

Mediation as an alternative dispute resolution tool

This document is provided to briefly outline what mediation is and how it may be of benefit in resolving a matrimonial dispute.

The mediator's role and function:

- The mediator does not represent either of the parties to the dispute. Legal advice will only be given by and taken from each party's own lawyers who are solely responsible for protecting their client's interests.
- The mediator's job is to guide the parties towards a mutually satisfactory settlement. The role of the mediator is not to reconcile the parties or their conflicting points of view with each other.
- The mediator is required to act fairly and impartially in identifying and considering points of difference, discussing legal rights and duties, and the practical implications of competing proposals with the parties and their legal advisors.
- Any opinions, suggestions or recommendations of the mediator are not binding and will not force an unwanted solution by either party.
- A range of available options will be explored with the parties during mediation with a view to reaching final resolution, but the choices and decisions are theirs alone.

The mediation process:

- The mediation conference will be conducted at an appropriate, agreed venue at a time suitable to all parties and the mediator.
- The mediation may involve private meetings between the parties and the mediator to help define or narrow any contentious issues between the parties.
- The mediation will normally include a preliminary conference between each party and the mediator individually, on a date suitable to the parties, so that the mediator can ascertain whether or not, in their opinion, the mediation is worthwhile proceeding with.
- Before the mediation, each party is required to sign a mediation agreement which sets out the rules of the mediation, which rules can be tailored to suit each particular case.

The parties' responsibilities:

- Each party agrees to act courteously and co-operate in good faith throughout the mediation process and to comply with all reasonable requests made by the mediator, including making full and frank disclosure of their respective financial situations and providing documents, if necessary.
- Each party has an obligation of full and frank disclosure of all relevant documents and information. Any agreements reached in mediation based on incomplete or misleading information may be a ground to set aside any agreement reached at mediation.

Termination of mediation:

The mediation ends when:

- a settlement agreement is signed by the parties;
- either party gives written notice of termination; or

- the mediator withdraws their services, in writing. (This usually occurs if the mediator considers there is no prospect of resolving the matter.)

Settlement by mediation:

Any resolution of a dispute by mediation is binding when a final settlement agreement has been signed by the parties. The agreement is not enforceable however until it is converted to an Order of the Court or a Binding Financial Agreement.

Mediation fees:

- The parties agree to share the mediator's professional fees equally.
- Mediators' fees vary depending on the experience and seniority of each mediator.
- The normal daily fee for an experienced mediator is approximately \$5,000 per day.
- In addition to the mediation fee, a mediator will charge travel and accommodation expenses if the mediation is outside the Brisbane metropolitan area.
- Each party is required to pay their half share of the mediator's fee in advance of the mediation.

Advantages of mediation:

- Provided an experienced and respected mediator is selected for the process, mediation is normally quicker, cheaper and more informal than the court process or other forms of dispute resolution.
- If agreement is not reached at mediation, then at least some of the issues can be identified and limited by the process.
- Anything said at mediation is confidential and cannot be used in court. (Subject to some minor exceptions.)

Disadvantages of mediation:

There are no real disadvantages to mediation, for the following reasons:

- Mediation may resolve the matter, but if it does not resolve the matter it often limits the issues.
- If the matter does not resolve by way of mediation, all that is lost is one day's mediation and the mediation fees – which fees are usually insignificant to the costs of alternative dispute resolution or the court process.

If the mediation is unsuccessful the parties can proceed to institute proceedings in court or continue with court proceedings if they are already instituted.

A mediation can be conducted at any time either before or during the court process by agreement between the parties.