

'WE ARE LAWYERS, WE ARE NOT PSYCHOLOGISTS': HOW VICTORIAN PERSONAL INJURY LAWYERS PERCEIVE AND RESPOND TO CLIENTS' EMOTIONAL NEEDS DURING MEDIATION

TINA POPA,* CHRISTINA PLATZ,** KAYLEIGH YOUNG***
AND KATE JACKOWSKI****

Claimants in personal injury ('PI') disputes often endure profound physical and psychological harm. Traditionally resolved through litigation or court-annexed processes, these mechanisms rarely address claimants' emotional and psychological needs. Mediation has been promoted as a more responsive alternative, yet existing research indicates that it too falls short. This study explores the role of emotions in the resolution of PI claims, drawing on interviews with 12 Victorian PI lawyers to explore how lawyers perceive and respond to claimants' emotional needs during mediation. Findings reveal that while lawyers acknowledge the emotional toll of PI disputes, their focus remains on legal strategy and outcomes, leaving limited scope for non-legal needs. These findings suggest that current mediation practices are insufficiently client-centric. Integrating emotional and psychological considerations into dispute resolution processes offers a timely framework for reform, enabling lawyers and policymakers to better support claimants and promote more effective, client-centric outcomes in PI claims.

I INTRODUCTION

Personal injury ('PI') disputes are abundant in Victorian courts,¹ and arise in diverse contexts, from car accidents and workplace injuries to medical negligence, public liability, and institutional abuse. These cases share a clear thread: the

* Senior Lecturer, RMIT University. The authors acknowledge the RMIT Alumni and Philanthropy and the Malcolm Moore Industry Research Award in funding this research project, along with the research assistance of Lisa Heap and Yingyi Luo.

** Senior Lecturer, RMIT University.

*** Director, Clinical Psychologist, Workplace Conversations.

**** Director, Forensic Psychologist, Workplace Conversations.

1 For instance, in the 2024–25 period the Victorian County Court saw an increase in the Serious Injury List by 7% to 1,483 cases. Further, 176 proceedings were initiated in the Medical List and 56 in the WorkCover List relating to statutory benefits: see County Court of Victoria, *Annual Report 2024–25* (Report, December 2025) 36, 43, 46 <https://www.countycourt.vic.gov.au/files/documents/2025-12/ccv-annualreport-2024-25_0.pdf>.

physical and psychological harm to claimants is often permanent, life-altering, and deeply traumatic. While such disputes are litigated in the shadow of tort law doctrine,² the physical and psychological injuries sustained by claimants means disputes are often emotionally charged and characterised by non-legal and non-financial considerations.³ Roger Fisher and Daniel Shapiro define emotions as a felt experience that can either be positive or negative, while Edward J Kelly and Natalija Kaminskienė describe emotions as conscious mental reactions, generating responses such as anger, fear or sadness, experienced as intense feelings that are often directed towards a person or event, and are typically accompanied by physiological and behavioural changes.⁴ Emotions are deeply embedded in conflict and therefore for parties and lawyers to be successful in conflict management, it is important to address the emotional dimensions of the dispute.⁵ Traditionally, legal systems and institutions have adopted procedure-driven processes to resolve disputes, often prioritising rights-based approaches and legal arguments,⁶ thereby sidelining injured claimants' emotional needs. Yet, qualitative research has found that PI claimants are motivated by factors other than purely tangible compensatory motives, meaning emotional and 'human' factors are often at the forefront of such claims.⁷ To that end, research supports addressing emotions in conflicts as it has the potential to lead to enhanced outcomes for parties in dispute.⁸

Appropriate Dispute Resolution ('ADR') processes, such as mediation, attempt to address the limitations of adversarial litigation by creating forums for resolving disputes that aim to be less adversarial, more focused on party interests than strict legal

- 2 Such as entitlements under the *Wrongs Act 1958* (Vic), *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) or the *Transport Accident Act 1986* (Vic).
- 3 See, eg, Tamara Relis, *Perceptions in Litigation and Mediation: Lawyers, Defendants, Plaintiffs and Gendered Parties* (Cambridge University Press, 2009) ('*Perceptions in Litigation and Mediation*'); Patricia Weir, Liz Jones and Nicola Sheeran, 'Australian Lawyers' Experience of Exposure to Traumatic Material: A Qualitative Study' (2021) 28(3) *Psychiatry, Psychology and Law* 363, 364 <<https://doi.org/10.1080/13218719.2020.1776650>>. See also Kylie Burns, Carly Schrever and Prue Vines, 'Vicarious Trauma in the Judicial Workplace: State Liability for Judicial Psychiatric Injury in Australia' (2024) 31(3) *Psychiatry, Psychology and Law* 466 <<https://doi.org/10.1080/13218719.2024.2340697>>, suggesting that PI and compensation lawyers are exposed to materials containing intense human suffering and distress.
- 4 Roger Fisher and Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate* (Penguin Books, 2005) 4; Edward J Kelly and Natalija Kaminskienė, 'Importance of Emotional Intelligence in Negotiation and Mediation' (2016) 2(1) *International Comparative Jurisprudence* 55, 56 <<https://doi.org/10.1016/j.icj.2016.07.001>>.
- 5 In their research, Roger Fisher, William Ury and Bruce Patton developed four core principles of negotiation (principled negotiation) where one of the principles is to separate the people from the problem. This concept is integral to successful conflict management because it underscores that emotions are deeply embedded in conflict and that, to enable successful resolution, emotional needs must be considered and addressed: Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement without Giving In*, ed Bruce Patton (Houghton Mifflin Company, 2nd ed, 1991) 19–42. See also Part II(B) below, which explores how emotions may be managed in mediation. The importance of addressing emotion in conflict is also noted by Paula Collins, Dalma Demeter and Susan Douglas: see Pauline Collins, Dalma Demeter and Susan Douglas, *Dispute Management* (Cambridge University Press, 2021) 43–5 <<https://doi.org/10.1017/9781108881791>>.
- 6 Michael S King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' (2008) 32(3) *Melbourne University Law Review* 1096, 1119.
- 7 Relis, *Perceptions in Litigation and Mediation* (n 3) 42–6, 142.
- 8 Kelly and Kaminskienė (n 4).

rights. It also offers the promise of addressing parties' emotional needs.⁹ However, despite this promise, research suggests ADR processes (or the lawyers representing clients within them) are unable to facilitate emotional expression or closure.¹⁰ Lawyers representing injured claimants have an integral role in dispute resolution, and can overlook emotion in favour of legal doctrine, strategy and financial outcomes.¹¹ In doing so, lawyers may inadvertently act as barriers, preventing clients from having their non-legal needs met, such as a desire to tell their story to the defendant or to seek an acknowledgement or apology.¹² This disconnect between the ideals of dispute resolution versus reality creates an opportunity to explore how ADR processes might be better designed to meet participants' emotional and psychological needs, or at the very least prevent further harm.

Interdisciplinary research at the intersect of law and psychology has suggested that court proceedings often induce stress and trauma in disputants, consequently detrimentally impacting their overall wellbeing.¹³ The concept of *wellbeing*¹⁴ is multifaceted and includes good mental health, high life satisfaction, a sense of meaning or purpose, and the ability to manage stress.¹⁵ Psychological concepts of wellbeing and emotions have filtered into legal scholarship exploring the impact of legal systems on human actors. First, *procedural justice* scholarship highlights that participants in a legal system, such as disputants, value elements such as a voice, trust, courtesy/respect and neutrality as key factors in the dispute resolution

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- 9 For an exploration of the concept of ADR, please see: Tania Sourdin and Lola Akin Ojelabi, *Alternative Dispute Resolution* (Thomson Reuters, 7th ed, 2026) 11–13; Rachael Field, *Australian Dispute Resolution* (LexisNexis, 2022); Jessica Katz Jameson et al, 'Exploring the Role of Emotion in Conflict Transformation' (2009) 27(2) *Conflict Resolution Quarterly* 167 <<https://doi.org/10.1002/crq.254>>. Emotional needs in disputes refers to the human need to have feelings and concerns acknowledged and appreciated: Kelly and Kaminskiene (n 4) 58.
 - 10 Relis, *Perceptions in Litigation and Mediation* (n 3); Tina Popa, "'No One Gets Closure in the End': Non-adversarial Justice and Practitioner Insights into the Role of Emotion in Medical Negligence Mediation' (2018) 27(4) *Journal of Judicial Administration* 148.
 - 11 Tina Popa and Kathy Douglas, "'Best for the Protagonists Involved": Views from Senior Tort Lawyers on the Value of Mediation in Victorian Medical Negligence Disputes' (2019) 45(2) *Monash University Law Review* 333, 350–2.
 - 12 Ibid.
 - 13 King (n 6); Monica K Miller and Brian H Bornstein (eds), *Stress, Trauma, and Wellbeing in the Legal System* (Oxford University Press, 2013) <<https://doi.org/10.1093/acprof:oso/9780199829996.001.0001>>. The stress that the court system has on lawyers and judicial officers (including judges, magistrates, coroners, judicial registrars and others appointed to judicial office within a court) is explored in greater depth by Burns, Schrever and Vines (n 3) 466. For a PI context see: Tina Popa et al, "'A Big Nebulous, Multifaceted Concept": Reflections from Victorian Personal Injury Lawyers on Wellbeing, Burnout and Vicarious Trauma' (2024) 31(3) *Psychiatry, Psychology and Law* 417 <<https://doi.org/10.1080/13218719.2024.2342410>>.
 - 14 For a definition from the legal discipline, see Monica K Miller and Brian H Bornstein, 'Stress, Trauma, and Wellbeing in the Legal System: An Overview' in Monica K Miller and Brian H Bornstein (eds), *Stress, Trauma, and Wellbeing in the Legal System* (Oxford University Press, 2013) 5.
 - 15 In psychology, Carol Ryff proposes a six-part model: Carol D Ryff, 'Psychological Well-Being Revisited: Advances in the Science and Practice of Eudaimonia' (2014) 83(1) *Psychotherapy and Psychosomatics* 10 <<https://doi.org/10.1159/000353263>>; while Corey Keyes proposes a three-part model: Corey L M Keyes, Dov Shmotkin and Carol D Ryff, 'Optimizing Well-Being: The Empirical Encounter of Two Traditions' (2002) 82(6) *Journal of Personality and Social Psychology* 1007 <<https://doi.org/10.1037/0022-3514.82.6.1007>>.

process; these factors can help disputants accept and ‘live with’ a decision, regardless of the legal outcome.¹⁶ Second, *therapeutic jurisprudence* scholarship recognises legal systems and processes can be detrimental to disputants’ emotional and psychological wellbeing.¹⁷ Both of these non-adversarial approaches to justice promote ways of reforming legal processes to better meet the needs of disputants that do not strictly centre around legal or financial entitlements.¹⁸ Third, *human-centred design* has created an emerging field of ‘legal design’ which promotes innovation in designing legal processes to meet the ‘human needs’ of disputants.¹⁹

The aim of this article is to explore the role of lawyers in PI mediation, with a particular focus on how they engage with and respond to client emotion. Drawing on interviews with 12 Victorian PI lawyers, this article examines how PI lawyers navigate emotionally charged interactions, the strategies they use to address their clients’ distress, and the broader implications for legal practice. This article draws on data from a broader empirical study exploring emotional dynamics in Victorian PI disputes, however it does not include data from mediators or direct interviews with claimants. This article examines a discrete component of the dataset concerning how mediation processes fail to meet claimants’ emotional needs and proposes systemic reforms to dispute resolution design. For consistency, this article uses the term *claimant* to describe the injured party, or *client* when discussing the lawyer–client relationship. Part II introduces the tort landscape and the emotional dimensions of PI claims. ADR, particularly mediation, is discussed as an avenue that holds promise of meeting the emotional and non-legal needs of claimants. However, when mediation is used in PI disputes, no real opportunity is afforded for claimants to address emotional needs.²⁰ Lawyers in mediation play a critical role in gatekeeping emotional responsiveness, which aligns with past studies in Australia and internationally.²¹ Drawing on scholarship on procedural justice, therapeutic jurisprudence, and human-centred design, we argue that existing systems do not meet the non-legal needs of participants, such as their emotional and psychological wellbeing. In Part III, we present the methodology. In Part IV, our findings show that from the PI lawyers interviewed, while aware and sympathetic of their clients’

16 Tom R Tyler, ‘What Is Procedural Justice: Criteria Used by Citizens to Assess the Fairness of Legal Procedures’ (1988) 22(1) *Law and Society Review* 103 <<https://doi.org/10.2307/3053563>>; Denise Meyerson, Catriona Mackenzie and Therese MacDermott, ‘Introduction: Procedural Justice in Law, Psychology, and Philosophy’ in Denise Meyerson, Catriona Mackenzie and Therese MacDermott (eds), *Procedural Justice and Relational Theory: Empirical, Philosophical, and Legal Perspectives* (Routledge, 2021) 1 <<https://doi.org/10.4324/9780429317248>>.

