

A close-up portrait of an elderly woman with short, dark hair, looking directly at the camera with a calm expression. She is wearing a light-colored, possibly pink and white striped, top. The portrait is set against a dark blue background and is partially enclosed by a large, curved orange shape on the left side.

Mediation of age-related issues

If growing older brings challenges that trigger conflict, elder mediation can help to prevent situations escalating.

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As we grow older, we may start to encounter new situations and challenges. We may experience discrimination on the basis of our age. We might experience advancing frailty and disability that give rise to complex situations and decisions. Maintaining our independence may call for increasingly complicated life arrangements that involve reliance on, or intervention by, family members or other carers.

These challenges can lead to conflicts and disputes with people who care for us, which in turn could present a risk of our exploitation, abuse or neglect.

Mediation can be a useful preventative approach when conflict arises at any stage of the caring process. When the issue or conflict involves older people, their family members or significant other people in their lives, the mediation is often called 'elder mediation'.



What is elder mediation?

Elder mediation is a voluntary, cooperative process with a professionally trained elder mediator. The mediator helps facilitate discussions between everyone involved. They also develop a range of possible options or outcomes that help the participants manage the many changes and stresses that often occur throughout the family life cycle.

The mediator controls the process and assists participants to communicate respectfully, but they do not give advice, take sides, or make judgements or decisions. Discussions are confidential and held in a private, safe setting. Any agreement reached must be acceptable to all participants, including the older person.

Elder mediation is a relatively new, specialised approach to decision-making in Australia. It requires mediators to rethink the way they handle interventions involving older adults and to be mindful of older adults' rights. These rights include their right to participate in decision-making about their lives, directly or indirectly, and with or without capacity.

To practise ethically, qualified elder mediators need to have:

- special sensitivities
- knowledge of age-related policies, issues, practices and processes
- an awareness of the subtle effects of ageism on themselves and others, including older adults.



When can elder mediation be helpful?

Elder mediation is often necessary when older people need support to make their own decisions. Examples include situations where there are allegations of elder abuse, conflicts or complaints and family members and significant others are involved.

Older people often rely or depend on their family members, and their decisions can be strongly influenced – and sometimes overridden – when families are involved in planning and decision-making about their care. This happens especially where there are ageist attitudes, imbalances of power, or threats of (or actual) abuse or neglect.

Research indicates that older people can be distressed when there is conflict with or between family members or conflict with others – for example, neighbours, carers or service providers – that involve or affect them. Research also suggests that they tend to avoid seeking legal solutions, particularly when their family members are involved. Mediation can provide an alternative route to resolution.

Unlike other traditional forms of mediation, conflict may or may not be at the centre of someone's concern when they first contact an elder mediator. Rather, it could be the need to have a difficult conversation with family members or others, or to make plans for an older person that are preventive and proactive.

Whether the need for mediation is conflict-driven or not, the focus is on helping all who participate to contribute to finding new ways to promote effective, inclusive and respectful behaviours, decisions and actions.

How does elder mediation work?

Elder mediation provides an opportunity for older people to talk frankly with family members and others about their wishes and preferences, the values they hold, and the risks they are or are not willing to take. They can acknowledge their need for assistance during mediation without fearing that it will lead to a ruling of incapacity.

Mediators are trained to work with larger groups. They often include in the mediation known and trusted support people, advocates or representatives, or service providers and experts. They may also make appropriate referrals to other service providers to ensure that the older person is supported in an informal or formal collaborative network.

So, for example, because of the power differences between older people and aged care providers, an elder mediation could include:

- the older person
- the provider
- a support person or advocate
- family members
- significant others such as friends, neighbours, carers, social workers, psychologists, occupational therapists, physiotherapists, nurses, medical practitioners, lawyers or financial advisers.

If physical, mental or legal capacity is in question, trained elder mediators can make appropriate accommodations and, if necessary, explore effective ways to enhance supported or substitute decision-making. For example, they might see participants separately, find the most appropriate setting or time of day, or involve an interpreter or a trusted, known support person or advocate for the older person.

Elder mediation is based on a positive wellness model that promotes a person-centred approach for all participants. Elder mediators explore the many ways to enhance the best interests, safety and rights of older persons and ensure that older persons, with or without capacity, have a 'voice' in decision-making that is heard and respected.

By focusing on strengths, the aim of elder mediation is to help all who attend to contribute towards finding new ways to promote effective, inclusive and respectful behaviours, decisions and actions.



Typical issues for elder mediation

Elder mediation promotes positive, respectful communication and the involvement of a range of informal and formal supports for older people and their families.

This list identifies typical issues of ageing that can be addressed in elder mediation. The potential for abuse or neglect is present within each of them.

