

What is mediation?

Mediation is an alternative to litigation via the courts. Litigation is an adversarial system in open court which can be stressful and costly and where there is a winner and loser. Mediation seeks to settle disputes between parties amicably in an informal and confidential forum without strict legal rules under the guidance of a skilled mediator. The mediator's role is to assist the parties to discuss, negotiate and achieve a solution in an atmosphere of cooperation and good faith.

What is mediation?

Mediation is a voluntary and confidential conference, where all the participants have agreed to attend and to cooperate in good faith to resolve the dispute between them.

A mediator appointed by the Law Society of New South Wales assists the parties to discuss, negotiate and achieve a solution.

All negotiations during a mediation are non-binding and confidential. Experience has shown that mediation is more effective because it is confidential.

Parties must be present in person at mediation. Where a party is not a natural person (for example a company), a properly authorised person with written authority to settle the matter is required to represent it.

If each party is prepared to negotiate in good faith and work towards a mutually satisfying compromise the mediation is more likely to succeed. Parties who are not prepared to make concessions will be better served by the traditional adversarial system of the court process.

One of the underlying philosophies of mediation is that the parties can reach an agreement that does not necessarily conform with legal precedent, or with community standards but is one which resolves the problem to the satisfaction of the parties.

Any agreement reached as a result of the mediation session is written down by the parties' lawyers and signed by each side. The terms of the agreement may be retained in contract form or, if there are court proceedings, the lawyers will obtain the appropriate court order.

Why mediation?

Mediation is more 'user-friendly' than litigation and it has a proven success rate. It is informal and, if successful, provides a cheaper and quicker means of settling a dispute.

Statistics show that more than 90 per cent of cases are settled before they reach court. Mediation can enable settlement to occur even earlier. Early settlement reduces the stress inevitably involved in court proceedings particularly where a party may have to give evidence. Early settlement also reduces legal and other costs such as those involved if parties have to take time off work or from business.

Mediation can help the relationship between parties to survive their dispute because it allows them to formulate their own mutually acceptable solutions.

Even if parties do not settle their dispute, they do clarify and narrow the issues at the mediation thereby reducing the time and expense of the hearing. At the very least, parties who have been through a mediation will have had an opportunity to discuss and clarify the disputed issues.

What is the role of the mediator?

The mediator is a neutral and impartial person who does not impose a solution on the parties, nor does he or she make a decision for, or give any legal advice to, the parties. Mediators give an overview of the mediation process, which will include the following three important stages:

- the identification of all disputed matters;
- facilitation of direct communication between the parties with a view to the development of options to resolve the matters in issue and to explore the appropriateness of the options; and
- arriving at an agreement that the parties find mutually acceptable.

What does the mediation process involve?

Mediation is normally divided into two sessions - a preliminary conference and a mediation session. The purpose of the preliminary conference is to explain the features of the mediation process, to sign an agreement to mediate, to determine the preliminary steps to be taken before the mediation conference, and to set a timetable for the completion of these steps before the mediation session. During the mediation conference parties have an opportunity to give a brief opening statement outlining their individual concerns and issues. The mediator then encourages the parties to communicate directly to enable them to clarify their position with the other side and to gain an understanding of the other party's point of view. At some stage during the mediation the mediator may see each party separately; during such meetings, confidentiality continues to be preserved.

Who are the mediators?

The mediators are solicitors on the Law Society Mediators' Panel who are appointed under stringent Law Society selection criteria. All are experienced mediators who have undergone specific and advanced mediation training including co-mediation training where two mediators share the conduct of the mediation session. Some panel members have mediated for more than 15 years and conducted more than 400 mediations. Panel

members are solicitors who have been qualified for at least 12 years, most of whom have been practicing law for more than 15 years and many for more than 30 years.

What cases are suitable?

Mediation is suitable for all civil cases where the parties are committed to reaching settlement. All types of cases have been mediated: personal injury matters; multi-party commercial cases; contract cases; family law matters; disputes over wills; and debt recovery matters. Cases in which the parties want an early and amicable solution are particularly appropriate. Your Solicitor will be in a position to advise you whether your case is suitable for mediation.

What will it cost?

NOTE: PRICES ARE NOW INCLUSIVE OF GST

Parties are required to pay \$495.00 (inclusive of GST) each to the Law Society for the cost of providing a mediator for a preliminary conference of up to one hour and a mediation session of up to three hours. In appropriate matters a co-mediation team is appointed at no extra cost to the parties. In such cases the fee is divided between the co-mediators. There may be Law Society rooms available for preliminary conferences and mediations from time to time. The mediation fee is refundable if a party withdraws prior to the preliminary conference. If the withdrawal occurs after the preliminary conference and before the mediation session, half the mediation fee is refundable. The mediation fee includes in all cases a fee of \$55 (GST inclusive) from each party, which is retained by the Law Society for administrative purposes.

How can a Solicitor help me?

Your Solicitor can:

- Advise if your case is suitable for mediation.
- Describe fully the process of mediation to you.
- Contact the other party for you.
- Negotiate on your behalf.
- Refer your matter to the Law Society's mediation program.
- Prepare your matter for the mediation.
- Attend the mediation with you in order to advise you during the course of the mediation.
- Assist you to draft a settlement agreement.

- If necessary, obtain the appropriate court order to put an end to court proceedings.
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These brief notes are for your general information. They are not a definitive analysis of the subject and professional legal advice should be taken before any course of action is pursued. Your Solicitors at Barry F. Cosier & Associates can advise you further regarding any matters of this nature.



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