17 King (n 6).

18 Michael King et al, *Non-adversarial Justice* (Federation Press, 2nd ed, 2014).

19 Margaret Hagan, ‘Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System’ (2020) 36(3) *Design Issues* 3 <https://doi.org/10.1162/desi_a_00600> (‘Legal Design as a Thing’); Margaret Hagan, ‘A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly’ (2018) 6(2) *Indiana Journal of Law and Social Equality* 199 (‘A Human-Centered Design’); Lisa Toohey et al, ‘Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice, and Human-Centred Design’ (2019) 19 *Macquarie Law Journal* 133 <<https://doi.org/10.2139/ssrn.3438538>>.

20 Relis, *Perceptions in Litigation and Mediation* (n 3); Popa (n 10).

21 Relis, *Perceptions in Litigation and Mediation* (n 3); Popa and Douglas (n 11).

non-legal needs, they recognised that mediation does not afford their clients the opportunity to have those needs met. In Part V, we discuss the findings and argue that PI disputes are appropriate settings for exploring ways to enhance emotional and psychological wellbeing of users, and to redesign dispute resolution processes to better meet the emotional, psychological, and non-legal needs of users. Part VI concludes this article.

II EMOTIONS, LAW AND DISPUTE RESOLUTION

PI claims are often steeped in emotion, as the person at the heart of the dispute – the claimant – has sustained a physical and/or psychological injury.²² PI claims encompass a plethora of claims, from transport accidents and workplace injuries to medical negligence and institutional sexual abuse,²³ meaning the injuries are frequently devastating, and the disputes emotionally charged. Emotional and psychological needs are often central to these disputes, with claimants' motivations to sue extending beyond compensation to include a desire for an apology, acknowledgement of harm, and the opportunity to tell their story.²⁴ Theoretically, mediation has the potential to address these non-legal needs by offering space for storytelling, a voice, and empathy.²⁵ However, practical shortcomings such as limited defendant participation, lawyers as barriers to claimants' emotional expression, and a predominant focus on legal strategy can hinder this potential.²⁶ Part II explores these issues and draws on empirical studies to show that while lawyers recognise the emotional needs of injured claimants, these needs are often sidelined in mediation. Scholarship on therapeutic jurisprudence, procedural justice, and legal design is also considered to support the argument that law impacts the emotional wellbeing of injured claimants. Where current processes fail to meet these needs, there is scope to redesign legal mechanisms – such as the mediation of PI claims – to better support the needs of injured claimants.

A Tort Law and the Emotional Dimensions of PI Claims

Tort claims have a deep-rooted common law history, meaning that these disputes frequently play out in litigious courtroom proceedings and contribute to the development of doctrinal principles.²⁷ For participants in tort litigation,

22 Arno Akkermans, 'Achieving Justice in Personal Injury Compensation: The Need to Address the Emotional Dimensions of Suffering a Wrong' in Prue Vines and Arno Akkermans (eds), *Unexpected Consequences of Compensation Law* (Hart Publishing, 2020) 15 <<https://doi.org/10.5040/9781509928026.ch-001>>.

23 For an overview, see Harold Luntz and Sirko Harder, *Assessment of Damages for Personal Injury and Death* (LexisNexis, 5th ed, 2021); Genevieve Grant and Jason Taliadoros, *Victorian Statutory Compensation Schemes* (LexisNexis, 2021); Benjamin Madden, Bill Madden and Janine McIlwraith, *Australian Medical Liability* (LexisNexis, 5th ed, 2024).

24 Tamara Relis, "'It's Not About the Money!'" A Theory on Misconceptions of Plaintiffs' Litigation Aims' (2007) 68(2) *University of Pittsburgh Law Review* 341 <<https://doi.org/10.5195/lawreview.2007.81>>.

25 For an overview of the advantages of mediation, see Field (n 9) ch 8.

26 Popa (n 10); Popa and Douglas (n 11).

27 Harold Luntz et al, *Luntz and Hamblly's Torts: Cases, Legislation and Commentary* (LexisNexis, 10th ed, 2025).

particularly injured claimants, such claims often contain multi-layered problems, including emotional dimensions.²⁸ To resolve such disputes via litigation, court processes are required to focus on ‘fact-finding, determination of the law, applying the law to the facts via rules of evidence, court procedure, statutory interpretation and case law’, contributing to the rich legal precedents that form the backbone of tort law claims.²⁹ However, court processes are generally inept at addressing non-legal needs of disputants (such as emotional wellbeing, personal relationships and health) as these extra-legal issues are often perceived as falling outside of a court’s jurisdiction.³⁰ Nevertheless, Michael S King contends that neglecting emotional aspects can impede court processes,³¹ hinder access to justice, prevent emotional needs from being met, and exacerbate, or result in, additional stress and trauma for disputants. Furthermore, existing research acknowledges that legal systems have the potential to improve disputants’ wellbeing, by creating processes that better align to their emotional and psychological needs.³²

PI claims, a branch of tort law, have a physical and/or psychological injury component, with claimants frequently presenting with complex personal and emotional dimensions alongside legal issues.³³ Medical negligence claims, a subset of PI law, often evoke heightened emotional responses due to the breach of trust between healthcare practitioners and patients, particularly where patients are especially vulnerable.³⁴ In such instances, sustaining devastating injuries and the associated trauma often heighten the claimant’s emotions during disputes.³⁵ Mary-Elizabeth Tumelty’s Irish study of medical negligence claims found that the adversarial nature of litigation and the length of the litigation processes were two key aspects that adversely impacted upon both the claimant and the healthcare professional.³⁶ Tumelty also found that the litigious process was extremely stressful for all parties involved and had the potential for profound emotional impacts on claimants in medical negligence claims. PI claims (in contrast to claims for pure economic loss or infringement of property rights) are therefore arguably the ideal type of tort claim that warrants specific attention to emotional and psychological factors, along with disputants’ wellbeing.³⁷ Thus, addressing the emotional

28 King (n 6) 1118.

29 Ibid 1119.

30 Ibid 1118–19.

31 Ibid 1119.

32 Miller and Bornstein (n 14) 3–13.

33 David Alcorn, ‘Mediation and the Psychologically Injured Plaintiff’ (1996) 12(1) *Queensland University of Technology Law Journal* 162, 167 <<https://doi.org/10.5204/qutlr.v12i0.417>>.

34 See, eg, Penelope Weller et al, ‘The Importance of Legal Accountability in Negligence and Mental Health Care’ (2024) 47(2) *University of New South Wales Law Journal* 490 <<https://doi.org/10.53637/BKPU6989>> (discussing numerous Australian case examples involving medical negligence claims and particularly vulnerable patients).

35 Alcorn (n 33).

36 Mary-Elizabeth Tumelty, ‘Exploring the Emotional Burdens and Impact of Medical Negligence Litigation on the Plaintiff and Medical Practitioner: Insights from Ireland’ (2021) 41(4) *Legal Studies* 633, 649–54 <<https://doi.org/10.1017/lst.2021.20>> (‘Emotional Burdens and Impact of Medical Negligence Litigation’).

37 Criminal, family, disability and immigration law, as well as coronial inquiries, domestic violence, child protection, compensation and PI claims, involve high emotions in the form of human depravity, intense human suffering and distress: Burns, Schreier and Vines (n 3) 471, 483. Further, criminal cases were

dimensions in medical negligence claims/PI claims can be crucial in successfully reaching settlement.

Contemporary scholarship on social issues in tort law also recognises the importance of emotional dimensions in tort claims.³⁸ Arno Akkermans acknowledges the vast literature showing that injured people are not predominantly motivated to pursue damages; thus, seeking compensation is usually not reported as the sole or primary motive for suing. Rather, non-legal and non-financial needs are often reported as primary motivators, involving the claimant seeking one, or a combination of: clarification, acknowledgement of fault, responsibility, desire to '[see] justice done' and preventing the same incident reoccurring.³⁹ Akkermans contends that 'compensation is required not only on the monetary level but also on the emotional one'⁴⁰ and that adversarial fault-based systems are anti-therapeutic for injured individuals. To that end, Akkermans suggests that resolution processes should be more emotionally attuned and provide a broader scope of services than just compensation – akin to health, rehabilitation and return to work processes evident in many no-fault compensation schemes.⁴¹

The needs of injured claimants are also recognised in the field of psychology, which has underpinned a movement to integrate law practice with psychological principles, termed trauma-informed practice. Trauma is a long-lasting response to a traumatic event that can lead to emotional, cognitive and physiological impacts on the affected individual.⁴² Extant literature suggests that there is a glaring gap in legal processes relating to client needs, a gap that can be filled with trauma-informed practice. Trauma-informed practice recognises the client's experience of trauma, and places it at the forefront of the process. This can include trauma-informed mediation, which is rooted in understanding the impact of trauma, acknowledges the physical, psychological and emotional safety needs of the client, and provides an opportunity for the client to rebuild control and empowerment.⁴³ Importantly, the process emphasises legal professionals' self-care, recognising the emotional impact and potential transfer of client trauma,⁴⁴ which is increasingly recognised in the literature on vicarious trauma in the legal profession. Trauma-informed practice is not a novel approach and has been shown to be effective in

identified as distressing to the judiciary due to the content and presence of emotional consequences when making decisions in such cases: Carly Schrever, Carol Hulbert and Tania Sourdin, 'The Privilege and the Pressure: Judges' and Magistrates' Reflections on the Sources and Impacts of Stress in Judicial Work' (2024) 31(3) *Psychiatry, Psychology and Law* 327 <<https://doi.org/10.1080/13218719.2024.2335913>>.

See also Popa et al (n 13) 417.

38 Akkermans (n 22) 19.

39 Ibid 18.

40 Ibid 19.

41 Ibid 28–9.

42 Constance J Dalenberg, Elizabeth Straus and Eve B Carlson, 'Defining Trauma' in Steven N Gold (ed), *APA Handbook of Trauma Psychology: Foundations in Knowledge* (American Psychological Association, 2017) 15.

43 Taylor Marshall, 'Trauma-Informed Mediation: A Path to Healing and Resolution' (2024) 37(1) *Journal of the American Academy of Matrimonial Lawyers* 325, 329.

44 Ibid.

family dispute resolution, where trauma lies at the heart of many of the families in dispute.⁴⁵

There is increasing recognition of the role that emotion and psychological wellbeing play in the legal system.⁴⁶ In the PI context, contemporary qualitative research shows that emotional dimensions are a crucial aspect of such disputes, particularly in mediation. For example, Tamara Relis' qualitative study of 64 court-orientated Canadian medical malpractice mediations showed that emotional and 'human' factors were integral aspects in the mediation of medical disputes, with claimants often pursuing non-legal and non-financial objectives. This included wanting to be seen, a desire to have their voice heard, seeking an explanation and reasons behind the medical error, and an acknowledgment of the suffering they had experienced following injury.⁴⁷

Similar findings are echoed in Australian studies of PI dispute resolution from the perspective of lawyers. In a study of Victorian medical negligence lawyers, 18 out of 24 participants acknowledged that emotion was a key aspect of medical negligence claims.⁴⁸ In this study, 15 out of 24 participants saw this emotion as being predominantly plaintiff-orientated, including as an 'emotional stressor' underpinning the mediation process.⁴⁹ However, despite acknowledging that emotion is a key factor in medical negligence disputes, 20 participants expressed the view that mediation did not assist with the expression of emotion.⁵⁰ Lawyer involvement can often hinder emotional needs being met, as lawyers sideline emotional expression for tactical reasons to ensure the focus remains on legal and financial issues.⁵¹ The non-attendance by defendants (particularly healthcare professionals in medical negligence disputes) and limited meaningful participation by claimants are key blockers of emotional expression in such claims.⁵²

As demonstrated, emotion plays a pivotal role in PI disputes, with claimants often seeking not only compensation but also emotional acknowledgment and validation. Yet, these emotional needs frequently remain unmet through traditional legal processes. Given that most PI claims are resolved through ADR, the following section explores how ADR, particularly mediation, has the potential to address these emotional components, and examines the critical role lawyers play in facilitating or hindering this process.

