

## INTRODUCTION

Mediation is a quick, effective and informal way of resolving disputes. It is particularly valuable when parties need to continue to live and work together in the future.

If you are unfamiliar with mediation, the following information will provide you with an overview of the process, the role of your lawyer or support people (if present) and my role as mediator. The mediation process is not set in stone but can be adapted to suit you.



A mediation agreement, to be signed by, or on behalf of the parties is also included. The agreement sets out our mutual responsibilities and contains some basic principles such as confidentiality and cooperation that are important features of the process.

## THE MEDIATION PROCESS -WHAT IS IT?

Mediation is an opportunity for parties in dispute to resolve their dispute by agreement. As mediator, I will help you to identify the issues needing resolution and to develop a range of options for resolving them. If appropriate, the parties will reach a mutually acceptable resolution of some or all of those issues which will be formalised by a binding written agreement. Agreement is usually the end product of mediation, but reconciliation or improved understanding is also positive outcomes of mediation.

My preferred definition of mediation is "a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them".

There are very few disputes that cannot be mediated, if the parties are genuinely prepared to try and work together understanding each other's perspectives and to resolve their differences by agreement.

## THE MEDIATOR'S ROLE

There are many different mediation models and approaches. In essence, I believe mediation allows parties to have a structured discussion in which disagreements will be regarded as problems to be solved rather than battles to be won. My role as mediator is to:

- establish a constructive atmosphere and facilitate communication between the parties about their

respective views

- assist the parties to isolate and discuss the key issues and to identify and focus on their underlying needs in relation to them
- assist the parties to develop a range of possible options for resolution of the issues
- assist the parties to reach an agreement by looking at the risks associated with not resolving the dispute and the advantages of settlement now.

## **STEPS IN THE PROCESS**

### **Pre Mediation**

The steps in my mediation process are usually as follows:

#### **Agreement to Mediate and Appointment of Mediator**

- Mediation is voluntary, so agreement from all parties is required before mediation can begin. Any party may end the process at any time.
- The parties agree to appoint me as an impartial mediator. This is usually confirmed in a written agreement, signed by the parties and me.

#### **Preliminary Conference**

- I communicate by email or telephone with all parties or their lawyers to:
- agree on a time and place for the mediation;
- agree on documents or materials to be provided in advance;
- agree on the process e.g. whether I need to meet with the parties separately in advance of a joint meeting.

#### **Mediation Meeting**

##### **Attendance**

- A person from each party with authority to settle the dispute, needs to be present at the

mediation. The parties may agree that other people be present at the mediation, for example legal advisers, expert advisers, and support persons. These people may be required to sign a confidentiality agreement.

### **My Opening Statement**

- Following introductions, I make a short statement explaining the mediation process and my role and answer any questions from the parties.

### **Parties' Statements**

- I will then ask each party in turn to briefly outline the issues they wish to raise in the mediation. This is an important opportunity for lawyer and parties to set the tone of the mediation and to ensure that their key concerns are highlighted.

### **Key Issues**

- Following the parties' statements, the key issues in dispute are identified and form the basis for an agenda for discussion.
- My aim during the joint session where the key issues are discussed will be to promote consensus around agreed facts and an understanding of the different perspectives each party brings to the dispute.

### **Private Meetings**

- Parties will need to hold their own private meetings during the mediation. I will also meet on a confidential basis with one party at a time. The aim of private meetings is to allow parties to raise issues with me in private and to identify settlement options and parameters. Unless specifically authorised to do so, I will not disclose anything said in a private meeting, to another party.

### **Recording Agreement**

- If agreement is reached, the parties or their legal advisers will record it in writing. The parties will sign the written agreement. Once signed, the agreement is binding. If agreement is not reached, the parties are free to try and resolve their dispute in other ways, such as court action. In some cases, agreement may be reached later, after the parties have had time for further reflection, in negotiations between the parties or their lawyers, or in another mediation meeting.

### **PRELIMINARY CONFERENCE CONSIDERATIONS? – DO WE NEED ONE?**

A preliminary conference is an opportunity for me to clarify any issues about the process, make arrangements for the mediation and establish that all parties are ready to mediate.

The preliminary conference provides the opportunity:

- for parties (and/or their lawyers) to indicate their expectations of the process and for me to explain my approach to mediation.
- to ensure that mediation is the appropriate dispute resolution process and that I do not have a conflict of interest.
- for the parties to agree whether further steps need to be taken in advance of the mediation, for example, the exchange of documents or any further information or whether any expert reports are required.
- for the parties to agree on the information to be provided to me in advance of the mediation. You may wish to provide me with a brief statement of the issues and possible options for settlement on a confidential basis in advance of the mediation. This gives me the background to the dispute and also helps the parties to focus on the main issues and possible settlement options prior to the mediation, thus reducing time spent in the mediation itself. Alternatively, the parties may wish to agree a statement of facts or to exchange issues statements in advance of the mediation. It is very helpful for me to have this "heads up" ahead of a mediation.
- for the parties to agree who will attend the mediation, including support people if needed.
- to set a convenient date and venue for the mediation.

#### **THE ROLE OF LEGAL ADVISERS IN MEDIATION**

- To advise and assist their client in the course of the mediation;
- To discuss with each other, and with their respective clients, legal, evidentiary or practical matters which might assist to resolve the dispute.
- To generate possible options for the resolution of the dispute.
- To evaluate any settlement options generated against what will happen if no agreement is reached (known as best alternatives to a negotiated agreement or BATNA) e.g. most likely outcome in court, damage to reputation/relationship/business opportunities, time, cost and other factors associated

with failing to reach agreement.

- To prepare the terms of settlement or heads of agreement recording any agreement reached.