



FAQ

A BRYANT MCKINNON RESOURCE

Mediation



This document summarises some of the more commonly asked questions regarding mediation. If your question is not answered on this page or you need further advice on any family law related matter please phone us on 02 6651 8440 or email info@bryantmckinnon.com.au.

What is mediation?

Mediation is an opportunity to negotiate an agreement with your former partner, with the support of a qualified, impartial mediator. You can organise mediation through public mediation services or with a private mediator.

In family law, mediation most commonly deals either with property settlement or parenting disputes.

With parenting disputes, the law requires you to mediate through a special process called Family Dispute Resolution, which is tailored to the needs of children.

What is Family Dispute Resolution?

Any parent wishing to resolve disputes related to their children is required to attend a special type of mediation, known as Family Dispute Resolution (FDR), before they can progress through the court system. The primary purpose of FDR is to assist participants to make a Parenting Plan that sets out future parenting arrangements.

There are exceptions to this requirement: when there are allegations of family violence or child abuse, in circumstances of urgency or in other circumstances where a FDR

practitioner thinks it inappropriate for the mediation to proceed.

For more detailed information in multiple languages refer to the [Family Dispute Resolution Fact Sheet](#).

For more information on Parenting Plans refer to the [Community Justice Centres Fact Sheet on Family Law Parenting Plans](#).

See also Bryant McKinnon's [Children's Matters FAQs](#).

What does the mediator actually do?

Mediators work to ensure a fair negotiation to assist you and your ex-partner to reach an agreement that meets both your needs. The mediator will help to focus, clarify and structure the discussion, aiming to reach a mutually agreeable outcome for both

you and your former partner. The mediator may discuss issues separately with each of you, and will record the outcomes of your mediation.

How long does a mediation session take?

This depends on what is being discussed, whether the mediation is court-ordered or private and the organisation facilitating the mediation.

A property mediation usually takes place on one occasion only, lasting from a half to a full day depending on the complexities of the issues. A court-ordered mediation will generally only last for half a day.

The Family Dispute Resolution process to mediate children's matters may last anywhere from a single 4-hour session to multiple 1-2 hour sessions over a period of several weeks. The duration depends on the complexity of the issues and what service is facilitating the mediation. Legal Aid NSW usually facilitates a single 4-hour session. Family Relationship Centres generally facilitate mediation over longer periods of time.

Is mediation a confidential process?

Yes, unless you and your former partner agree to disclose information to a third party. Also, the mediator is required by law to disclose certain information, for example where the mediator believes a child is at risk of harm or someone intends to cause harm to another person or property.

Most cases will be suitable for mediation, except if your dispute is very urgent or involves violence or child abuse.

How do I know if my case is suitable for mediation?

Most cases will be suitable for mediation, except if your dispute is very urgent or involves violence or child abuse. The Court will generally require you and your former partner to make an attempt at mediation before it will hear your dispute.

Can I be forced to attend mediation?

Unless your case is subject to the exemptions outlined above, you must attempt Family Dispute Resolution

with your former partner before you apply to the Court for parenting orders. If you have already done Family Dispute Resolution in the last 12 months or have parenting orders made in the last 12 months then you do not have to repeat the FDR process.

Once you start the court process in a property settlement case, the Court will usually order mediation before your case can be heard before a judge.

Mediation is often the most efficient and cost-effective way to reach an agreement in family law disputes. For most people mediation is a good idea and a good investment, regardless of whether or not it is required by the Court.

Who chooses the mediator?

If your case is not in the court system, then you and your former partner may choose your own accredited mediator. If the matter relates to a parenting plan then the mediator must be a recognised Family Dispute Resolution practitioner.



If your case has reached Court, a mediator may be appointed for you.

Is an agreement reached through mediation binding?

Agreements made through mediation are not legally enforceable until they are formalised in a way that the Family Law Courts recognise.

A property settlement can be formalised by way of a Binding Financial Agreement between yourself and your partner, or through a Consent Order from the Court. The Court will recognise the former, but it is not as easily enforceable as a Consent Order.

With children's matters the Family Law Act requires you to enter into a Parenting Plan. The arrangement in your Parenting Plan can be formulated and enshrined into Consent Orders, making the agreement easier to enforce.

Prior to issuing a Consent Order, either for a property settlement or a Parenting Plan, the judge will expect you to have received independent legal

advice and will review the agreement to ensure it is just and equitable. Once your agreement is enshrined in a Consent Order, penalties can flow from non-compliance.

For more information see our [Property Settlement FAQs](#) and [Children's Matters FAQs](#). You should obtain independent legal advice before entering into Parenting Plans or Consent Orders.

Can I arrange mediation if court proceedings have already started?

Yes, in fact the Family Law Act encourages it.

What is the cost of mediation?

If you choose to use government-funded services such as Family Relationship Centres or Dispute Resolution Centres, you may pay little to nothing for mediation.

Private mediation is more expensive, but will almost always cost less than court proceedings.

Do I have to be in the same room as my ex?

Not necessarily. If required, the mediator can "shuttle" between two separate rooms, or you can use teleconferencing. If you are concerned about your safety, you can arrange for a plan to be put in place for your protection which includes compliance with any Apprehended Domestic Violence Order.

Can I bring a support person with me?

You can generally bring a support person, but you will need to check with the mediator.

Should I bring a lawyer to the mediation session?

You can attend mediation without a lawyer, however you may find it useful to have a lawyer's support. A lawyer can provide advice, assist in focusing on key issues and provide level-headed experience.

What is a Child Inclusive Mediation?

Where appropriate, either you or your former partner may choose Child Inclusive Mediation. In this type of mediation, your children attend and are included in the mediation process. The mediator will speak with your children separately from you and your former partner. The mediator may also choose to include your children in the general discussions.

Child Inclusive Mediation will not be appropriate in all cases, particularly where your children are very young.

This is general information only. We are here to advise you on your specific circumstances; please get in touch to set up an initial consultation.

