



THE LAW SOCIETY
OF NEW SOUTH WALES

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RIGHTS

MEDIATION

What is mediation?

Mediation is a process that lets people try to settle their disputes informally, with the help of a mediator. It can be a cost-effective and efficient alternative to taking a dispute to a court or tribunal. Sometimes, a court will even ask people to go to mediation as a first step in finding a solution.

The mediator won't tell you what to do or give advice about what decision a court would reach. Mediators also won't decide who is right or wrong. Instead, they'll try to help everyone reach an agreement by identifying the issues, discussing options and working out alternatives for resolving the dispute.

In other words, it's the parties to the dispute and not the mediator who decide the outcome.

If you do reach an agreement you will be asked to sign a document setting out exactly what you agreed. Often this agreement takes the form of a binding contract. When a court has ordered mediation, the agreement may need to be in the form of draft court orders prepared by your lawyers.

Any negotiations during the mediation are confidential and nothing you say can be used in court.

Why choose mediation?

There are a number of reasons you might choose mediation.

- Mediation focuses on reaching an outcome that suits all parties rather than deciding who is right or wrong.
- Mediation is less formal than going to a court or tribunal.
- Mediation often leads to disputes being settled early, which can mean less stress and less cost.
- You can use mediation to decide whether going to court is the right option or if there is a better solution.
- Mediation usually takes less time than a formal hearing.

Even if you can't resolve your conflict through mediation, there are still often benefits to going through the mediation process, particularly when it comes to clarifying the issues in your dispute. This can help keep costs down and reduce the length of any hearing.

What is the mediator's role?

The mediator stays impartial and won't offer advice or impose a solution. Instead, they will try to create the kind of atmosphere that lets everyone talk about their concerns and allows them to exchange information and negotiate an outcome.

How does the mediation process work?

Usually, there are two phases in any mediation: the preliminary conferences and the mediation session itself.

The preliminary conferences

During the preliminary conferences the mediator will explain how the mediation works and discuss anything that needs to be done before the mediation session to make sure it's productive. They will also ask you to agree to a timetable for the exchange of information.

The mediation session

At the start of the mediation session, each party outlines their issues and concerns. The mediator uses this information to set an agenda, identifying areas of common ground as well as those issues that need to be agreed on. The mediator will then help everyone explore each of these issues in detail.

At some stage during the mediation session the mediator may ask to meet with each party individually, so that you have the chance to consider the issues and explore options confidentially and in private.

You'll then usually complete the mediation by negotiating terms, which you will write down and sign.



MEDIATION

What qualifications will the mediator have?

Mediators are often qualified solicitors who meet the strict criteria required to sit on the Law Society of New South Wales Mediators Panel. Most have many years of experience and have facilitated hundreds of negotiations.

Is mediation right for you?

Your solicitor can let you know whether your case is suitable for mediation. But generally mediation can be a good choice in any dispute where the parties are committed to reaching an agreement. This often includes disputes involving personal injury claims, partnership disputes, commercial and contractual disputes, family law matters, disputes about wills and estates and debt recovery disputes.

What will mediation cost?

Law Society mediations cost \$825 per party (including GST). This covers the costs of a mediator for a one hour preliminary session and a mediation session of up to three hours.

If you withdraw from mediation before the preliminary conference, your mediation fee will be refunded. If you withdraw from the mediation process between the preliminary conference and the mediation session, you'll receive a refund for half your fee.

You can find out more on the Law Society of New South Wales website at www.lawsociety.com.au/mediation

How can a solicitor help?

If you're involved in a dispute and considering mediation a solicitor can help in many ways, including:

- Advising you on whether or not mediation is a suitable way to try to resolve your case
- Describing how the mediation process works and helping you prepare for the mediation
- Contacting the other party to the dispute for you
- Referring your case to the Law Society's mediation program
- Engaging a mediator on your behalf
- Attending the mediation with you to advise and assist you as it unfolds.

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