45 Rachael M Field and Angela Lynch, 'Hearing Parties' Voices in Coordinated Family Dispute Resolution (CFDR): An Australian Pilot of a Family Mediation Model Designed for Matters Involving a History of Domestic Violence' (2014) 36(4) *Journal of Social Welfare and Family Law* 392 <<https://doi.org/10.1080/09649069.2014.967988>>.

46 Heather Conway and John Stannard (eds), *The Emotional Dynamics of Law and Legal Discourse* (Hart Publishing, 2016).

47 Relis, *Perceptions in Litigation and Mediation* (n 3) 142.

48 Popa (n 10) 154.

49 Ibid.

50 Ibid 156.

51 Ibid 156–7.

52 Ibid 160.

B ADR and Mediation: Promise and Practice

Mediation is a dispute resolution process that is inherently different from court, as in contrast to a trial, it is facilitated by a mediator that provides a structured process to facilitate conversation between the disputants to potentially resolve the dispute.⁵³ Facilitative mediation, which is the focus of this study, is governed by self-determinism and autonomy and focuses on interests instead of legal positions.⁵⁴

Emotion is a key component of conflict,⁵⁵ and research recognises that addressing emotions is a significant component of dispute resolution, and hence an important part of mediation.⁵⁶ Paula Collins, Dalma Demeter and Susan Douglas emphasise that neuroscience research establishes that the amygdala, a key structure in the 'primitive emotional brain', plays an important role in decision-making and emotional processing, which are central parts of self-determination in mediation.⁵⁷ To successfully address the emotional component of conflict, Fisher and Shapiro identify five core concerns.⁵⁸ First, the concept of appreciation involves ensuring parties feel heard, that they have a voice and are understood.⁵⁹ This is supported through the stages of mediation and skills such as active listening. Tools such as summarising, paraphrasing and reframing are key communication skills that help disputants feel heard but also help to address emotion by removing emotional sentiments from statements, and neutralising language, so that disputants can better identify and respond to issues without being fuelled by emotion. However, this purported advantage has been critiqued by scholars in instances where the use of reframing by a mediator changes the intended meaning, thus depriving the disputants of voice and autonomy.⁶⁰ Second, affiliation is fostered by shifting parties from an adversarial to collaborative mindset, often supported through stressing common ground, reality testing, agendasetting and early exploration of shared interests. Third, acceptance, or autonomy, is promoted by enabling parties to retain control over decisions and feel ownership of the process which is naturally supported through the concept of self-determination. Fourth, addressing status requires acknowledging each party's standing and using respectful forms

53 Sourdin and Akin Ojelabi (n 9) 71–7; Rachael Field and Jonathan Crowe, *Mediation Ethics: From Theory to Practice* (Edward Elgar Publishing, 2020) chs 1–2 <<https://doi.org/10.4337/9781786437785>>; *Federal Court Rules 1979* (Cth) ord 72, as repealed by *Federal Court Rules 2011* (Cth) r 28.04.

54 Collins, Demeter and Douglas (n 5) 144, 177–84.

55 Michelle Maiese, 'Engaging the Emotions in Conflict Intervention' (2006) 24(2) *Conflict Resolution Quarterly* 187 <<https://doi.org/10.1002/crq.167>>; Tricia S Jones, 'Emotional Communication in Conflict: Essence and Impact' in William F Eadie and Paul E Nelson (eds), *The Language of Conflict and Resolution* (Sage Publications, 2001) 81, 91–2 <<https://doi.org/10.4135/9781452205496.n6>>; Jameson et al (n 9).

56 Tricia S Jones and Andrea Bodtker, 'Mediating with Heart in Mind: Addressing Emotion in Mediation Practice' (2001) 17(3) *Negotiation Journal* 217 <<https://doi.org/10.1111/j.1571-9979.2001.tb00238.x>>; Collins, Demeter and Douglas (n 5) 43–5.

57 Collins, Demeter and Douglas (n 5) 42–3, 181–4.

58 Fisher and Shapiro (n 4).

59 Voice is a key factor in procedural justice literature and research: see Rebecca Hollander-Blumoff and Tom R Tyler, 'Procedural Justice and the Rule of Law: Fostering Legitimacy in Alternative Dispute Resolution' [2011] (1) *Journal of Dispute Resolution* 1; Collins, Demeter and Douglas (n 5) 45–58, 197–8.

60 Sourdin and Akin Ojelabi (n 9) 255; Laurence Boulle and Nadja Alexander, *LexisNexis Skills Series: Mediation Skills and Techniques* (LexisNexis, 2nd ed, 2012) 282–3; Collins, Demeter and Douglas (n 5) 45–58, 197–8.

of address to enhance communication.⁶¹ Fifth, clarifying the roles of both the mediator, lawyers involved and the parties reduces uncertainty and helps establish a calm, confident atmosphere conducive to productive engagement.⁶²

Further, Shapiro acknowledges that negative and positive emotions impact on mediation in several ways. For instance: negative emotions can divert people's attention from substantive (legal) issues; disclosure of emotions can allow for manipulation or tactical advantage by the opposition; and emotions can hinder rational thinking and influence disputants' behaviour in mediation. On the other hand, positive emotions can help foster understanding of needs and interests, they can help you to achieve parties' goals in conflict (based on their interests) and it is through emotions that people communicate important information about themselves, their position and how they wish to be treated.⁶³ However, as emotions are deeply embedded in conflict, if not managed accordingly – and if the five concerns as expressed by Fisher and Shapiro are not properly addressed – emotions may hinder people's ability to experience positive outcomes in mediation.⁶⁴

Theoretically, mediation is well-suited for PI disputes because of the flexibility of the process to cater to emotional and non-legal needs of injured claimants.⁶⁵ However, studies of mediation of PI claims show that the theoretical ideals are not always achieved because often no meaningful opportunity is provided to meet such emotional needs; instead, there is a focus on legal rights and financial compensation.⁶⁶ In practice, defendants (such as doctors in medical negligence claims) are often represented by insurance companies so there is no real opportunity for closure or for emotional discussion.⁶⁷ Hence, these non-legal needs are often not met, especially in medical negligence claims where health professionals rarely attend mediation.⁶⁸ For example, in a United States study of mediation of medical negligence claims, 25 out of 31 plaintiffs attended mediation but not a single doctor attended.⁶⁹ The lack of attendance by defendants drastically limits any 'real' opportunity for emotional needs to be met, because often injured claimants wish

61 This is, for example, supported in the introductory statement by the mediator but also through ground rules: see Sourdin and Akin Ojelabi (n 9) 255; Collins, Demeter and Douglas (n 5) 45–58, 197–200.

62 Fisher and Shapiro (n 4); Sourdin and Akin Ojelabi (n 9) 255, 260–4; Collins, Demeter and Douglas (n 5) 197.

63 Daniel Shapiro, 'Untapped Power: Emotions in Negotiation' in Roy J Lewicki, Bruce Barry and David M Saunders (eds), *Negotiation: Readings, Exercises and Cases* (McGraw Hill Higher Education, 7th ed, 2015) 163–70; Fisher and Shapiro (n 4) 5–8. The impact that emotions have on communication is explored in Collins, Demeter and Douglas (n 5) 43–5.

64 Kelly and Kaminskienė (n 4) 57; Cheryl Picard and Janet Siltanen, 'Exploring the Significance of Emotion for Mediation Practice' (2013) 31(1) *Conflict Resolution Quarterly* 31 <<https://doi.org/10.1002/crq.21078>>; Fisher and Shapiro (n 4).

65 Alcorn (n 33); Lisa Emanuel and Michael Mills, 'Medical Negligence, Litigation and Mediation' (2002) 5(4) *ADR Bulletin* 55; Carol B Liebman, 'Medical Malpractice Mediation: Benefits Gained, Opportunities Lost' (2011) 74(3) *Law and Contemporary Problems* 135.

66 Relis, *Perceptions in Litigation and Mediation* (n 3); Popa (n 10).

67 Ibid.

68 Relis, *Perceptions in Litigation and Mediation* (n 3) 26; Liebman (n 65) 140–1; Chris Stern Hyman et al, 'Interest-Based Mediation of Medical Malpractice Lawsuits: A Route to Improved Patient Safety?' (2010) 35(5) *Journal of Health Politics, Policy and Law* 797, 807 <<https://doi.org/10.1215/03616878-2010-028>>.

69 Hyman et al (n 68) 807, 814.

to confront the defendant to seek an explanation, acknowledgement of suffering or an apology. Thus, it is difficult to obtain closure from an insurance representative who is not the defendant that caused the actual harm.

Further, past research has shown that emotions can be perceived as detracting from legal issues, with lawyers preferring to focus on legal issues and attaining the best financial outcome for the client.⁷⁰ Thus, research shows that lawyers tended to dominate the mediation processes which hinders the capacity of mediation to address emotion.⁷¹ For example, in a 2015–16 qualitative study of Victorian medical negligence lawyers, participants in the study stated that they valued mediation for resolving medical negligence claims, but they discouraged their clients from speaking and prevented emotional dialogue between the claimant and the tortfeasor (or their representative).⁷²

Internationally, an Irish study of medical negligence claims found the potential for litigation to be harmful to both claimants and healthcare practitioners. It recommended reform by introducing pre-action protocols, case management and mediation.⁷³ Despite holding the potential to reduce adverse emotional aspects of litigation, many of these procedural innovations have already been introduced into the Australian legal system, though they do not directly purport to address emotional needs. For example, legislation and policy already embed mediation at the heart of dispute resolution in the Victorian judiciary. One example is the *Civil Procedure Act 2010* (Vic) ('*Civil Procedure Act*') which contains an overarching purpose 'to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute'.⁷⁴ Further, section 66 of the *Civil Procedure Act* provides that the court may make an order referring a civil proceeding, or part of a civil proceeding, to ADR. This may include mediation, settlement conference, expert determination, conciliation, or arbitration, as provided for in the *Civil Procedure Act* section 3.⁷⁵

Hence, courts may, and often do, refer parties to mediation.⁷⁶ For instance, in Victoria, a Supreme Court Practice Note explains that case management includes ADR as a standard step, while the County Court Medical List requires disputants to attempt mediation.⁷⁷ As described earlier, mediation has theoretical potential to address emotional needs, but these emotional dimensions are often kept subordinate to legal issues, predominantly by lawyers who, to a degree, act as barriers to

70 Popa and Douglas (n 11) 363.

71 Ibid 359.

72 Ibid.

73 Tumelty, 'Emotional Burdens and Impact of Medical Negligence Litigation' (n 36) 654–5.

74 *Civil Procedure Act 2010* (Vic) s 7(1) ('*Civil Procedure Act*').

75 The *Supreme Court (General Civil Procedure) Rules 2015* (Vic) r 50.07 provides that the Court has power to order that civil proceedings be referred to mediation at any time, with or without the consent of the parties. Similar initiatives have also been implemented at the federal level: *Civil Dispute Resolution Act 2011* (Cth) ss 6–7.

76 *Civil Procedure Act* (n 74) s 47.

77 See, eg, Supreme Court of Victoria, *Practice Note SC CC 1: Commercial Court*, 26 February 2024 <<https://www.supremecourt.vic.gov.au/areas/legal-resources/practice-notes/practice-notes-archive/sc-cc-1-commercial-court-second-revision>>; County Court of Victoria, *Practice Note PNCLD 6–2020: Medical List*, 1 July 2020 <<https://www.countycourt.vic.gov.au/files/documents/2020-12/medical-list.docx>>.

emotional expression.⁷⁸ Further, Victorian courts are not new to case management processes which are used to streamline procedures and improve efficiency.⁷⁹ Finally, some jurisdictions, including South Australia, have introduced pre-action protocols for medical negligence claims, with qualitative findings suggesting their use is positive and fair.⁸⁰ However, these procedures do not place emotion at the centre of PI dispute resolution, highlighting an opportunity to design processes that better meet human needs.

Given these tensions between mediation's theoretical capacity to address emotional needs and the practical realities that often suppress them, the following section examines the pivotal role lawyers play in mediation.

