

# Judicial mediation in Australia and the impact on Asian parties

Professor Andrew Godwin FAAL

Melbourne Law School, The University of Melbourne

“Considering possible settlement: Asian parties in court”

Russell McVeagh, Monday 19 May 2025

- An anecdote
  - Different premises and paradigms for mediation
- Mediation in civil proceedings in Australia (e.g. under the *Civil Procedure Act 2010* in Victoria):
  - The Court may order judicial mediation or private mediation
  - A referral to mediation may occur at any time during the dispute
  - Mediation must be attended by the parties or their representatives
  - Mediation has proven effective

# Feedback on mediation involving Asian parties (or certain parties with an Asian background)

- Language barriers are often present, and interpreters are required
- Overseas parties often send Australian-based representatives with limited authority to negotiate
- Loss of “face” can significantly hinder negotiations: parties can be unwilling to put forward a first offer or compromise for fear of how they will be perceived (including in the local community)
- Sometimes the mere fact that litigation has been commenced is seen as relationship-destroying and can act as a barrier to commercial negotiations
- Parties approach negotiations not through an analysis of risk but simply by reference to what they are prepared to pay to settle the dispute

# Different approaches to mediation

- Western “neutral” (or “facilitative”) mediation vs Asian “evaluative” mediation
- Judges acting as mediators (e.g. in certain civil law jurisdictions)
- The perceived similarities between litigation and judicial mediation

# What is the solution?

- Training and professional standards:
  - Cultural awareness/cultural competence
  - Understanding the differences between legal systems (e.g. the discovery process in common law jurisdictions and the evidence-gathering process in other jurisdictions)
- Information and education:
  - About our legal system and legal process, including in the context of pre-trial management
- More effective use of interpreters
  - Should orders be made for mediators to have their own interpreter?



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# Thank you!

[a.godwin@unimelb.edu.au](mailto:a.godwin@unimelb.edu.au)