- Health and medical care (at home, in the community, in the hospital, continuing care and long-term care communities)
- Aged care issues and complaints
- Progressive dementias and other memory, cognitive and neurological, impairments
- Informal and formal caregiving
- Financial issues
- Guardianship issues
- Housing issues
- Living arrangements
- Intergenerational relationship issues
- New marriages and step-relative issues
- Religious issues
- Cultural issues
- Gender and LGBTQIA+ issues
- Indigenous issues
- Family business issues
- Driving issues
- Abuse, safety issues, self-neglect
- Legal issues (estates, inheritance, wills, medical and legal powers of attorney etc)
- End-of-life planning and decision-making.

The mediation process can help to add, improve, preserve or restore relationships. It provides a non-adversarial model of communication and opportunities for therapeutic and practical discussions, meetings and interventions.

In this approach, everyone can contribute their concerns and ideas freely and without prejudice, with the intention of protecting the safety, rights, wishes and preferences of the older person and maintain family, carer and other culturally relevant supportive relationships.



Elder mediation and elder abuse

Older people often need support to make their own decisions where there are risks, allegations or suspicions of elder abuse, complex family and intergenerational dynamics, family pressure, or family conflicts.

Elder mediators take a holistic approach. They are educated and trained to screen for capacity and elder abuse, facilitate family (and often larger) meetings, and handle complex intergenerational and family dynamics. Above all, they can ensure that the safety, rights, will and preferences of older people are upheld in any outcomes or agreements.

Elder abuse is prevalent and secretive in nature. Because of this, one of the essential roles of an elder mediator is to ensure the risk, presence, type, level and extent of the mistreatment, abuse, or neglect of elders (actual and potential) are assessed, in order to determine appropriate forms of intervention.

Seeing participants separately in the initial process of elder mediation is essential for identifying suspicions of elder abuse or neglect that have previously not been recognised or named and are sometimes difficult, if not impossible, to prove. Trained elder mediators can provide a safe, trusting environment where any suspected or actual abuse can be identified and named. Referrals and plans can then be safely put in place to prevent any future abuse or neglect and to support the remediation of past abuse and neglect.

A key challenge for elder mediators is balance: finding ways to detect elder abuse and offer a degree of protection to vulnerable older people while promoting their independence as far as possible and respecting their right to make decisions that may be risky and result in harm. This respect is sometimes called 'the dignity of risk'.

Elder mediators, however, cannot be neutral to issues or behaviours that threaten the safety of an older person or any other person. If they do identify any issues or behaviours like this, the mediator must refer the case to an appropriate body for investigation and intervention.



Elder mediation and elder law

Elder mediation provides the elder law system with a resource for dealing effectively with underlying issues that the legal system cannot. Examples include:

- ageist, gendered, cultural and Indigenous attitudes and values
- family history and intergenerational dynamics
- issues of autonomy, safety and trauma and the dignity of risk
- interpersonal estrangement or conflict
- quality-of-life choices.

It is essential that elder mediators have knowledge of relevant legislation and policies, including requirements to report past or present abuse. Trained elder mediators know how, when and where to refer the older person or family members when other resources or services are needed.

They also maintain a working knowledge of the range of services available to older people, their families and their caregivers, including local programs that provide medical, legal, cultural, therapeutic and social resources.

Elder mediator code of ethics, training and certification

Australia now has increasing numbers of trained and certified elder mediators, many of whom are members of the Elder Mediation Australasian Network (EMAN).

Recognised mediators in Australia:

- are accredited by the Australian Mediator and Dispute Resolution Accreditation Standards (AMDRAS) Board or are accredited Family Dispute Resolution (FDR) Practitioners
- or have the equivalent training and experience.

AMDRAS recognised **elder mediators** in Australia:

- have completed the required AMDRAS mediation accreditation specified above
- have completed additional 30 hours of training in ageing and age-related issues with an Elder Mediation International Network (EMIN) Certified trainer.
- have been certified by EMIN and AMDRAS as an elder mediator.

The AMDRAS Board has approved a submission by EMAN and the Resolution Institute (with support from Relationships Australia) that elder mediation be made a specialisation in the new Australian mediation accreditation standards, with specific requirements for elder mediator certification with the Elder Mediation International Network (EMIN). Trained and certified elder mediators are expected to be familiar with and abide by the EMIN Code of Ethics for Elder Mediators and the Safeguarding Vulnerable Adults: Guidelines for Elder Mediators.

If you would like to **find an elder mediator to support you or someone you know**, you can contact:

- Relationships Australia in your state or territory, through the Contact webpage
- a member of the EMAN Board or Resolution Institute Elder Mediation Sub-Committee.

EMAN is currently developing a directory of specially trained elder mediators to publish on its website and on the Resolution Institute's website.

For **more information about elder mediation education, training and certification**, email the Chair of EMAN, Professor Dale Bagshaw, on dale.bagshaw@unisa.edu.au