C Role of Lawyers in Mediation

The increasing involvement of lawyers in court-connected ADR, particularly mediation, reflects both a legal and ethical shift in the Australian legal system, where lawyers are not only expected to actively promote ADR in line with statutory duties and professional standards,⁸¹ but also play a pivotal role in shaping how mediation is conducted through their direct participation and influence.⁸² Lawyers can be involved in mediation in two ways: (1) lawyers can act as a mediator, or (2) they can legally represent the disputants in the mediation.⁸³ The following section focuses on lawyers acting as legal representatives in mediation.⁸⁴

Lawyers representing clients in mediation must comply with professional conduct rules which require lawyers to advise their client of available dispute resolution processes (such as mediation) and their suitability.⁸⁵ Thus, lawyers must act in their clients' best interests and support them to gain access to justice in an efficient and cost-effective manner. To achieve this, lawyers must be familiar with the range of dispute resolution processes, their purpose and governing principles, and further, they need to possess knowledge on conflict and dispute resolution management. In mediation, it is ideal practice for lawyers to be aware of their own role, be respectful towards the mediator, to act collaboratively, and remain supportive of their client.⁸⁶ However, such ideals may not be achieved in practice

78 Relis, *Perceptions in Litigation and Mediation* (n 3); Popa (n 10).

79 Judicial Registrar Julie Clayton, 'Case Management in Common Law Specialist Lists in the Supreme Court of Victoria' (Speech, Australian Lawyers Alliance Victorian State Conference, 5 May 2018) <<https://www.supremecourt.vic.gov.au/sites/default/files/assets/2018/06/62/065965c2f/Case%20Management%20in%20Common%20Law%20Specialist%20Lists%20in%20the%20SCV.pdf>>.

80 Tania Sourdin, Margaret Castles and Madeline Muddle, 'Pre-action Requirements in Medical Negligence Matters' (2018) 7(2) *Journal of Civil Litigation and Practice* 77.

81 For an overview, see Popa and Douglas (n 11) 349.

82 Kathy Douglas and Becky Batagol, 'The Role of Lawyers in Mediation: Insights from Mediators at Victoria's Civil and Administrative Tribunal' (2014) 40(3) *Monash University Law Review* 758, 765.

83 Collins, Demeter and Douglas (n 5) 212.

84 Research pertaining to lawyers acting as mediators is the focus of future research publications, and is beyond the scope of this article.

85 *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) r 7.2; *Civil Dispute Resolution Act 2011* (Cth) s 9.

86 Kathy Douglas and Lola Akin Ojelabi, 'Civil Dispute Resolution in Australia: A Content Analysis of the Teaching of the Topic of ADR in the Core Legal Curriculum' (2024) 45(2) *Adelaide Law Review*

where lawyers are required to act in their clients' best interests and support them to achieve an outcome in an efficient and cost-effective manner.

Collaboration (in contrast to Collaborative Practice)⁸⁷ requires a different skill set from adversarial skills needed in litigation and an awareness of this shift in skills is beneficial to lawyers when acting in a mediation setting.⁸⁸ Traditionally, these skills have been understood as central to the role of mediators. However, as legal education – and in particular the Priestley 11 requirement of Civil Dispute Resolution – now incorporates ADR processes and their associated competencies, and as some universities offer specialised ADR courses, the development of these skills has become equally significant for legal practitioners.⁸⁹

First, a collaborative lawyer must abide by ethical and professional conduct rules to ensure confidentiality and the integrity of the process. Second, a collaborative lawyer will possess advanced communication skills suited for mediation.⁹⁰ Generally, this includes communication skills such as active listening, reflection – including summarising and paraphrasing – as well as reframing, which are skills required to support effective ADR processes such as mediation.⁹¹ Such skills, often associated with mediators, foster understanding and promote dialogue rather than escalating the dispute. Further, a collaborative lawyer will possess abilities to support their client including providing legal advice when necessary.⁹²

Third, a collaborative lawyer brings strong emotional intelligence,⁹³ including empathy, helping them recognise and respond to emotional cues of their clients and other participants. This underscores the importance of the lawyer's supportive role in mediation, a role previously identified as essential, as it facilitates constructive engagement, strengthens relational dynamics between the parties, and assists clients in progressing toward a mutually acceptable resolution. Additionally, lawyers need self-awareness to manage personal biases and emotions, and the necessary skills

339, 343, 347–8 ('Civil Dispute Resolution in Australia'). The value of collaborative lawyers are further stressed in Douglas and Batagol (n 82) 758, 760–3, 767, 779–81; Olivia Rundle, 'A Spectrum of Contributions that Lawyers Can Make to Mediation' (2009) 20(4) *Australasian Dispute Resolution Journal* 220; Law Council of Australia, *Guidelines for Lawyers in Mediations* (May 2019) Guidelines 1, 3, 5.1, 6.1, 6.3 ('*Guidelines for Lawyers in Mediations*'). The role of lawyers in mediation may vary depending on the type of mediation that is utilised and the dispute at hand: at Guideline 1. For an in-depth historical analysis of the concept of access to justice and its relation to the legal profession and society in general, see Mary Anne Noone and Lola Akin Ojelabi, 'Alternative Dispute Resolution and Access to Justice in Australia' (2020) 16(2) *International Journal of Law in Context* 108 <<https://doi.org/10.1017/S1744552320000099>>; Field (n 9) 284–5.

87 See Sourdin and Akin Ojelabi (n 9) ch 4; Anne Ardagh and Guy Cumes, 'The Legal Profession Post-ADR: From Mediation to Collaborative Law' (2007) 18(4) *Australasian Dispute Resolution Journal* 205.

88 Collins, Demeter and Douglas (n 5) 34–5, 212.

89 Douglas and Akin Ojelabi, 'Civil Dispute Resolution in Australia' (n 86) 361.

90 Sourdin and Akin Ojelabi note that learning advanced collaboration skills through an ADR course can help lawyers to advance their existing skill base: Sourdin and Akin Ojelabi (n 9) 219–20.

91 Ibid. The usefulness of active listening skills is also noted by Douglas and Batagol (n 82) 758, 791. See also Peter Condliffe and Claire Holland, *Conflict Management: Theory and Practice* (LexisNexis, 7th ed, 2026) ch 4, which is written for a broad audience of conflict managers, including lawyers: at xxiii–xxiv.

92 See Sourdin and Akin Ojelabi (n 9) 83, 100; Field (n 9) 284–5.

93 Daniel Goleman, *Emotional Intelligence: Why It Can Matter More than IQ* (Bantam Books, 1996); John D Mayer, Richard D Roberts and Sigal G Barsade, 'Human Abilities: Emotional Intelligence' (2008) 59 *Annual Review of Psychology* 507 <<https://doi.org/10.1146/annurev.psych.59.103006.093646>>.

to build trust and rapport with all participants. That means collaborating not only with their own client, but also with the other side, the mediator, and anyone else involved in the process.⁹⁴ Fourth, a collaborative lawyer must have problem-solving skills and be able to think creatively about potential solutions the disputants may need help with.⁹⁵ Knowing their own role in mediation and being respectful of process, lawyers should allow conversations to be had between the disputants to support emotional healing and foster understanding.⁹⁶

The role of lawyers in mediation is therefore multifaceted, and the provision of appropriate and comprehensive training remains of paramount importance. The following section explores the educational requirements to practice law in Australia and emphasises how ADR skills fit into that context.

1 Education of Lawyers about Dispute Resolution

In Australia, the Law Admissions Consultative Committee ('LACC') is the governing body that promotes a uniform approach to admission to practise as a lawyer.⁹⁷ States and territories have specific requirements to practice law in Australia which includes a university qualification in law, which may be the Juris Doctor or a Bachelor of Laws degree from an institution approved by the Council of Legal Education.⁹⁸ The degree must include the Priestley 11 core subjects, which are nationally prescribed areas of legal knowledge required for admission.⁹⁹ After completing the academic component, applicants must undertake Practical Legal Training through an approved provider. This typically results in a Graduate Diploma in Legal Practice, which includes both coursework and supervised legal experience.¹⁰⁰ In 2011 and with the enactment of the *Civil Procedure Act*, legal

94 *Guidelines for Lawyers in Mediations* (n 86) Guideline 5.2.

95 Douglas and Batagol (n 82) 758, 762–3.

96 Collins, Demeter and Douglas (n 5) 34–6; *Guidelines for Lawyers in Mediations* (n 86) Guideline 5.1(d); Douglas and Batagol (n 82) 775–87; Susan Daicoff, 'Law as a Healing Profession: The "Comprehensive Law Movement"' (2006) 6(1) *Pepperdine Dispute Resolution Law Journal* 1, 10. The importance put on emotional healing and understanding find support in the concept of therapeutic justice: see King et al (n 18) ch 7.

97 'Law Admission Consultative Committee (LACC)', *Legal Services Council* (Web Page, 23 June 2026) <<https://legalservicescouncil.org.au/about-us/law-admissions-consultative-committee.html>>.

98 The *Legal Profession Uniform Admission Rules 2015* (Vic) ('*Uniform Admission Rules*') adopts the Law Admissions Consultative Committee, 'Model Admission Rules 2015' (Rules, 31 October 2025) ('*Model Admission Rules*') which is a national model developed by the Law Admissions Consultative Committee; *Uniform Admissions Rules* (n 98) s 5. See 'Admissions', *Victorian Legal Admissions Board* (Web Page, 23 April 2026) <<https://www.lawadmissions.vic.gov.au/admissions>>; 'Model Admission Rules' (n 98) r 2. See also Law Admissions Consultative Committee, 'Accreditation Standards for Australian Law Courses' (July 2018) cl 4.1 <<https://legalservicescouncil.org.au/documents/accreditation-standards-for-law-courses.pdf>>, which provides that for a course to be accredited it must lead to a degree or similar qualification in law.

99 'Approved Priestley Subjects in Victoria 2012–2026', *Victorian Legal Admissions Board* (Web Page, 14 May 2026) <<https://www.lawadmissions.vic.gov.au/approved-priestley-subjects-in-victoria-2012-2026>>.

100 *Uniform Admission Rules* (n 98) s 6; 'Model Admission Rules' (n 98) r 9. Legal education in Australia is also influenced by accrediting bodies such as the Tertiary Education Quality Standards Agency and, until 2024, the Council of Australian Law Deans ('CALD') which is made up of representatives from the various law programs in Australia: Olivia Rundle and Lynden Griggs, 'Law Schools and the Burden of Bureaucracy: Release the Yoke (a Plea from the Coalface) Part 1' (2019) 93(5) *Australian Law Journal* 389, 389–90, 499.

education saw a shift and ADR became part of the Priestley 11 subject (in some universities 'unit' or 'course'), Civil Procedure. In 2017, Civil Procedure was renamed to Civil Dispute Resolution which highlighted the need for lawyers to be educated on all dispute resolution processes, not simply litigation.¹⁰¹ Hence, Australian universities that provide legal qualification pathways must now teach ADR processes as part of the mandatory Civil Dispute Resolution. However, some universities have a separate ADR subject that is a compulsory part of their law program, while most other Australian universities fulfill their ADR requirement through integrated content in Civil Dispute Resolution and offer a separate ADR subject as an elective.¹⁰²

Traditionally, lawyers have therefore been trained to be adversarial in nature.¹⁰³ As discussed, while recent shifts in law accreditation now require the teaching of ADR as part of Civil Dispute Resolution, that focus is largely theoretical and aimed at equipping law students with knowledge about the range of dispute resolution processes available.¹⁰⁴ The way that dispute resolution is taught in practice, including practical skills, can thus vary vastly. For example, mapping of existing institutions show a huge variation of focus on ADR across institutions from standalone subjects to those integrated with civil dispute resolution, and to those that have a medium or minimal focus.¹⁰⁵ Thus, lawyers are arguably not well-equipped to manage emotion in conflict, which requires emotional intelligence, communication skills and skills pertaining to reflective practice. Some of these skills may be introduced in Civil Dispute Resolution and/or a dedicated ADR course, however, the teaching of such skills as part of Civil Dispute Resolution is limited. Further, if such skills are introduced in a dedicated ADR subject this may be due to an academic interest in the topic. Finally, if an ADR subject is purely an elective, acquiring ADR skills will depend on the choice of the student.¹⁰⁶ Ultimately, this means that lawyers may not be equipped – at the very outset of their law career – to recognise, manage or address clients' emotional needs during dispute resolution.

101 *Civil Procedure Act* (n 74) s 22; *Civil Dispute Resolution Act* 2011 (Cth) s 6. The change in name from Civil Procedure to Civil Dispute Resolution was effective from 2017: 'Model Admission Rules' (n 98) sch 1.

102 See, eg, 'Negotiation and Dispute Resolution', *RMIT University Handbook* (Web Page, 17 March 2026) <handbook.rmit.edu.au/ords/t/rmit/catalogue/course?p6_code=038583>; 'LAWS6102: Alternative Dispute Resolution', *University of Newcastle Handbook* (Web Page, 2025) <handbook.newcastle.edu.au/course/2025/LAWS6102>; Douglas and Akin Ojelabi, 'Civil Dispute Resolution in Australia' (n 86) 339.

