

**Family Law Mediation** is a form of Alternative Dispute Resolution (ADR), which is used in all walks of life to resolve conflict with minimal input from solicitors and without using the court system. Specifically Family Law Mediation is conducted by a Family Dispute Resolutions Practitioner (FDRP) who is an Accredited Mediator who specialises in Family Law matters. They are registered with the Attorney General's office of Australia; they have undertaken specialised, post graduate training and are accredited via the National Mediator Accreditation System NMAS.

FDR enables separating couples to engage in a process which provides a practical, non-adversarial approach to resolving Family Law disputes. This can include, but is not limited to – access arrangements (custody) for children, property settlements, formalising a separation agreement, resolving a will or estate dispute or any family issue that would benefit from a third party mediation.

The mediator acts as **neutral, impartial** third party, they do not represent either client in the dispute, however they actively advocate for any children impacted by the separation. They do not give advice, take sides make rulings or determine the outcome of the dispute. They assist in helping people to negotiate and communicate more effectively.

It is a process based on negotiation. It involves specific methods and techniques, many of which we all use in everyday life, others are learnt skills. The structure of mediation brings these all together to assist people to reach agreements.

The aim of mediation is to explore all available options and to encourage the parties to focus on ways they can achieve their desired outcome. Unlike the traditional process of litigation, mediation allows the parties to explore the range of options and factors specific to their situation.

In mediation, it is the parties who own their dispute. The mediators provide support and encouragement to each party to state their point of view and facilitate their communication and negotiation with each other. Mediators do not act as judges but allow and encourage parties to formulate their own criteria for determining the acceptability of options and agreements.

Mediation is **confidential** and with the exception of admissions made by adults or disclosures by children relating to child abuse, nothing said in mediation can be used as evidence in court.

## **How Mediation Works:**

Mediation is a structured process involving several distinct stages.

### **Initial Contact:**

You may phone Bayside Mediation during office hours to find out about the services offered, and to discuss your specific situation with one of our mediators, or to make an appointment for a personal interview (intake interview).

### **Intake Interview:**

One of our mediators will meet with each of you separately before a mediation session can be booked. During this interview the mediator will listen to your side of the story and help to clarify your concerns and possible solutions, this may include:

- helping you decide whether mediation will be helpful for you and specifically explore any matters such as violence, abuse or drug/alcohol use which could make mediation unsafe, unfair or unsuitable for either of you
- giving you information on the mediation process and helping you adequately prepare for mediation
- suggesting appropriate referrals for legal advice, counselling, income support or other assistance.

## **First Mediation Session**

### **At the first session:**

- the mediator will explain the process;
- the mediator will explain the rules of mediation such as:
  - speaking respectfully, not interrupting each other, listening to what others have to say.
  - you will each have the opportunity to outline your own view of the problem without interruptions
- the mediator will help you break down the problem into manageable issues and develop an agreed agenda
- the mediator will encourage direct communication and negotiation
- the mediator will encourage you to consider each other's point of view and help you explore options and check whether these options are workable or realistic
- the mediator will help you work out an agreement which takes into account everybody's needs and concerns
- the mediator will work with you to produce a parenting plan or separation agreement
- when financial issues are involved, a joint financial statement and other data collection is prepared

### **Subsequent Mediation Sessions:**

Bayside Mediation offer sessions of up to four hours in duration and work to facilitate your dispute as quickly as possible, however it is not usual for a mediated agreement to take more than one session to complete, especially if we are dealing with both children's matters and property settlement; Children's matters are always dealt with first.

### **Private Sessions during Mediation:**

You may ask to confer individually with the mediator at any stage of the process. The mediator may call a private session if the discussion gets 'stuck'. We often have breaks during a session and you or the mediator can call a break at any time.

### **It is your mediation**

**Parenting Plans:**

The family court recognises the legitimacy of a Parenting Plan negotiated between parents. Should the matter proceed to court an existing Parenting Plan will be used as the basis for any future orders. Equally, a Parenting Plan negotiated by a child's parents will take precedence over a pre-existing Court Orders in most instances and if the matter goes back to court.

**Agreements:**

Agreements reached in mediation are not in themselves legally binding, yet over 85% of mediated agreements are honoured by both parties. If required, agreements reached can be formalised into Court Orders through the Family Court or with the assistance of a solicitor. Equally if the parties are able to agree on how to divide their property, the agreement can be formalised as a Financial Agreement or Consent Order. If either party then breaks the agreement, court proceedings can be instituted to enforce it.

**Mediators are Professionally Qualified:**

Mediators are required to be qualified in law, psychology, social work or a social science, and to have completed a Graduate Diploma in Family Dispute Resolution or mediation and to have undergone specialist training and supervised experience in family mediation. They also have to meet legal requirements covering client confidentiality and professional conduct.

**60(I) Certificates:**

In the event that the parties cannot come to an agreement in relation to access arrangements it is the Family Dispute Resolutions Practitioner who issues the certificate that allows the matter to proceed to the Family Court. There is a requirement to indicate why the certificate was issued, and this can be for a variety of reasons including if a party refuses to attend mediation or does attend and does not make a genuine effort to resolve the matter. In these instances it is possible for a Judge to order the matter back to mediation or award costs to the party who did not act in good faith. In any event, mediation is a preferable option to litigation and should be approached with genuine intent.

**Cost of Mediation:**

- 1) There are two types of Family Mediation Services, Not-For-Profit Organisations and Private Practitioners, the N,F,P services charge a sliding scale depending on the client's income and can range from \$0.00 to \$300.00 per hour, Private Mediators generally charge a fixed hourly fee.
- 2) Mediation is charged out to both clients, i.e. An amount per hour per client even when you are both present
- 3) Private Practitioner fees vary depending on the skill level and experience of the Mediator, Mediators with experience and expertise will charge more than those without.
- 4) Mediators generally charge considerable less than Solicitors and it is generally accepted that mediation will cost clients many thousands of dollars less than engaging a Solicitor or going to Court.
- 5) Equally, private Mediation will generally conclude a matter within weeks whereas engaging a Not-For-Profit Organisation or Solicitors can mean a matter will take months and in some cases years to conclude.

**Important Things to Remember:**

- 1) Mediation is confidential, your Mediator cannot discuss any part of your story with anyone without your permission, this includes your solicitor and your former partner.
- 2) Your mediator is impartial; even though one party to the dispute initiates mediation the Mediator does not act for either party and is impartial in the discussions.
- 3) Mediators are required by law to act in the best interest of any children in the dispute.
- 4) It is the Mediator who issues the 60(I) Certificate that allows a Children's Matters to proceed to Court.
- 5) The Mediator will indicate via the certificate if either party did not act in good faith or refused to attend mediation.
- 6) The Family Law Act provides for costs to be awarded if a party to the mediation does not act in good faith or refuses to attend.
- 7) Any document produced through mediation can be formalised into Consent Orders by the Court
- 8) A signed recent, Parenting Plan over rules an existing Court Order
- 9) A signed Parenting Plan will be used by the court as the basis for future orders.
- 10) Any information gained through mediation cannot be used in the Family Court
- 11) There is a legal requirement for clients to attend Family Law Mediation, as such a letter can be provided for employers.
- 12) Clients with existing IVO's can generally attend mediation at the Court & the Mediators discretion
- 13) Children's matters are almost always dealt with first.

**Further Information:**

If you have any enquiries or wish to speak to a mediator about your situation or about mediation generally, please do not hesitate to phone Bayside Mediation on 03 9553 6491.



**Contact: Bayside Mediation 03 9553 6491  
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