



The ethical limits of advocacy at mediation

- **How the Australian Consumer Law applies to lawyers acting as advocates at mediations: why you shouldn't say, 'This is my client's final offer'**
- **The ethics of advocating at evaluative mediations**
- **The ethics of using neuroscience in mediations**

A Commercial Law Association lunchtime seminar

12.45 to 2.00pm, Friday, 20 September 2019

Dixson Room, Mitchell Wing, NSW State Library

CLA members: \$119; non-members \$149. One CLE point.

Speaker

Robert Angyal SC, 6 St James Hall Chambers

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This practical seminar is designed for lawyers who represent clients at mediations ... which means all lawyers handling civil disputes. It explores the answers to the question: 'What are the ethical restrictions on advocacy at mediations?' The seminar explains the impact on mediation advocacy of the solicitors' and barristers' rules, the common law of

misrepresentation and — of great importance — the Australian Consumer Law.

The ACL applies to lawyers acting as advocates at mediation. It cannot be excluded. It deems statements about future matters to be misleading unless there are reasonable grounds for making them. Common statements at mediations such as, 'This is my client's final offer. They will not make another offer or consider a counter-offer' may well breach the ACL. The seminar also explores two areas where the ethical limits of advocacy at mediation are unclear:

- What rules apply when you are advocating to mediators who use an evaluative model of mediation, ie, they offer opinions on disputed issues of fact and law? These mediations are quasi-adjudicative, but the rules of natural justice do not apply during them. What are the ethical limits of advocacy to an evaluative mediator?
- What ethical rules apply to the use of neuroscientific techniques which affect behaviour without those being affected being conscious of what is happening? The use of a colour such as **Drunk Tank Pink**, which has a radical calming effect, is an example of a neuroscientific technique.

Robert Angyal SC has been mediating since 1992 and frequently writes and speaks about mediation and mediation advocacy. Doyle's 2019 Guide lists him as one of NSW's leading mediators.