103 Julie Macfarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBC Press, 2008) 28–9 <<https://doi.org/10.59962/9780774855792>>, where Macfarlane discusses the shifting role of lawyers who have traditionally been trained to be adversarial in nature. Chapters 1 and 2 provide further context about the culture of law and professional identity of lawyers.

104 See Douglas and Akin Ojelabi, 'Civil Dispute Resolution in Australia' (n 86) 340–2.

105 Ibid 355–8.

106 Kathy Douglas and Lola Akin Ojelabi, 'Lawyers' Ethical and Practice Norms in Mediation: Including Emotion as Part of the Australian Guidelines for Lawyers in Mediation' (2023) 26(2) *Legal Ethics* 297, 301–3 <<https://doi.org/10.1080/1460728x.2023.2227554>>.

2 *Role of Lawyers in Mediation Studies*

Over the preceding two decades, a plethora of influential studies have explored the role of lawyers in mediation, with findings increasingly recognising that lawyers can play an integral role in mediation.

In 2009, Olivia Rundle identified five distinct roles that lawyers may adopt in dispute resolution, particularly mediation.¹⁰⁷ These range from the Absent Advisor, who provides legal advice but does not attend the mediation, to the Advisor Observer, who attends to support the client without engaging with the opposing party. The Expert Contributor participates in the mediation and offers advice yet similarly refrains from direct interaction with the other side. More actively involved is the Supportive Professional Participant, who engages in negotiation and other mediation activities. Finally, the Spokesperson assumes a central role by both advising and speaking on behalf of the client, who remains largely silent. Rundle's model offers a useful framework for categorising lawyer involvement and underscores that the role adopted may vary depending on the context and subject matter of the mediation.¹⁰⁸

In a 2009 study of 16 mediators at the Victorian Civil and Administrative Tribunal ('VCAT'), Kathy Douglas and Becky Batagol explored the role of lawyers in mediation from the perspective of mediators.¹⁰⁹ Using Rundle's model, the analysis of data showed 11 of the mediators viewed lawyers as Expert Contributors, 8 as Supportive Professional Participants and 6 as the Spokesperson, meaning that mostly lawyers were positioned in the middle of Rundle's spectrum.¹¹⁰ Mediators valued lawyers who understood the process and worked collaboratively, though acknowledged a small portion of lawyers who 'undermined the process and fomented conflict'.¹¹¹

Relis' 2009 study explored the experiences and perceptions of different actors involved in PI mediation, including from the perspectives of lawyers, plaintiffs, defendants and mediators. Data was gathered from 64 mediations, and 131 interviews, questionnaires and observations. A significant finding emanating from Relis' research showed lawyers and clients operated in 'parallel worlds' wherein lawyers focused on financial objectives while plaintiffs wanted non-legal outcomes, such as apologies or acknowledgements of harm.¹¹² In mediation, lawyers tended to dominate the process, sidelining plaintiffs' opportunities to express their voice or emotional needs. Further, lawyers saw mediation as a process for strategic control, including asserting legal positions, financial objectives and information pertaining to trial.¹¹³ In summary, the findings showed lawyers had co-opted mediation, making it a lawyer-driven process rather than a client-centred one.

107 Rundle (n 86) 222.

108 Ibid 228.

109 Douglas and Batagol (n 82) 773.

110 Ibid 774.

111 Ibid 775.

112 Relis, *Perceptions in Litigation and Mediation* (n 3) 153.

113 Ibid 194–5.

A Victorian 2015–16 qualitative study of 24 senior tort lawyers explored the role of lawyers in mediation of medical negligence claims. While all 24 participants acknowledged the value of mediation and spoke of it positively,¹¹⁴ showcasing a genuine cultural acceptance of the process as an alternative to trial, many of the participants saw their role as focusing on legal advice, strategy and attaining a favourable financial outcome for their client.¹¹⁵ The findings aligned with previous research which suggests increasing endorsement and integration of mediation as a dispute resolution process.¹¹⁶ However, the lawyers' conduct in mediation mostly presented as 'protectors' of the client, shielding them from the impact of dispute resolution.¹¹⁷ The findings of this study mostly aligned with Rundle's Expert Contributors and Spokesperson categories.¹¹⁸

Most recently, Tumelty's qualitative study of medical negligence disputes stemmed from interviews with 12 barristers in Ireland.¹¹⁹ The participants in that study acknowledged that plaintiffs had non-legal aims, including a desire for an explanation, apology and prevention of recurrence of harm.¹²⁰ Yet even when the lawyers were aware of their clients' needs, they 'translated these aims into narrower objectives'.¹²¹ Tumelty describes the phenomenon of the dispute being 'transformed', where despite the plaintiff's aims, the dispute is transformed into one that aligns with procedural steps and legal argument.¹²² In practice, that may mean that even lawyers who are expressly aware of their client's desire for an apology or need to express their view, will transform the dispute into one aligned with legal processes, strategy and legal doctrine.

The next section discusses scholarship on the intersection of law, psychology and wellbeing to highlight the importance of emotional and psychological wellbeing of users in the legal system, particularly those partaking in PI claims.

D Interdisciplinary Frameworks for Reform

One form of non-adversarial justice is therapeutic jurisprudence which focuses on emotion, wellbeing and the law, and recognises that adversarial legal processes can adversely impact on court and tribunal users' mental health.¹²³ Therapeutic

114 Popa and Douglas (n 11) 354.

115 Ibid 358.

116 See, eg, Thomas B Metzloff, Ralph A Peebles and Catherine T Harris, 'Empirical Perspectives on Mediation and Malpractice' (1997) 60(1) *Law and Contemporary Problems* 107, 141 <<https://doi.org/10.2307/1191997>>; Hyman et al (n 68) 804; Relis, *Perceptions in Litigation and Mediation* (n 3) 82.

117 Popa and Douglas (n 11) 362.

118 Rundle (n 86) 224–5, 227–8.

119 Mary-Elizabeth Tumelty, 'Plaintiff Aims in Medical Negligence Disputes: Limitations of an Adversarial System' (2023) 31(2) *Medical Law Review* 226 <<https://doi.org/10.1093/medlaw/fwac037>> ('Plaintiff Aims in Medical Negligence Disputes').

120 Ibid 235–41.

121 Ibid 243.

122 Ibid 242.

123 The term 'therapeutic jurisprudence' was developed by Professor David Wexler in the United States in the context of mental health: see David B Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (Carolina Academic Press, 1990); David B Wexler and Bruce J Winick, *Essays in Therapeutic Jurisprudence* (Carolina Academic Press, 1991).

jurisprudence considers how the law affects the emotional wellbeing of court users.¹²⁴ It recognises that legal systems and legal actors (such as judges and lawyers) can impact upon the emotional and psychological wellbeing of participants in legal systems.¹²⁵ It further acknowledges that emotional dimensions are critical aspects of legal disputes.¹²⁶ Research has shown that therapeutic jurisprudence can be applied to tort disputes, including in workers' compensation¹²⁷ and medical negligence.¹²⁸ For individuals living with a physical or psychiatric injury, the legal process may be particularly stressful and traumatic, hence sensitivity to these emotional issues can assist to approach the dispute holistically. By equipping legal professionals (including judges, lawyers and mediators) with appropriate skills to facilitate emotional dimensions in legal disputes, one can promote a more holistic resolution of legal problems.¹²⁹

Another form of non-adversarial justice is procedural justice, which has its origins in social psychology.¹³⁰ It recognises that people's experiences with the legal system can influence their satisfaction with the process, regardless of whether the outcome is in their favour.¹³¹ Procedural justice is concerned with satisfaction with the process itself, rather than with notions of *procedural fairness* in legal proceedings. It should also be distinguished from notions of *substantive justice*, which is concerned with the merit of a legal claim. Procedural justice is relevant in all forms of dispute resolution, including in courts and tribunals, and in mediation and negotiation.¹³² It has also been empirically explored in relation to compensation processes and claimants' perceived fairness of traffic accident compensation processes in the Netherlands.¹³³

Four factors have been identified as being key determinants of procedural justice: (1) voice; (2) neutrality; (3) courtesy/respect; and (4) trust.¹³⁴ *Voice* is the ability for participants to tell their side of the story. In a PI claim, that may involve

124 King (n 6) 1097.

125 Ibid.

126 Ibid.

127 Michael King and Robert Guthrie, 'Using Alternative Therapeutic Intervention Strategies to Reduce the Costs and Anti-therapeutic Effects of Work Stress and Litigation' (2007) 17(1) *Journal of Judicial Administration* 30.

128 Popa (n 10).

129 King (n 6) 1118.

130 John Thibaut and Laurens Walker, *Procedural Justice: A Psychological Analysis* (Lawrence Erlbaum Associates, 1975) 5.

131 Tom R Tyler, 'Restorative Justice and Procedural Justice: Dealing with Rule Breaking' (2006) 62(2) *Journal of Social Issues* 307 <<https://doi.org/10.1111/j.1540-4560.2006.00452.x>>; Jill Howieson, 'Perceptions of Procedural Justice and Legitimacy in Local Court Mediation' (2002) 9(2) *eLaw Journal: Murdoch University Electronic Journal of Law* 13. See E Allen Lind and Tom R Tyler, *The Social Psychology of Procedural Justice* (Springer, 1988) <<https://doi.org/10.1007/978-1-4899-2115-4>>.

132 Howieson (n 131); Relis, *Perceptions in Litigation and Mediation* (n 3); Tom R Tyler, 'The Psychology of Disputant Concerns in Mediation' (1987) 3(4) *Negotiation Journal* 367 <<https://doi.org/10.1111/j.1571-9979.1987.tb00432.x>>.

133 Nieke A Elbers et al, 'Procedural Justice and Quality of Life in Compensation Processes' (2013) 44(11) *Injury* 1431 <<https://doi.org/10.1016/j.injury.2012.08.034>>.

134 Steven L Blader and Tom R Tyler, 'A Four-Component Model of Procedural Justice: Defining the Meaning of a "Fair" Process' (2003) 29(6) *Personality and Social Psychology Bulletin* 747, 747-58 <<https://doi.org/10.1177/0146167203029006007>>.

an individual sharing the impact that an injury has had on their life. *Neutrality* refers to the fact that the third-party involved in the process (for example a judge or mediator) has conducted themselves in an unbiased manner.¹³⁵ If disputants have perceived the dispute resolution process to be fair and transparent, they are more likely to be satisfied that the outcome is fair and that the third-party involved has conducted themselves in an unbiased manner. *Courtesy and respect* refer to the treatment of all participants with dignity and respect. *Trust* is the participants' belief that the decision-maker or the mediator intends to be fair and accurate in their dealings.¹³⁶ For example, in a medical negligence claim, the perception that the judge or mediator is an expert in medical negligence claims may instil trust that the judge is familiar with the claim and capable of reaching an appropriate decision and, for the case of mediation, that the mediator is able to facilitate a process that lead the parties to an equitable solution. These four factors were evident in empirical research in relation to mediation arising in the Victorian tribunal context, albeit in a non-PI context.¹³⁷

Most recently, an emerging field termed 'legal design' has endeavoured to draw on interdisciplinary research combining human-centred design and the law to create processes that better cater to the needs and wellbeing of stakeholders.¹³⁸ Human-centred design is an approach to problem-solving that places human experiences at the heart of solution development.¹³⁹ It often involves collecting rich data to gain insight into human needs and experiences, so that innovative thinking and problem-solving can be better tailored to people's needs.

The emerging phenomenon of *legal design* has combined the philosophy of human-centred design and applied it to legal systems to create and tailor solutions. It does this by prioritising the 'human element' and being responsive to the needs of the users of such legal systems. For example, legal design has recognised that for laypeople, legal processes can be confusing and intimidating, especially for individuals with past trauma.¹⁴⁰ Human-centred design can be used to enhance legal environments to better meet the needs of individuals who would otherwise face barriers.¹⁴¹ It can be used to enhance access to justice in court systems and make foreign and inaccessible processes manageable and easier to navigate.¹⁴² Thus, legal design can be used as a research tool to approach reform and redesign

135 Sourdin and Akin Ojelabi (n 9) note that the mediator accreditation standards, Australian Dispute Resolution Accreditation Standards, have shifted from the use of neutrality to impartiality. For an exploration of the concept of neutrality and impartiality, see Sourdin and Akin Ojelabi (n 9) 85–7, 229–31.

136 Rebecca Hollander-Blumoff, 'Fairness Beyond the Adversary System: Procedural Justice Norms for Legal Negotiation' (2017) 85(5) *Fordham Law Review* 2081, 2085; Sourdin and Akin Ojelabi (n 9).

