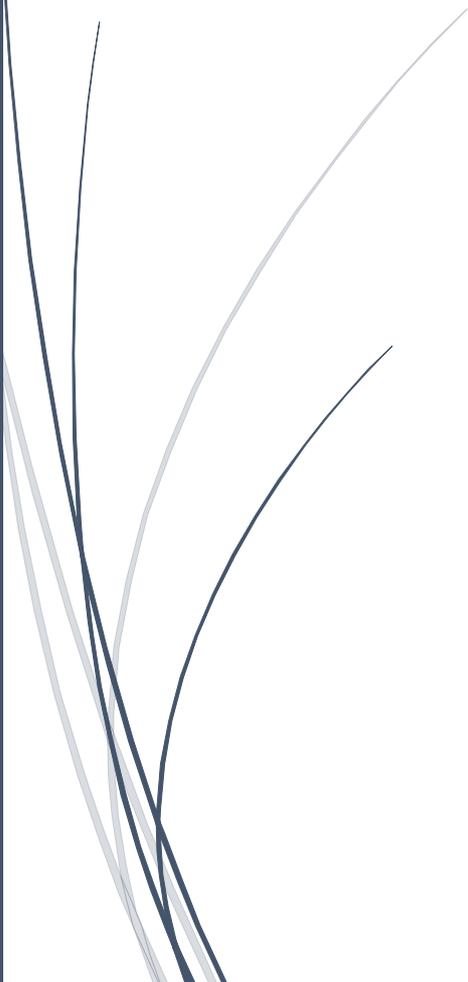


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Dispute Resolution, Mediation and Facilitation

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## What is mediation?

Mediation is a voluntary process which can be used in many situations where people are unable to reach an agreement to resolve a dispute. Mediation is facilitated by a mediator, that is, a person who doesn't have any personal involvement in the problem being resolved.

Mediators help people, who are in conflict and have not been able to agree about something, to discuss the issues, understand each other's point of view and explore possible options for resolving the problem. When an agreement is possible the mediator will write up the points of agreement, so each person has a copy of what they and the other people involved have agreed to commit to.

## What does a mediator do?

The mediator's job is to help parties to communicate about the issues that are causing a dispute between the parties. They make sure it is safe to meet and keep the conversation respectful.

The mediator will help to:

- have a chance to be heard equally and fairly
- work out what issues are important to each party and why
- find areas of agreement and common ground
- work with the parties to help find solutions for the identified issues

The mediator will **not**:

- give advice – legal, counselling, financial, or any other advice
- judge or decide who is right or wrong
- take sides or make decisions for the parties
- tell the parties what agreement should be made

Mediation is a voluntary process, in which the parties are responsible for finding workable solutions to the identified issues. These solutions may not be perfect, but solutions that parties can live with, and move life forward.

## Why mediate?

Trying to sort our problems in mediation is better than going to court for many reasons, including:

- **Commitment** - Mediation is a voluntary process. That means that if the parties agree to mediation then the parties want to resolve the issues.
- **Confidentiality** - Mediation is private and confidential. Going to court is not. Even if you are not able to reach agreement in mediation **nothing** said during mediation or options considered during mediation can be used as evidence outside mediation or in a court. The mediator is bound by strict confidentiality rules and cannot speak about anything discussed in mediation with others without permission of the parties except where there is a need to protect persons or property from harm.

- **Cost - Mediation** costs are lower than the cost of going to court. The cost will be known up front and fixed so you will know exactly what it will cost you.
- **Time** - Mediation can be arranged at short notice – usually within a week or two so parties are not forced to live in a conflict situation for a long time.
- **Flexibility** - Mediation is a flexible, informal process. You decide what you will discuss and can take a break when you need unlike court processes which are very formal and controlled by a judge.
- **Honesty** - Mediators are skilled in creating a safe environment where you are able to speak honestly about the impact the conflict has had on you and what you need for it to be resolved. This allows you to discuss issues, explore options and reach agreements that meet your needs and interests.
- **Support** - Non-participating support persons are welcome to attend the mediation, subject to the agreement of all parties.
- **Agreement** - Depending on the issues between you, your agreement may be a simple handshake agreement, a written reminder, a signed agreement which has some legal weight, or you can take further steps to turn your agreement into a contract.
- **Finality** - Agreements reached in mediation are your decisions about what will work for each of you so are generally much more likely to be more successful in the long run and not requiring further resolution or legal.

