

WHAT YOU NEED TO KNOW ABOUT MEDIATION

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What is mediation?

Mediation provides an alternative to going to Court (letting a Judge decide your matter for you). It involves you and your former partner, sitting down with an independent third party (a "mediator"), who gives both of you an opportunity to tell your side of the story and attempt to help you both work towards resolving the issues in dispute.

Mediation does not always result in a settlement of all issues, but it may help both of you better understand where the other person may be coming from, or find some "common ground".

A mediator will not force a decision upon you or your former partner, but if an agreement is reached, they will provide you with a record of your agreement, which can be drawn up into a binding agreement later, by your lawyer.

What is family dispute resolution?

Family Dispute Resolution is a form of mediation.

In accordance with the changes to the *Family Law Act*, any party who wants to file a Court Application seeking parenting Orders must have attended mediation and have obtained a Certificate of Attendance (Section 60I Certificate) from a Family Dispute Resolution Practitioner.

While the *Family Law Act* requires people to attend Family Dispute Resolution it is dependent on mediation being appropriate in the circumstances.

what are the benefits of mediation?

There are a number of benefits to you and your former partner attending mediation, regardless of whether an agreement is reached on all issues, these include:

1. By exploring both sides of the dispute, mediation may help you better understand and explore other points of view, which may assist you both with co-parenting in the future;
2. You may be able to narrow the issues in dispute by identifying some areas of "common ground";
3. You may be able to work together with your former partner to jointly make a decision for you, and your children, rather than having a third party who does not know you personally make those decisions for you; and
4. The financial and emotional costs of going to Court are reduced if an agreement can be reached at mediation, whether that agreement relates to all the issues, or just some of the issues.

is mediation appropriate for me?

Everyone's circumstances are unique. In determining whether mediation is appropriate, a mediator will consider your circumstances, and in particular:

1. Whether you are able to speak freely;
2. Any history of family violence;
3. The equality of bargaining power between the parties (i.e. whether one party is disadvantaged in the mediation, in terms of language, culture, finances etc);
4. Any risk that a child may suffer abuse;
5. The emotional, psychological and physical health of the parties; or
6. Any other issue the practitioner considers relevant.

If the practitioner is of the view that mediation is not appropriate, it should not proceed.

how do i prepare for mediation?

1. Get legal advice before attending: A mediator is not able to provide you with legal advice. You should speak to a lawyer about how the Law applies to your circumstances prior to attending, and also regarding what outcome would be "within range" (i.e. the range that a Court may determine if the matter were to proceed that far) in your circumstances. This advice will help you to decide whether any offers to settle made at mediation are in your best interests.

2. Make a list of the issues: You should consider what your issues may be and what you hope to achieve at mediation, prior to attending.

If the issues in dispute relate to the children, what is in the children's best interests? If the matter proceeds to Court, the paramount consideration will be, "What is in the child's best interest?" You should also think about what is reasonably practicable, both in terms of the time you (or your partner) can reasonably spend with the children and in terms of implementing the agreement.

If the issues in dispute relate to property do you know what assets each of you have, both individually and in joint names? Mediation may not be appropriate if you or your former partner have not completed disclosure. You should know what assets are available (and the value of those assets), prior to attending. You should also consider what contributions you have made to those assets both financially and non-financially, initially and during the relationship.

3. Think about what your best (and worst) alternative to a negotiated agreement might be: Realistically consider your options prior to attending mediation. Options which may effect whether or not you should accept an offer at mediation will include matter, such as:

- a. the potential ongoing legal costs;
- b. the emotional turmoil of the continuing Court process;
- c. the uncertainty of leaving decisions involving your life to a third party; and

d. other such factors;

You should also think about what outcomes may not be ideal, but may be something you could live with.

4. Do you have any special requirements? You should tell the mediator if you have any concerns prior to starting mediation: If you:

a. are scared of you former partner;

b. are concerned that you will not be able to speak freely;

c. have language difficulties; or

d. have any special needs or concerns;

it is best that you make the mediator aware of those concerns before starting the mediation.