137 Kathy Douglas and Jennifer Hurley, 'The Potential of Procedural Justice in Mediation: A Study into Mediators Understandings' (2017) 29(1) *Bond Law Review* 69 <<https://doi.org/10.53300/001c.5647>>.

138 Toohey et al (n 19).

139 Kees Dorst, 'The Core of "Design Thinking" and Its Application' (2011) 32(6) *Design Studies* 521 <<https://doi.org/10.1016/j.destud.2011.07.006>>.

140 Ingo Oswald Karpen and Melis Senova, 'Designing for Trust: Role and Benefits of Human-Centered Design in the Legal System' (2021) 12(3) *International Journal for Court Administration* 7:1–18 <<https://doi.org/10.36745/ijca.422>>.

141 Ibid.

142 Hagan, 'A Human-Centered Design' (n 19).

of legal systems and services to make them better equipped to meet the needs of users. Part II has shown that while mediation theoretically offers a forum for PI disputes where emotion can be addressed, these needs are routinely subordinated to legal and financial imperatives, exacerbated by limited defendant participation and lawyers acting as barriers to emotional expression. Drawing on therapeutic jurisprudence, procedural justice and human-centred legal design, Part II argued that current practices can be redesigned to better support claimant's emotional needs. To ground this claim empirically, Part III sets out the methodology for our qualitative study that included interviews with 12 Victorian PI lawyers. The study explores how lawyers engage with client emotion in mediations and what implications this may have for future dispute-system design.

III METHODOLOGY

The aim of this empirical study was to integrate principles from law and psychology to explore the experiences of lawyers managing client emotions in Victorian PI disputes. This dataset is part of a broader empirical study which explored the role of emotion in these processes, including how lawyers manage emotions in mediation and litigation of PI claims, along with lawyer wellbeing, burnout and vicarious trauma associated with handling distressing material. The overall study adopted a mixed methods approach, including semi-structured interviews with 12 Victorian PI lawyers, 9 Victorian mediators, along with quantitative surveys.¹⁴³ This article is the second publication emanating from this research project, and presents data gathered from interviews with 12 Victorian PI lawyers.¹⁴⁴

Invitations were sent to accredited PI lawyers who were registered with the Law Institute of Victoria. Participation was voluntary and participants could cease the interview or withdraw their consent to participate. This part of the study was based in interpretivist epistemology and involved semi-structured interviews¹⁴⁵ with lawyers who practised across a variety of PI cases, including transport accident, workplace, medical negligence, public liability and institutional sexual abuse.

An Interview Guide was developed with questions informed by literature. Questions pertaining to this article included prompts inviting interviewees to reflect on:

143 A mixed-methods approach to data collection is acceptable and common in the study of psychology research: Dennis Howitt and Duncan Cramer, *Research Methods in Psychology* (Pearson, 6th ed, 2020) chs 13, 18–27. The data stemming from interviews with mediators, along with the survey questionnaire, will be the subject of future publications. Data pertaining to lawyer wellbeing, burnout and vicarious trauma has already been published.

144 Popa et al (n 13) (the first article in this research project) examined lawyer wellbeing, burnout and vicarious trauma, whereas this article examines how mediation processes fail to meet claimants' emotional needs and proposes systemic reforms to dispute resolution design.

145 Christina Quinlan et al, *Business Research Methods* (Cengage Learning, 1st ed, 2015) 29, 57, 247–8; Alan Bryman, *Social Research Methods* (Oxford University Press, 5th ed, 2016); Jill Collis and Roger Hussey, *Business Research: A Practical Guide for Undergraduate and Postgraduate Students* (Palgrave Macmillan, 4th ed, 2014) 46–7, 49.

- Whether current dispute resolution processes cater to the non-legal needs (eg, emotional needs) of clients;
- Whether the mediation process is equipped to address the emotional needs of clients; and,
- Whether mediation/ADR processes provide disputants an opportunity to express their emotions associated with the dispute.

The semi-structured questions served as prompts, and allowed interviewees to talk broadly, openly and in-depth about their experiences in representing clients at mediation. The project received Ethics Approval by the RMIT Ethics Committee (Project No 26509). Interviews were conducted between October and December 2023 and were 45 to 90 minutes in duration. Interviews were transcribed by a secure third-party provider.

Thematic analysis was used to analyse the data.¹⁴⁶ This included line-by-line analysis by the first and second-named author, and the assistance of a Research Assistant allocated to this project. The analysis involved assigning codes which were later grouped into themes. To maintain anonymity pursuant to ethical requirements, the participants were assigned pseudonyms (eg, Carter, Smith, Taylor).

Part III set out the methodological foundations of this study highlighting how the qualitative study was conducted and analysed. This methodological account established the scope of this article and clarified how the themes were generated through systematic coding and thematic analysis. Having outlined the methodology of the study, this article now turns to the empirical findings. Part IV presents the key themes that emerged from the lawyer interviews, highlighting how lawyers perceive and manage client emotion in PI mediation, the extent to which emotional needs are acknowledged or sidelined, and how the structure and culture of PI mediation shape opportunities for emotional expression.

IV FINDINGS

An analysis of the data elicited several themes. These themes were around the emotional toll of PI claims, the way that lawyers conducted themselves in mediation and how cognisant they were of their clients' non-legal needs. Theme 1 recognises the significance and sheer prevalence of emotion in PI disputes. Theme 2 explores how lawyers react to that emotion. While all the lawyers were cognisant of their clients' emotional needs, their responses showed a desire to remain somewhat distant from this. They firmly recognise their role as navigators of the legal system, aptly describing it as: 'we are lawyers, we are not psychologists'. Theme 3 acknowledges that clients have a profound need for acknowledgment, apology, and emotional validation – yet the legal process often fails to provide meaningful opportunities for them to be heard, leaving lawyers to informally bridge this gap in institutional empathy. Theme 4 was immensely powerful and eye-opening.

146 See Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology* 77 <<https://doi.org/10.1191/1478088706qp063oa>>.

While mediation is often promoted as a more human-centred alternative to trial, the process frequently fails to provide claimants with meaningful opportunities to express their emotions. The structure, culture, and legal framing of mediation often exclude or suppress emotional narratives, leaving claimants feeling unheard, sidelined, or overwhelmed.

A Theme 1: ‘The Emotional Toll: Injury beyond the Law’

All participants in this study recognised the prevalence of emotion, describing it being present across ‘every case’ and present in ‘every client’, sentiments echoed by two participants: ‘every case I do has some level of heightened emotions ... an incident that has completely changed their life’ (Smith); ‘every client ... has been emotionally impacted by the trauma of their accident’ (John).

Two participants illustrated that the reason why clients are emotional is because they are frequently grappling with physical and psychiatric injuries, including experiencing pain or taking medication. Additionally, the very process of seeking compensation through the legal system can dehumanise the person at the centre of the claim, heightening emotion:

[A] significant majority of our [medical negligence] clients are psychologically damaged. They all are to some extent, but most of them are to a point where it’s noticeable and it might affect their behaviours or our relationship. So, it’s hard to give you a classic client because they all have different injuries, but one thing they all do have in common is obviously, they all have permanent physical injuries or psychological injuries. We don’t act for people who have recovered because they don’t have a legal entitlement to damages. So, they all have in common this ongoing impact on their lives and so, that might be pain, loss of function, all of those sorts of things and so, they’re struggling with that. (Morgan)

I have no client who’s happy. They’re all depressed and they’re all in pain. They are unhappy from two different perspectives. First of all, [those in] chronic pain, need to take medication ... The other thing is the process ... WorkCover tend[s] to be very cumbersome ... you get treated like a number without any dignity. And a lot of my clients, they feel that they are being treated without dignity. And that makes them really angry and frustrated and depressed. (Anderson)

Two participants described how the client’s experience impacts lawyers and that lawyers are often at the receiving end of emotional outbursts and frustration:

I guess I find it really important to understand how trauma affects the brain, to understand that my clients, you know, aren’t always sort of responsible for their behaviour, that they have very little emotional control, very little restraint – they’re very impulsive, they can lash out. (Thompson)

Every client of mine has been through some sort of trauma ... they often have quite significant post-traumatic stress or adjustment disorder, [or] bereavement disorder, so it’s very, very common to have very complex emotional presentations ... So, there are avoidant clients who won’t answer phone calls ... people who become obsessed with the details ... incredibly anxious ... depression ... anger ... mistrustful of us ... very angry and upset with really anything that happens. (Alice)

B Theme 2: ‘Balancing Law and Emotion: Lawyers as Navigators’

While acknowledging that PI disputes are often highly emotional for clients, the participants in this study described their role primarily as navigators of the legal

system. They were mindful of maintaining professional boundaries, deliberately avoiding the provision of emotional counselling beyond what was appropriate. Participants also emphasised procedural responsibilities, such as preparing clients for the emotional intensity of mediation, while simultaneously maintaining a degree of professional detachment from the emotional aspects of the process.

[T]he client management element of the work, that's a huge thing ... [Y]ou have a particular role in that client's life, and a harsh way of saying that is most clients have got plenty of people to sympathise with them. What they need from you is [for you] to do your job. Having said that, a lot of what you do in your job is actually showing that you understand them and their needs, at an individual level. But you do have to have [a] level of self-protection, because otherwise you'll go nuts. (Bennett)

We always have appointments with our clients a week before the mediation ... I tell them, it's an emotional time, to expect it to be emotional, to expect to be up and down, to expect not to sleep well ... Sometimes I will tell people to stop talking whatever they're talking about because it's unhelpful, you know. Like, I did a mediation recently where this client just kept going back into like trauma situations and starting to describe them in detail, and I just ... part of it was about protecting me, but also her, I was like, 'You know, it's not helpful for you to go over that, we don't need all that detail ...' (Thompson)

[T]he preparation for a mediation now as well is really important. [That involves] setting expectations, telling them what the process is going to be, telling them how it's going to play out, telling them how long it's going to go for, making sure they have a support person with them if they can, really managing their expectations as well about what ... the legal issues [are] in the case? (Smith)

We try to deescalate the emotion. We try to, you know, return their focus because there is the tendency for the client to lose track of what it is that we're actually asking them about or whatever. So, it's really trying to manage that the best way that we can. We are lawyers, we are not psychologists, and we do whatever we can, in the best way that we can, to deescalate their emotion. (John)

While participants acknowledged the emotional intensity of PI disputes, their reflections reveal that lawyers primarily see their role as legal navigators rather than emotional supports. The quotes suggest that while lawyers are sensitive to the emotional states of their clients, they maintain clear professional boundaries, often redirecting emotional expression and focusing on procedural preparation. Emotional support is offered in practical ways, such as setting expectations, managing distress, and encouraging clients to bring support persons, but lawyers consistently emphasised that they are not psychologists. As Bennett noted, 'most clients have got plenty of people to sympathise with them. What they need from you is [for you] to do your job'. Similarly, Thompson described actively steering clients away from trauma narratives during mediation, while Smith and John highlighted the importance of preparation and emotional de-escalation. Collectively, these accounts suggest that while emotional awareness is present, the mediation process itself does not provide a space for deep emotional engagement, and lawyers often act as buffers rather than facilitators of emotional expression.

C Theme 3: 'Beyond Compensation: What Clients Really Need'

There is a deep desire for acknowledgement in mediation, especially in medical negligence cases. This was acknowledged by two participants:

[B]ut we do often get people saying ‘I wanted an apology. I want an expression of acknowledgment and saying sorry’. So, we do often facilitate that discussion. Another thing that really irritates them is when the hospital tries to put in a denial of liability in the release. So, that is kind of mediation adjacent because they find that insulting in a lot of cases. Why are you paying me money if you don’t think you’re doing anything wrong? (Morgan)

I think that’s a real problem from the perspective of, I think a lot of people would love [to receive] an apology, [they] would love some recognition, and indeed that’s often what drives people into these processes. But I don’t think the law as it stands is very cognisant of that or facilitates that very well. (Simmons)

These quotes reveal a deep emotional need for acknowledgment and accountability, not simply financial compensation. However, the legal system does not facilitate this very well. Clients feel insulted by denials of liability (such as from insurance representatives), even when receiving a settlement, showing that genuine validation and recognition of harm are central to their healing. There is also a desire to feel heard and share how the negligent act has impacted them:

Maybe it’s because there’s a part of my clients where they want to be able to tell their story and they only ever really get to tell their story to me, you know, and the psychiatrist who examined them. But I don’t know if it’s a process which really lets them feel heard and seen. (Thompson)

So, it is a missing piece that certainly in a workers’ compensation setting, you know, a worker against their employer, assuming that they’re no longer working ... you know, the worker is no longer in that environment, doesn’t have the opportunity to convey in a meaningful way to the employer essentially what their negligent act has done. (John)

These quotes highlight a core emotional need – the desire to be heard and acknowledged – which is not met by the current legal process. Thompson’s reflection suggests that clients are emotionally isolated, even during mediation, and their stories are contained within narrow, clinical or legal contexts, rather than shared meaningfully. John’s statement stresses that clients do not get an emotional outlet to explain how the incident has impacted their life, and to feel heard. Another lawyer, Simmons, echoed similar sentiments:

I think the solicitor is seen as the caretaker of the client, so if the solicitor is attuned to the client and their emotional support, then the client will probably be well supported ... But I don’t know that that broader consideration of the impact of the event on the individual is really considered much by other parties, to be honest ... (Simmons)

This quote underscores that emotional care is not built into the legal system, and instead it is outsourced to individual lawyers. Simmons identifies a gap in institutional empathy, where some mediators and other actors fail to engage with the emotional reality of clients, leaving lawyers to fill that void informally. This finding must be qualified by the fact that mediators’ perspectives in PI disputes have not been included in this article. Further, it must be recognised that mediators have responsibilities such as engaging with the challenges of managing emotions, through the new Australian Mediation and Dispute Resolution Standards.¹⁴⁷

147 *The Australian Mediator and Dispute Resolution Accreditation Standards (AMDRAS)* (February 2025) 49–55 table 2 [2.2], [2.2.1].