## What type of issues can be mediated?

Mediation is used to resolve issues and establish mutually beneficial agreements in a number of different situations including:

- Issues between directors;
- Workplace issues;
- Business issues;
- Facilitating workplace discussions and workshops;
- Buying and selling businesses;
- Wills and estates;
- Friendship groups.

## Do I need to get legal advice?

Getting legal advice before mediation is helpful because the mediator does not provide legal advice. The mediator may recommend that you get legal advice for certain types of disputes. Make sure you ask the lawyer:

- What is the best, worst and most likely outcome from a court decision?
- How long will going to court will take? Knowing that it will take months or even years for a court decision may be something to take into account when considering possible offers in mediation.
- How much time and money, would going to court cost you?

## Where does mediation happen?

Mediation will happen anywhere of the parties choosing or the mediators or, it can be done by video conferencing using a computer or tablet device; if there are any safety concerns or other issues that makes face to face mediation not possible.

Your mediator will hold a meeting with each of you before any joint meeting is conducted. Part of that pre-mediation process is designated to decide if mediation is a safe and suitable process for you and the issues involved. In some cases, the mediator may decide that mediation isn't the right process for you.

During this process your mediator will discuss with you where, when and how the mediation will be run.

## What happens in the pre-mediation session?

In the private pre-mediation session, the mediator will meet with you to explain the mediation process, find out if your dispute is suitable for mediation and make sure you are prepared and ready to participate. During the pre-mediation session, you and the mediator will:

- Discuss your situation and what you would like to achieve in mediation.
- Talk about the mediation process so that you can make an informed decision to participate or not.
- Talk about the history of your dispute and identify any risks associated with meeting with the other person.
- Find out if there are any Court Orders or other legal proceedings in place that are relevant to the mediation.
- Ensure that all parties are capable of making decisions freely and willing to participate in the mediation process voluntarily.
- To discuss any additional information or advice that may be beneficial to acquire before the mediation e.g. legal, financial, notes or documents.
- To make sure that you are prepared and ready to participate in mediation.

Pre-Mediation sessions typical last around an hour and are totally private and confidential.

## How do I prepare for mediation?

Because you are the person in control of what you say at the mediation it is important to prepare. You can prepare by thinking about the following:

- What issues are in dispute, including the facts and sources of conflict?
- What is important to you to resolve the dispute? What do you really want? And why?
- How can you communicate this information, both to the mediator and the other participant?
- What will you say at the start of the mediation to help identify the key issues and create an agenda?

- What do you think the other participant wants? How might they see the issues?
- What are some ways that the issues that concern you could be resolved? What could you ask them to do? What could you offer to do?
- What is the reality of your situation? What has the dispute cost you already? What will it cost you if it isn't resolved? What would it cost if you can't sort it out in mediation and have to go to court?
- What are the possible outcomes if you did go to court?

## What do I need to take to the mediation?

Documents and information to bring to mediation are any that may help to progress discussions or that will help you remember what you want to say?

Documents that may be relevant, depending on the particular situation are:

