

## **MODELS OF MEDIATION**

Mediation is a flexible process. That is the beauty of it. Every dispute is different. People in conflict emerge from behind the legal issues and positions. The causes of conflict are as varied as human personality, but there are recognisable patterns of behaviour. Mediation is able to take into account legal analysis, personality and emotion, and other drivers of conflict.

Mediation practice has developed a number of different models. The most common are: transformative, facilitative, evaluative and settlement.

Transformative mediation seeks transformation of the parties, their relationship, and the conflict.

Facilitative mediation involves identifying the underlying interests of the parties, with the mediator then assisting the parties to identify settlement options that satisfy those interests.

Evaluative mediation places more emphasis on an evaluation of the parties positions and likely outcomes if settlement is not achieved at mediation.

Transformative and facilitative mediation strive for integrative and co-operative bargaining. Evaluative and settlement mediation more commonly lead to distributive and competitive bargaining.

A particular mediation will often draw on more than one model. Selection of model, and deciding when to engage features of different models, is an important function for a mediator. The parties and their representatives may wish to discuss with the mediator which approach ought to be taken, prior to the mediation. Alternatively, many parties are happy to leave this at the mediator's discretion.