However, it is also important to acknowledge that the needs of clients will vary vastly. Lawyers must be attuned to their clients' needs and respond to their desire to face the tortfeasor, or in some cases, to actively choose to avoid that process. Morgan articulated the dichotomy (a 'curious inconsistency') between the desire for an apology or acknowledgement of harms versus a reluctance to attend:

[P]lenty of clients will tell you, 'I never want to be in a room with anyone to do with the hospital and I would never go in there', so it's fine, but there might be some who say 'No, I actually want to go in there and tell them what's happened' ... I think far more don't want to see the doctor than want them to be there. It's very rare that I have someone express disappointment if the doctor is not there. It does [happen] on occasion, but I can only remember a handful, which is an interesting thing. So, 'I want to tell you a story, but I don't necessarily want to have to face the individual concerned', which is a curious inconsistency ... (Morgan)

Morgan went on to add that: 'I think it depends on the client, but I think for those [for] whom that's important, we could do better at bringing that into the mediation.'

Morgan's words underscore the importance of making the mediation experience client-centric and catering to the needs of the individual, reinforcing the importance of autonomy and choice in bolstering positive client outcomes.

D Theme 4: 'Silenced in the System: Where Emotion Has No Room'

The data collected reveals that mediation in PI disputes often fails to facilitate emotional expression in a meaningful way. While some lawyers attempt to create space for clients to speak, the process is typically highly managed, indirect, and emotionally sterile.

It is important to note that the lawyers' descriptions of mediation as affording little to no opportunity for claimants to speak, reflects mediation as it is commonly practised in PI disputes, rather than a limitation inherent to the mediation model itself. This finding is consistent with prior scholarship demonstrating that PI mediation is frequently lawyer-driven, with emotional expression narrowed or redirected to align with legal strategy and procedural norms. Accordingly, the apparent gap between mediation's theoretical potential for voice and acknowledgement and the lawyers' accounts in this study is not a contradiction but rather illustrates how the process becomes constrained when dominated by legal actors. These accounts therefore shed light on the prevailing culture of PI mediation, one in which opportunities for claimant voice are shaped, and often restricted, by lawyer-led practices.

Claimants are often shielded from direct engagement, and their emotional experiences are filtered through legal representatives. This undermines the potential of mediation to be truly client-centric and emotionally responsive. Some participants were direct about how mediation excludes claimants from the mediation:

[C]lients are pretty much shut out of it, really ... plaintiffs rarely get to see the inside of the mediation room. (Bennett)

It's not really sitting opposite the perpetrator of that negligent act to say, 'Here I am, look what you've done to me.' There is that exposure to being critiqued and ridiculed and undermined by the defendant ... many plaintiffs ... wouldn't be able to cope with that type of scrutiny in terms of their distress levels. (John)

In the Victorian medical negligence context, the participants practising in that area explained that they will have a conference with the client beforehand, and they will have an opportunity to meet with the barrister who will represent them at mediation. While many clients may attend the mediation, they will likely be seated in another room while the negotiations occur between the barristers. For example, Morgan explained that it resembles a shuttle-style mediation:

We take a lot of time to talk them through exactly how it works a few days before to prepare them because it can be quite impersonal ... If they [the client] haven't come into the group session, they're in another room, and we're ferrying back what's going on. If there's an offer, we tell them what the offer is and then, we tell them to reject it and then, it's back and forth over the day, and I will talk them through specifically beforehand how that works. And we acknowledge that it can be impersonal, it can be a bit [like] negotiating the sale of the house, which can be distressing given what's happened to you and it sucks, but that's the process, and so, at least they're prepared for that. (Morgan)

Morgan articulated that clients do not participate in the mediation, even though they are never formally prevented. Rather, the culture of these mediations is that it is an event for lawyers, with lawyers like Morgan particularly cognisant that participating can re-traumatise the client:

[T]he practice in Victoria appears to be usually, amongst plaintiff lawyers, ourselves included, that when there's a joint session where both parties are setting out their cases and having the arguments, we recommend that our clients don't attend that. Now, we always say 'If you want to, you can'. I've never told a client that they can't, but we recommend that they don't because strategically, wisdom seems to be, that it's better for both parties, both sets of lawyers, to be able to have frank discussions without fear of insulting or hurting or traumatising the plaintiff. (Morgan)

Whilst this may be an effective legal strategy, when claimants are not present in the mediation, they are excluded from engaging meaningfully with the other side and the process in general. This leaves it to lawyers to engage in the process on their client's behalf and prevents the client from expressing their emotion. This lack of emotional outlet is reinforced by the facts that defendants actively avoid emotional confrontation in mediation settings: 'And defendants don't want it, either. They'll say, "Well, we don't want to be saying things in front of your client that's going to upset them"' (Bennett).

This also finds support in the statement by Anderson that reveals the emotional isolation of clients during mediation: 'They're not really speaking. I mean, it deals with the emotion, it assists with the emotion in a way that it precludes them from having a meltdown in front of everybody else, I'd say, but they might be having a meltdown in their little room' (Anderson).

This shows that while the process may prevent public 'meltdowns', it does not provide space for emotional expression or validation. Smith explains that even when clients can express emotions, they are not directed at the other party: 'but it's to your lawyers or it's to a mediator, it's not really going to be to the other side' (Smith).

The above quotes support the notion that mediation results in a third-party process, where both sides may be present but are not always actively involved, and where lawyers and barristers are left to resolve disputes. When clients do engage with the process, their emotional narratives are often filtered out or excluded. This

reinforces the idea that claimants are denied direct emotional engagement with the other side, and that mediation is a proxy process, not a relational one.

Participants also explained that mediation does not provide any real opportunity for a voice. Lawyers in this study were cognisant that shielding clients from participation denies them the opportunity to tell their story: '[B]ut I do sometimes wonder whether that denies the Plaintiff the opportunity to tell their story to the insurer or their lawyers, which is the one opportunity they might get to do that ... the impact is much better coming from them than me or the barrister' (Morgan). This quote reflects a missed opportunity for emotional validation and suggests that mediation's current structure may prioritise legal strategy over human connection.

Finally, when opportunity is provided, it is often done in a way that is quite structured:

We give all of our clients the opportunity and almost all of them will take it up to sit in at a mediation. Nobody's allowed to ask them a question, they just sit in at the beginning and when they're finished, they leave, but they prepare something in advance and they say what they want to say and usually they talk about the impact on them, and it can be incredibly moving. (Taylor)

Taylor's quote reflects a structured but meaningful opportunity for emotional expression. The impact statement allows clients to share their story and feel heard, even if briefly. Taylor's approach shows that non-legal needs, like validation and a voice, can be integrated into legal processes, albeit in limited ways. However, Taylor's quote was in the context of institutional sexual abuse cases, and Taylor noted that this was not the practice in motor vehicle accident disputes, hinting that practices can be context specific.

Taylor went on to explain that being listened to is incredibly powerful for a claimant. However, when the statement is concluded, their involvement in the mediation process is limited; rather, the process is left to the lawyers:

Yeah, that's one of the things that can be very powerful for a person, is being listened to, and saying their statement. Sometimes they don't want to read it out. They might write something and we'll read it out for them ... [M]ost of the time they want the opportunity and they're thankful for the opportunity because nobody's offered them that before ... So they would make their statement and then we would come out of the mediation with them, sit with them, make sure they're okay, and then we go back in and actually do the mediation. (Taylor)

When asked about the opportunity to express emotion, one participant said such opportunity did not exist, and the focus was often on attaining the 'best result' (as defined in legal terms rather than psychological outcomes) for the client:

Not really. No. ... The way I explain it is I always say, listen, this is how we do it. I try to explain to them why I'm doing it that way. I just say, from a practical point of view, in my experience, this is getting the best result, and I want to get the best results for you, that's my job. And people usually accept it. (Anderson)

Another participant highlighted that the focus in mediation and in PI claims is often on monetary compensation and not the non-legal needs of the client. Thompson expressed that all they could get for their client was 'money' yet acknowledged the need for the system to cater to the deeper needs of their clients:

But firstly, all I can get them is money, like that's what this system is about. I don't know who would provide this service, but there needs to be some kind of services for clients from the beginning to be thinking about, 'All right, once you've

started this legal process, how are you going to make sure that you're prepared to manage and spend the money that you receive, how are you doing to attend to your psychological needs over this time and into the future? How are you going to use this time to kind of heal and rehabilitate?' (Thompson)

This quote directly critiques the narrow focus of the legal system on financial compensation, while pointing to the absence of emotional and psychological support. Thompson identifies a need for integrated services that help clients heal, plan, and rebuild, suggesting that money alone is insufficient to meet the deeper needs of trauma survivors.

In addition to attaining the 'best result' and 'money' for clients, participants were cognisant that mediation operated in the shadow of the law. Although mediation is confidential in so far as the law allows,¹⁴⁸ fear of disclosure is present as illustrated by this participant's views:

I think the fear as well is if you let your client have a voice and they say the wrong thing and then that gets turned because of the adversarial nature; I think there's a sense that the other side might use things that client[s] might say, without appreciating the process, because they're complex, against them. (Simmons)

In summary, these quotes suggest that mediation (when conducted in the context of PI claims) does not offer claimants a genuine opportunity to express their emotions. While some lawyers attempt to create space for clients to speak, this is often limited to brief, scripted statements at the outset of the process. Emotional narratives are tightly managed, redirected, or excluded altogether, with lawyers frequently shielding clients from direct engagement with defendants or institutional representatives. The structure of mediation prioritises legal efficiency and containment over emotional validation, which can leave some claimants feeling unheard and emotionally disconnected from the process. Significantly, lawyers must be cognisant of client autonomy and choice, reflecting the diversity of client needs, and that not all clients will want to confront the tortfeasor or speak at mediation. However, for clients who *do* wish to have an opportunity, those needs are oftentimes curtailed as part of the mediation framework, which often fails to meet the emotional needs of injured claimants and does not deliver the restorative or cathartic experience many seek.

Part IV presented the empirical findings of the qualitative study. It revealed four key themes concerning the emotional dimensions of PI disputes, including the role lawyers play in mediations, and the structural features of mediation that shape or limit claimant participation. These findings highlight the significant emotional toll experienced by claimants, the tendency of lawyers to prioritise legal strategy over emotional engagement, and the systemic barriers within mediation that suppress claimant voice and agency. Building on these empirical insights, Part V now turns to a broader discussion of their implications. Part V situates the identified themes within existing scholarship on mediation, therapeutic jurisprudence, procedural justice, trauma-informed practice and legal design, and considers how the findings

148 The concept of confidentiality in mediation has statutory exceptions or requirements to disclose information in certain circumstances. For example, family dispute mediators may be under an obligation to report information pertaining to violence: *Federal Court of Australia Act 1976* (Cth) s 53B; *Family Law Act 1975* (Cth) s 10J; Sourdin and Akin Ojelabi (n 9) 478–82.

illuminate opportunities for reform in the structure, training, and culture of PI dispute resolution.

