



What to Expect When You Attend a Mediation

What is Mediation?

Mediation is a structured negotiation process in which an independent person, known as a Mediator, facilitates discussions between you and the other party to identify and assess options and negotiate an agreement to resolve your dispute. Mediation is an alternative to a Judge imposing a decision on you and the other party.

What Cases are Suitable for Mediation?

All cases, regardless of their complexity or number of parties, are suitable for mediation. This commonly includes family law matters, commercial disputes, estates disputes and neighbourhood disputes.

Why Mediate?

Mediation offers many benefits over a trial by a Judge including a quicker and more efficient resolution to a dispute, cost savings, confidentiality, flexibility in terms of results, a reduction in stress and a likely increase in satisfaction.

How do I Prepare for Mediation?

You can improve the quality of your mediation by considering:

- the issues that are in dispute, including the provable facts and the sources of conflict.
- what is important to you in resolving your dispute. Be aware that the interests you wish to pursue may be different to an outcome that is sought if you are proceeding to a trial at Court.
- how best to communicate this information, both to the mediator and to the other party.
- what you might like to say at the start of the mediation to assist in resolving the dispute.
- what the other party's aspirations might be, and how these might be accommodated in any offer of settlement.
- possible contents of an offer.

It is important to keep in mind what costs have already been incurred and what costs are likely to be incurred in the future in you need to proceed to trial. You should also keep in mind the possible range of outcomes if the matter were to proceed to a trial.

What Should I Bring to Mediation?

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Can I Bring a Support Person?

Mediation is generally conducted only with the parties and legal representatives present in the mediation room, but it may be possible for you to have a support person in your breakout room. The support person does not enter the mediation room but is available to speak to you about the offers that are taking place. We need to obtain the consent of the other party if you would like a support person to attend with you so, please do provide us with notice of this. The other party may also ask to bring a support person.

What Happens at Mediation?

Before commencing the mediation, your Mediator will consider the best process for resolving your dispute. Generally, mediations occur with the parties both present in the same room (either physically or online), but mediations can also be conducted in a shuttle manner where the parties are in separate rooms and the Mediator moves between the rooms. It is common for a mediation to start in the one room and then break into separate rooms if necessary.

Your Mediator will commence with an explanation of the process, a reminder about the confidential nature of mediation and a discussion around rules for respectful behaviour. The Mediator and the parties will then have a discussion about the background to the matter and the issues that are in dispute.

Mediation is a very flexible process and can be tailored to the circumstances. Mediators often assist negotiations by asking questions, encouraging open discussion, offering different perspectives and expressing issues in alternative ways.

What are the Possible Outcomes of Mediation?

The case may be settled in full or in part. In some cases, the parties may not be able to reach agreement, but the mediation might nonetheless be helpful in narrowing the issues in dispute.

If agreement is reached, the details of that agreement will usually be recorded in writing and potentially signed by all parties before the end of the mediation. If you are involved in litigation, the Mediator will generally notify the Court of the outcome, but the Mediator will not provide the Judge with any details of the mediation discussions or the negotiations that took place.

If you cannot settle your proceedings at mediation, there may be discussion about what needs to be done to prepare for trial.

It is important to remember that a mediation is not a Court hearing. Solicitors are not allowed to cross-examine either party. No one in the mediation room can engage in behaviour that is aggressive or disrespectful. If that occurs, the Mediator will stop any such behaviour. Be aware that mediations can get emotional. It is normal to feel angry, frustrated and disappointed during the process. At any time during the mediation, you can ask for a break to clear your head or to obtain legal advice.

We believe mediation is a powerful tool to help people resolve disputes and our solicitors have many years of experience attending mediations and negotiating on behalf of clients.