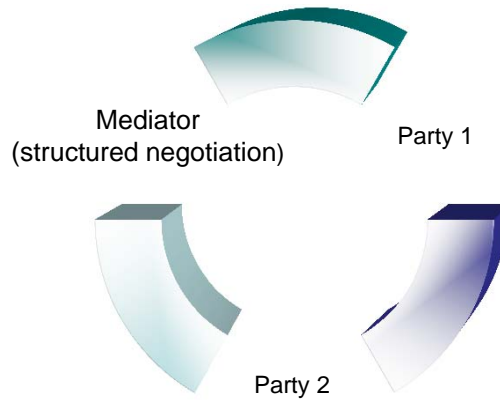
## The process of Mediation



- Mediation agreement.
- Preliminary conference.
- Ground rules.
- Opportunity to tell your (issues) side of the storey uninterrupted.
- Define interests /explore options/ develop solutions/ reality testing / formulation of an agreement & sign off.

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## The Neutral Third Party Mediator



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## Benefits of a negotiated agreement

- Confidentiality ( compare court reports).
- Win-Win (an arrangement to live with).
- Cost effective.
- Time effective ( compare litigation).
- Allows Consultants to be time productive.
- Preserves ongoing working relationships.

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## Other ADR processes

- **Shuttle Negotiation**
  - Senior Executive on the move
  - Rockdale Council & SHFA (imposed outcome /one winner)
- **Land & Environment Mediations**
  - Waste Operator & EPA
  - Quarry Operator & Gloucester Shire Council
- **Executive Mentoring**

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## Other determinable processes

- **Litigation**
  - Pre-hearing offers of settlement.
  - Court Hearings (imposed outcome /one winner)
- **Arbitration**
- **Adjudication**
  - The Building & Construction Security of Payment Act 1999 as amended ( SOP Act)

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## Do men & women negotiate differently

- Research suggests that gender may influence “the way” we negotiate.
- Other research results in a confused picture.
- Elements that are relevant are questions of:
  - Confidence / Style / Training /Education
  - International orientation
  - Culture / colour
  - Socialisation
  - Discrimination
  - Power
  - Time
  - Skill (are negotiators born with or do they acquire skills)

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## Hints for those in a dispute

- Read published material on Negotiation & Mediation (web sites)
- Attend formal training workshops
- To Negotiate well requires a developed skill-set
- Three basic elements to achieve a successful outcome are:

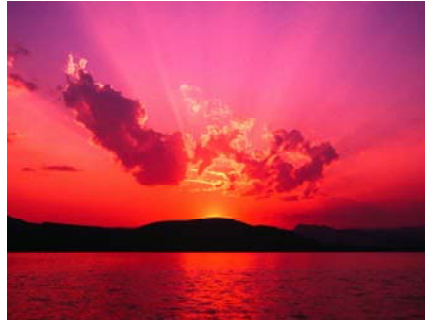
Power  
Time  
Information

***If all else fails seek out and use the services of a professional negotiator***

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# THE END

- *Thank you for the opportunity to present*



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