V DISCUSSION

The findings of this study reveal that PI lawyers are acutely aware of the emotional toll PI disputes exert on claimants. Participants consistently described their clients as emotionally impacted, often suffering from psychological injuries such as depression, anxiety, and post-traumatic stress, as illustrated in the quotes from Morgan and Anderson. This aligns with prior scholarship recognising the emotional intensity of PI claims,¹⁴⁹ particularly in medical negligence contexts where breaches of trust exacerbate trauma.¹⁵⁰

Despite this awareness, lawyers predominantly adopt a strategic rather than empathetic approach to emotional engagement. As Bennett noted, 'most clients have got plenty of people to sympathise with them. What they need from you is [for you] to do your job.' This sentiment reflects a professional boundary that prioritises legal outcomes over emotional support. Such boundaries are reinforced by the adversarial nature of legal training and practice, which traditionally sidelines emotional intelligence in favour of doctrinal rigour.¹⁵¹

While some lawyers attempt to prepare clients for the emotional intensity of mediation (such as Smith and Thompson), their role remains largely procedural. Emotional concerns are acknowledged but not substantively addressed, reinforcing the notion that lawyers act as emotional barriers.¹⁵²

Mediation is often promoted as a human-centric alternative to litigation, with the potential to address emotional and non-legal needs through storytelling, having a voice, and empathy.¹⁵³ However, the interviews with lawyers in this study (with the limitation that mediators' and clients' perspectives are not presented) suggest that mediation in PI disputes frequently fails to deliver on this promise. Claimants are often excluded from direct participation, with lawyers dominating the process and emotional narratives filtered or suppressed.

This exclusion undermines key elements of procedural justice, particularly the principle of a voice, which is the opportunity for participants to tell their story and feel heard.¹⁵⁴ As Morgan observed, 'the impact is much better coming from them than me or the barrister', yet mediation structures rarely facilitate such direct engagement. These findings should not be read as contradicting the literature noting mediation's potential to support claimant voice but rather, they illustrate how that potential is constrained in practice when PI mediation becomes lawyer-driven. Prior studies have shown that PI mediation is frequently co-opted by lawyers, who

149 Akkermans (n 22).

150 Tumelty, 'Emotional Burdens and Impact of Medical Negligence Litigation' (n 36).

151 Douglas and Batagol (n 82); Popa and Douglas (n 11).

152 Relis, *Perceptions in Litigation and Mediation* (n 3); Popa (n 10).

153 Picard and Siltanen (n 64); Jameson et al (n 9).

154 Tyler (n 16); Hollander-Blumoff and Tyler (n 59).

translate clients' non-legal aims into legal objectives and structure the process around legal strategies.¹⁵⁵ The lawyers' accounts in this study therefore describe mediation as it operates within this culture of professional dominance, rather than mediation as a process inherently incapable of supporting emotional expression. In this sense, the absence of claimant voice observed in our data reflects the way mediation is practised in PI disputes, not a limitation of the mediation model itself.

The lack of claimant voice and emotional validation reflects a broader systemic issue that mediation is structured around legal efficiency, thereby sacrificing the emotional needs of its participants. This is consistent with Relis' findings that lawyers and clients operate in 'parallel worlds', with lawyers focused on financial outcomes and clients seeking acknowledgment and apology.¹⁵⁶ That efficiency is also reflected in Ireland, where reforms around mediation have focused on expediency and reducing costs. Tumelty argues that while these reforms are welcomed, they do not address that claimants' needs are ultimately largely unmet. She argues for a more holistic approach to justice.¹⁵⁷

The delegation of emotional concerns to mediators raises questions about mediator preparedness. While mediation theoretically allows space for emotional expression, many mediators lack the psychological training necessary to manage trauma and distress effectively.¹⁵⁸ This gap is particularly concerning in PI disputes, where claimants often present with complex emotional needs.

Trauma-informed practice offers a potential framework for reform. Rooted in psychological principles, it emphasises safety, empowerment, and emotional validation.¹⁵⁹ Incorporating trauma-informed approaches into mediator training and accreditation could enhance the capacity of mediation to meet the emotional needs of claimants.

The tension between legal strategy and client centrality is a recurring theme in both the data and the literature. Lawyers are trained to prioritise legal outcomes, often at the expense of emotional engagement.¹⁶⁰ The data demonstrates that this strategic focus can result in missed opportunities for holistic resolution, particularly when clients seek acknowledgment, apology, or the chance to tell their story.

The legal profession's reluctance to engage with emotion is partly structural. Legal education, while increasingly incorporating ADR, often fails to equip lawyers with the emotional intelligence and reflective practice skills necessary for client-centred mediation.¹⁶¹ Moreover, the stigma surrounding emotional vulnerability in legal practice may deter lawyers from adopting more empathetic approaches.¹⁶²

155 Relis, *Perceptions in Litigation and Mediation* (n 3).

156 Ibid.

157 Tumelty, 'Plaintiff Aims in Medical Negligence Disputes' (n 119) 246.

158 Marshall (n 43) 329–31; Field and Lynch (n 45).

159 Dalenberg, Straus and Carlson (n 42); Sarah Katz and Deeya Haldar, 'The Pedagogy of Trauma-Informed Lawyering' (2016) 22(2) *Clinical Law Review* 359.

160 Douglas and Batagol (n 82); Rundle (n 86).

161 Douglas and Akin Ojelabi, 'Civil Dispute Resolution in Australia' (n 86) 339; Goleman (n 93).

162 See, eg, Popa et al (n 13) 425, which highlights the stigma associated with vulnerability and seeking help for mental health within the Victorian PI lawyer community.

The findings of this study underscore the need for reform in the mediation of PI disputes to better address the emotional and psychological needs of claimants. While lawyers and mediators acknowledge the emotional toll of these disputes, current practices remain predominantly focused on legal strategy and financial outcomes, often sidelining the human dimensions of conflict.

One promising avenue for reform is the integration of trauma-informed practice into mediation. Trauma-informed mediation recognises the impact of trauma on claimants and seeks to create a supportive environment that fosters healing and agency.¹⁶³ Incorporating this framework into mediator accreditation and continuing professional development ('CPD') for lawyers could enhance the emotional responsiveness of dispute resolution processes.¹⁶⁴

Legal education also presents a critical site for reform. While ADR is now embedded within Civil Dispute Resolution which forms part of the Priestley 11 curriculum, the teaching of emotional intelligence, reflective practice, and client-centred communication remains limited. Expanding ADR subjects to include these competencies, and making them compulsory rather than elective, would better prepare future lawyers to engage with the emotional realities of PI claims.¹⁶⁵

Professional supervision offers another reform pathway. Drawing inspiration from psychology, where supervision is mandated to support practitioner wellbeing and client care, the legal profession could adopt a similar model. The Psychology Board of Australia's Code of Conduct, effective December 2025, requires psychologists to 'engage in regular self-reflection and peer consultation' to manage burnout and enhance client outcomes.¹⁶⁶ A parallel framework in law would provide lawyers with structured support to navigate the emotional complexities of their work, fostering resilience and improving client relationships. It would provide lawyers with a structured environment to better understand the interpersonal dynamics within client relationships, thereby enhancing client trust and communication. Such a framework could also facilitate the development of more effective strategies for managing complex intertwined legal and emotional issues. Furthermore, a formal supervision structure would assist lawyers in coping

163 Marshall (n 43) 329–31.

164 Katz and Haldar (n 159).

165 Douglas and Akin Ojelabi, 'Civil Dispute Resolution in Australia' (n 86) 339.

166 Psychology Board of Australia, 'Code of Conduct for Psychologists' (Code, November 2024) 5 <<https://www.psychologyboard.gov.au/Standards-and-Guidelines/Professional-practice-standards/Code-of-conduct.aspx>>. The Psychology Board of Australia mandates ongoing professional development, which includes a compulsory supervisory component for psychologists as part of the national registration scheme that commenced on 1 July 2010. This requirement aims to ensure that psychologists regularly engage in reflective practice, which has been shown to enhance professional skill development, ethical and legal competency, quality assurance, burnout prevention, and lead to improvements in client care: Meribah Rose and Chris Maylea, 'The Case for Implementing Legal Clinical Supervision within Legal Practice and Recommendations for Best Practice' (2023) 32(2) *Griffith Law Review* 259, 260 <<https://doi.org/10.1080/10383441.2023.2260731>>; Su Min Ooi, Siân Coker and Paul Fisher, 'Clinical Psychologists' Experience of Cultivating Reflective Practice in Trainee Clinical Psychologists during Supervision: A Qualitative Study' (2023) 24(4) *Reflective Practice* 481 <<https://doi.org/10.1080/14623943.2023.2210069>>; Andrea Sadusky and Jacob Spinks, 'Psychologists' Engagement in Reflective Practice and Experiences of Burnout: A Correlational Analysis' (2022) 23(5) *Reflective Practice* 593 <<https://doi.org/10.1080/14623943.2022.2090326>>.

with the stress associated with their profession, ultimately leading to greater job satisfaction, career longevity, staff retention, and enhanced competence.

Finally, legal design offers an innovative lens for reform. By applying human-centred design principles to legal processes, mediation can be reimagined to prioritise the needs and experiences of claimants. This includes redesigning mediation structures to facilitate the claimant's voice, emotional expression, and direct engagement with defendants, where appropriate.¹⁶⁷

Collectively, these reform directions advocate for a shift from procedural efficiency to balancing this with emotional responsiveness. By embedding psychological insights, educational innovation, and human-centred design into mediation practice, the legal system can better support the wellbeing of injured claimants and deliver more meaningful justice outcomes.

While this study contributes to existing scholarship on the role of lawyers by offering insights into the culture of mediation in PI claims, it is not without limitations. First, the sample size was limited to 12 participants from Victoria, which constrains the generalisability of the findings. Second, the perspectives of mediators (who play a significant role in shaping how emotions are expressed during mediation) were not included in this article. Third, as claimants were not interviewed, their perspectives could not be included. Thus, the recommendations in this article are drawn from the literature and from interviews with claimants' lawyers, with opportunity for future research to be conducted to gather direct claimant experiences. Fourth, the findings are context-specific to Victorian PI disputes, acknowledging that mediation culture may differ across practice areas (eg, medical negligence, transport accidents, workplace injuries) and between Australian states. Finally, clients' emotional needs vary considerably, meaning the findings may not be broadly applicable to all cases. Nevertheless, this study offers a significant contribution by highlighting the emotional dimensions of mediation and the role of lawyers in shaping these dynamics within PI claims. Future research could expand the sample size, incorporate the perspectives of mediators, and explore variations across jurisdictions and practice areas to build a more comprehensive understanding of trauma-informed approaches in mediation.

VI CONCLUSION

This article has explored the emotional dimensions of PI disputes and the role of lawyers in mediation, drawing on empirical data from Victorian PI lawyers. The findings reveal a consistent tension between legal strategy and the unmet emotional needs of claimants. While lawyers in this study presented as compassionate and insightful during interviews, and acknowledged the psychological toll of injury and litigation, their professional role often limits their capacity to engage with clients' emotional experiences. They stressed they were lawyers, rather than psychologists.

167 Tooley et al (n 19) 133; Hagan, 'Legal Design as a Thing' (n 19); Hagan, 'A Human-Centered Design' (n 19).

Mediation, although theoretically positioned to address these needs, frequently fails to deliver on its promise of a voice, validation, and emotional closure.

The discussion has shown that current mediation practices are structured around legal efficiency and procedural containment, often excluding claimants from meaningful participation. Our study findings suggest that lawyers act as emotional barriers by preventing their clients from expressing emotion in a legal system which is not designed to provide validation or catharsis. Further, mediators are not always equipped with the psychological training necessary to manage trauma. These systemic limitations result in a process that prioritises financial outcomes over emotional healing, leaving many claimants feeling unheard and unsupported.

To address these shortcomings, this article proposes a series of reforms grounded in interdisciplinary scholarship. Trauma-informed practice offers a framework for creating emotionally responsive mediation environments. Legal education should be expanded to include emotional intelligence, reflective practice, and client-centred communication as core competencies. Professional supervision, modelled on psychological practice, could support lawyers in managing the emotional complexities of their work. Finally, legal design principles can be used to reimagine mediation structures that prioritise claimants having a voice and emotional expression.

These reforms align with broader societal and policy shifts that recognise the importance of psychological wellbeing in legal contexts. For example, the revised Psychology Board of Australia Code of Conduct signals a growing commitment to the mental health of professionals and trauma-informed practice. By embedding these principles into legal processes, the profession can move towards a more holistic, humane, and client-centred approach to dispute resolution.

Ultimately, this article argues that PI mediation must evolve beyond procedural efficiency to embrace emotional responsiveness. Doing so will not only improve outcomes for claimants but also enhance the integrity and effectiveness of the legal system.