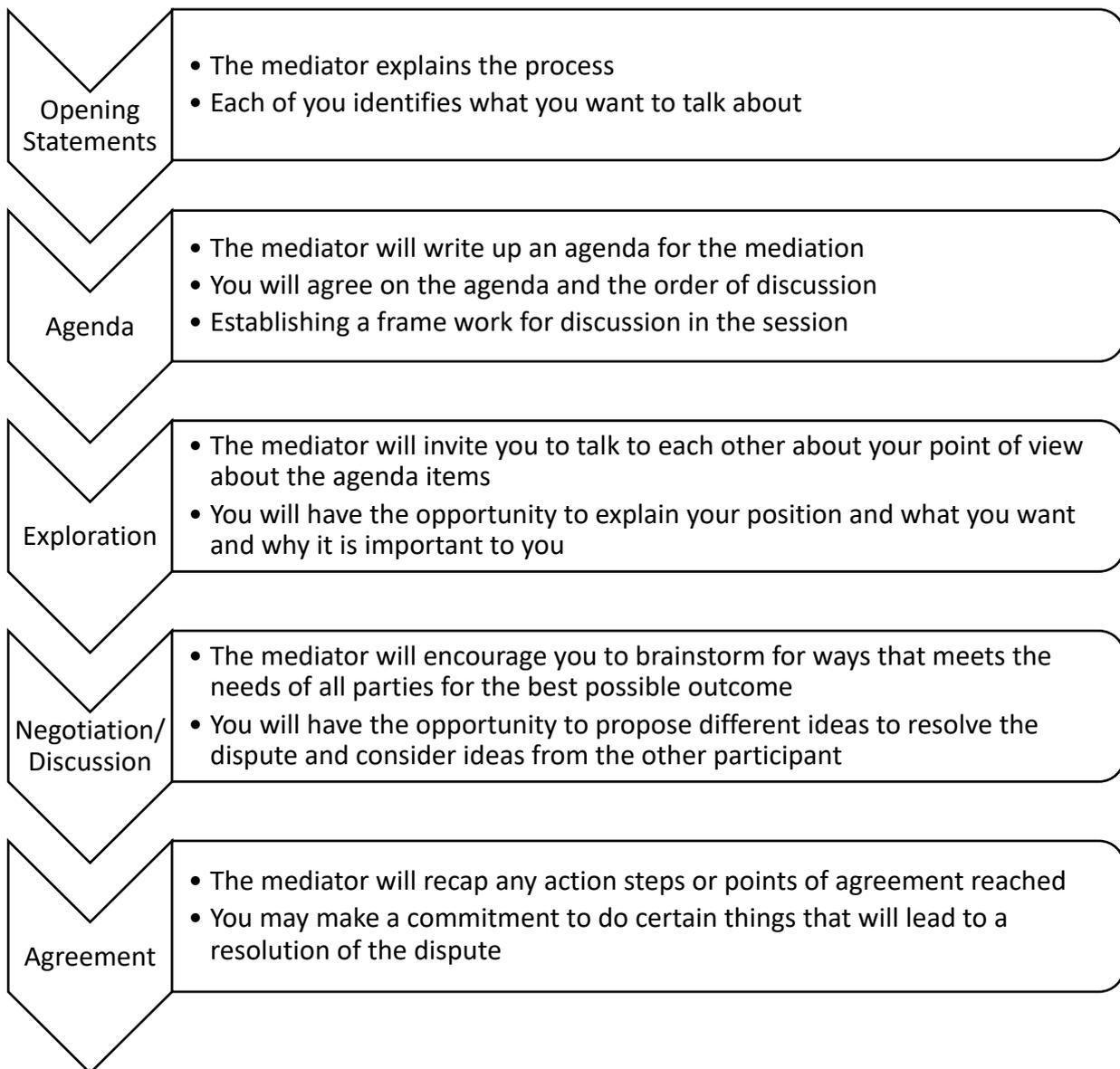
- Notes (including things you want to say, discuss, proposals, advice from advisors)
- Quotes, valuations, appraisals, invoices and photographs
- Any formal documents
- Notebook and pen for taking notes

## Mediation Etiquette

1. **Focus on future:** We will not dwell on things that did not work in the past, but instead will focus on the future we would like to create. The mediator is given permission to redirect discussion when necessary, also without making judgements.
2. **Take turns:** We agree to take turns speaking and not interrupt each other.
3. **First names:** We agree to call each other by our first names, not "he" or "she."
4. **No put downs:** We agree to not blame, attack, or engage in put-downs and will ask questions of each other for the purposes of gaining clarity and understanding.
5. **Show respect:** We agree to listen respectfully and sincerely try to understand the other person's needs and interests.
6. **Constructive mediation:** We agree to make a conscious, sincere effort to refrain from unproductive arguing, venting, or narration, and agree to use our time in mediation to work toward what we perceive to be our fairest and most constructive agreement possible.
7. **Respective Communication:** We agree to not swear during mediation or use aggressive language. We also agree to not be disruptive during the process.
8. **Break:** We will request a break when we need to.

## What happens in the mediation session?

Mediation is a structured process where the mediator facilitates the process while you are responsible for what you choose to talk about and the agreements you reach.



Mediation is flexible in that you are able to take a short break during the process and/or you or the mediator may ask for a private session with the mediator. This is a chance to talk confidentially with the mediator and is often suggested by the mediator after you have finished exploring the issues and started to make offers of how the dispute could be resolved.

## What else do I need to know about mediation?

The key things that make mediation unique and so powerful are:

- **Confidentiality** – mediation is a confidential process. That means that the mediator can only speak about your mediation to other people with your permission. It also means that the mediation parties also can only talk about what they learn in mediation with their advisors or close support people.

