



How does mediation work?

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When a relationship breaks down, and the parties have separated or are considering separation, things can become challenging, especially when you are trying to make decisions about [dividing up property](#) and [caring for your children](#). This is where mediation can help during your family law proceedings.

Mediation is becoming more common as a greater number of people seek to avoid the Court process. The Courts have also made mediation mandatory in most cases, meaning a party cannot file a Court case unless they have first attempted dispute resolution.

What is mediation?

In basic terms, mediation is simply a conversation supported by a mediator. The aim of mediation is to help people come to an agreement without going to Court.

A mediator is an independent person that helps people talk through their issues and reach an agreement. The mediator's role is to guide the negotiations and help facilitate positive communications.

The mediator will assist you and your former partner to find arrangements that work best for the children and the family and/or to reach a property settlement agreement.

Mediators cannot give legal advice, decide who is right or wrong, or force people to reach an agreement.

In a family law context, mediation can be a powerful tool to help separated couples reach an agreement and keep their matter out of the Courts.

There are generally two types of mediation:

Lawyer assisted mediation

This is where parties attend a mediation with their lawyers and a qualified mediator. The lawyers will generally lead the discussions and conduct negotiations on behalf of their clients. This process is best suited to parties who want to reach an agreement out of Court but don't feel comfortable or confident enough to do it alone.

Mediation without lawyers

Often where parties are on good terms and don't have complex legal affairs, they may prefer to engage in mediation without lawyers. This option is available via private mediation services (many of which are offered by lawyers) and through government organisations such as Relationships Australia.

What happens during mediation?

During mediation the mediator will work through a process that aims to:

1. identify the issues;
2. encourage each party to listen to the other's point of view;
3. keep each person on track;
4. focus on agreed outcomes and priorities, e.g., children; and
5. seek ideas and options that create solutions.

During the conversation, the mediator may also:

- talk separately with each party to help move issues along or to discuss options for negotiation;
- support parties to develop a parenting plan that sets out arrangements for children;
- ensure everyone understands what is being said and what has been agreed upon.

You can request to bring a support person with you. It is best to discuss your wishes with your mediator or with your lawyer if you're having a lawyer-assisted mediation.

How long does mediation take?

This is a common question, and there is no single answer. Each dispute is different, and some are more complex or more contentious than others. For example, a short mediation can take a few hours, whereas a longer mediation can require a whole day or even multiple meetings.

What are the benefits of mediation vs Court?

Mediation is generally a better way to resolve disagreements compared to going to Court.

Here are just some of the benefits of mediation:

- Cost:** Mediation is a less expensive approach if agreement can be achieved. The costs of preparing for and running a Court matter from start to finish will be significant.
- Speed:** Generally, decisions about family law disputes can be resolved more quickly through mediation than through a Court process.
- Stress:** Mediation is often less stressful than going through a formal Court process.
- Control:** Mediation allows you to have more control over the decision made. A decision made by a judge in Court may not land in your favour or offer the flexibility you could agree upon in mediation.
- Confidentiality:** What is said in mediation is confidential, unlike a Court trial, where written records are kept. This allows you to have honest conversations about what you want to achieve and the best options for settlement.

How should I prepare for mediation?

Successful mediation occurs when everyone is prepared to listen and share perspectives. As part of your preparation, it can help to write down responses to these questions:

1. What do you want to achieve, and what is most important to you?
2. What areas are you in agreement with the other party?
3. What issues are in dispute between you and the other party?
4. What compromises are you willing to make to achieve a settlement?

It is important to meet with your lawyer before your mediation to make sure you understand the process and that both parties are ready to attend a mediation. For example, if there is no agreement regarding the value of an asset (such as the family home), then it may be too early to attend the mediation, and a valuation may be required.

You can read more details about preparing for mediation in our earlier blog, [“How do I prepare for a successful family law mediation?”](#)

Does mediation really work?

Yes! Mediation is a great way to reach settlement and stay out of Court. If everyone is properly prepared and willing to make some compromises, then there is no reason why an agreement can't be reached.

A professional mediator is trained to use a range of tools and techniques to help guide your disagreement to a resolution in the best interests of the family.

It is important to understand, though, that mediation works best when both parties come prepared to listen to each other and genuinely seek to progress to a workable solution.

What happens if mediation doesn't work?

The family law system encourages separated families to come to their own arrangements in caring for their children or finalising their property settlement without going to Court.

However, if your dispute cannot be resolved through mediation, you may be required to go to Court. Going to Court can be a long, stressful and expensive process but is sometimes necessary to progress a matter.

The aim of mediation is to avoid the situation reaching Court. However, if you need to go to Court, there will still be opportunities to settle your matter along the way, and most cases won't make it all the way to a final hearing or trial.

How do I know if mediation is right for me?

Not all situations are suited to mediation. Before a mediation will occur, your mediator will assess if mediation is a suitable option.

The mediator will assess suitability, considering whether there is any family violence, the safety of the parties, the emotional, psychological and physical health of the parties and any children. Safety will and should always be the number one priority.

If you feel this applies to your situation, we have a team of family law experts here to discuss your options and the next steps involved.

[Call advice from a family lawyer about your mediation options: 03 9006 8907](#)

Do I need a family lawyer at mediation?

It is not a requirement to have your family lawyer present at your mediation however, many people feel more comfortable having someone to provide expert legal advice through this process and conduct the negotiations on their behalf.

Emera Family Law are experts in negotiating out-of-court settlements. Contact our team to ensure you have the best advice moving forward.

Helpful resources

- A key resource for parties is the [Federal Circuit Court website](#)
- Online dispute resolution tool by the [Attorney-General's Department: Amica](#)

- [Information on parenting plans](#)

- [Information on parenting orders](#)

- Find a government-funded service, call the Family Relationship Advice Line on [1800 050 321](tel:1800050321)

Need an experienced family lawyer?

Family law mediation is an excellent option for parties to negotiate issues in dispute and find a suitable resolution with less stress and less costs than taking your matter through the Court system. If you want legal advice or support during mediation, feel free to give us a call. We offer a free first consultation.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.