- **Release of Information** - the mediator may only release information at the end of mediation in accordance with instructions agreed to by both parties (or when obligated to by law or to prevent harm or injury to persons or property). For example, the mediator may write up and send to you the points of agreement from your mediation session or supply a copy of your agreement to your employer or legal advisor if the mediating parties have given permission to do so.
- **Ground rules** – the discussion in mediation is to be respectful and without threats or abuse. This is facilitated by both of you agreeing to a set of ground rules about how you will treat each other in mediation. These ground rules will be maintained by the mediator.
- **Neutrality of Mediators** - the mediator is a neutral and impartial third party. This means that they do not get a benefit from a specific outcome of the dispute or have/show a preference or bias towards any party to the mediation. The mediator must disclose and discuss with you any real or potential conflict of interests that they become aware of and you should immediately raise any concerns you have if you become aware of any.
- **Mediators – do not provide legal and other advice** - the mediator’s role is to assist you to reach an informed and voluntary agreement. The mediator will not provide legal, other advice or judgement. The mediator may assist, in a non-advisory manner, with making an informed decision or may suggest/refer you to independent advice or counsel.
- **Inadmissibility** – offers made, information shared, and the things discussed and considered in mediation are not admissible as evidence in court. That means you can consider your options without fear that you are going to be forced to do something you haven’t fully agreed to.
- **Agreements** – agreements reached in mediation are done so freely. If this is not the case, then ask to speak privately with the mediator and share your concerns with them. If the agreement is written, signed and dated it will have some legal weight and be able to be admitted as evidence in court. It will be up to the judge to decide if they will order that you follow the agreement you reached.

## Support people at the mediation

If agreed by all parties involved, legal or personal support persons may be present during mediation. This will be discussed during the pre-mediation and risk assessment session.

The support person(s) role is advisory to that party only and while present will not, in general, take part in the mediation itself. Support and advice can be given within private sessions with the party, not in the mediation itself. A support person is someone who can:

- Give you emotional and practical support.
- Help you understand the issues in dispute and what is important to you.
- Gently challenge you if you get stuck on one idea.
- Take notes or remind you later of things said.

Your support person could be:

- a family member
- a friend
- a work colleague
- a social worker
- a union representative
- a counselling psychologist
- a professional adviser (such as your lawyer, accountant, financial adviser/counsellor)

You must give notice before a support person will be allowed into the mediation and will only be allowed to attend upon agreement of the mediating parties and the mediator. It is necessary that any support person attending the mediation sign a confidentiality agreement before the session.

## Getting the most out of mediation

For mediation to have the best possible outcome for you it is recommended that you:

- Approach it with an open mind, listening carefully to what is being said.
- Take responsibility for your actions and decisions and for being clear about what is the dispute.
- Be genuine in wanting to resolve the dispute. An early resolution is a win for all.
- Seek support when you need it.
- Be informed, gather advice and information you may need prior to the mediation.
- Gather your thoughts before speaking and speak clearly and calmly.
- Be prepared to take turns at speaking and not interrupting the other party or speak over them. If there is something you need to respond to, write it down.
- Make sure that you understand what is being said and ask questions if you aren't sure.
- Stay positive and trust in a process which has been proven repeatedly to be successful, even if it's not feeling like that during it, especially in the initial stages.
- Listen to the other participants' point of view and suggestions and share your own.
- Don't focus on who's to blame or what has led to this point rather focus on the way forward from here creating win-win solutions that enable the matters to be resolved quickly and effectively.

## How do I proceed from here?

You can book in for your pre-mediation and risk assessment session by contacting me. All information provided is for your benefit and is not intended to be a substitute for professional advice on the topics covered. Some of the topics may not be relevant to your situation.

## Professional Fees Schedule

Mediation Fees Schedule	Fees
<b>File Creation and Administration Fee:</b> to cover the costs associated with administration and time and resources required to contact the other party and arrange the mediation.	<b>\$175</b> (per party)
<b>Pre-Mediation Intake and safety screening:</b> time set is <b>90 minutes</b> at a cost of \$330 per hour, per party.	<b>\$330</b> (per party)
<b>3-hour Mediation Session:</b> minimum time set is 3 hours at a cost of \$330 per hour, per party.	<b>\$1,980</b> (usually shared equally by the parties: \$990 per party)
<b>Ongoing mediation.</b>	<b>\$330 per hour</b> (usually shared equally by the parties.)

Other as Required	Fees
<b>Travel:</b> Within Canberra	No charge
<b>Travel:</b> Interstate or regional travel	Rates as negotiated

### Note:

- All prices listed are GST inclusive.
- All services are to be paid in advance of the service delivery.
- Fees are payable to the mediator regardless of an agreement being reached.
- Each party is invoiced separately, unless alternative arrangements are made in advance.