



INFORMATION SHEET

MEDIATION

This information sheet is for the assistance of those parties who have not previously been involved in mediations in the Supreme Court of Tasmania. It is intended to answer a range of questions that will enable participants to engage meaningfully in the mediation process, without worrying about procedures and protocols.

The following issues are relevant to your participation in Supreme Court of Tasmania mediations.

Purpose of Mediation

- Mediation provides an opportunity to resolve disputes in an informal process by discussion and negotiation.
- The primary aim of mediation is to facilitate the possible settlement of disputes in order to avoid the anxiety and expense of proceeding to a trial before a Judge.
- Mediation is a voluntary process based on consent, but subject to any orders having been made under the *Alternative Dispute Resolution Act 2001* and *Supreme Court Rules 2000* Part 20. It is entirely the decision of each party whether to agree with any proposed settlement terms to resolve the dispute. There is no obligation or compulsion to do so. The Court simply provides an opportunity for settlement by mediation if the parties are so minded.
- Mediations are confidential. Anything said, or documents produced, at mediation, cannot be referred to in any other forum or place unless permitted by law. That includes any reference to mediation materials in any subsequent trial before a Judge, if that eventuates. The reason for this confidentiality is that if settlement negotiations conducted at mediation were unsuccessful in resolving the dispute, those negotiations must be kept confidential to those who participated in the mediation. Another reason for this rule is that confidentiality enables more latitude for the parties to consider ways of resolving the dispute, without being bound by any proposals if the matter does not settle. The parties will be in no worse a position at trial than prior to mediation.
- The aim of mediation is to resolve disputes at the mediation, so all parties are expected to attend the mediation with authority to settle the issues being mediated. The agreement of co-parties, or an insurer, may need to be obtained prior to the mediation.

Mediator's Role

- The mediator will facilitate the mediation (like a Chairman of a meeting), and will invite each of the parties to speak, in turn.
- The mediator is not a decision maker, and does not make any findings of fact relating to the dispute. The mediator is impartial in the sense that he or she, with the assistance of the parties, identifies the issues, develops options for consideration, and if agreement is reached, documents the settlement of the matter. In some cases, the settlement can be documented and signed on the day at the conclusion of the mediation. In other mediations, there may be a number of steps to be taken before final settlement is reached and documented, but a heads of agreement can be recorded on the day.
- The mediator may conduct sessions in which he or she may play the “Devil’s Advocate” to test each parties understanding of the issues and options.
- The mediator will ensure that, if necessary, breaks are taken during the mediation to enable parties to consider issues. If a party wants to speak to their solicitor privately during the mediation, they can ask to do so.

Procedure at Mediation

- Mediations are usually conducted in person, face to face, in a conference room at the Supreme Court. In more recent times, mediators have permitted some parties to attend by videoconference or teleconference.
- During the mediation, each party’s case is presented by their solicitor or Counsel. If you have instructed a solicitor, you may be invited to speak during the mediation to provide relevant information at an appropriate time. If you are a litigant-in-person who has not instructed a solicitor, the mediator will guide you about when to speak.
- All attendees at mediation are expected to show respect in communicating with the other parties. Emotions can occasionally run high at mediations, but all are expected to show appropriate courtesy and respect while focusing on the issues.
- In some disputes, the mediator may convene a pre-mediation conference to ensure that all necessary, preliminary information has been exchanged between the parties to enable an effective mediation to proceed. The pre-mediation is usually conducted a number of weeks prior to the mediation, and usually involves only the lawyers acting for the parties. It is usually conducted by teleconference and deals with “housekeeping” issues in preparation for the mediation. The parties are not required to attend the pre-mediation conference unless requested by the mediator.

- The usual procedure at mediations is for the parties to be involved initially in a “*joint session*” in which all parties and their legal advisors are present in the room to summarise their client’s position, discuss matters and share information. It is then usual for the parties to have “*private sessions*” in which that party and his or her own legal advisors have private discussions in the absence of the other party or parties, to consider information that has been shared, and to discuss potential settlement options. The mediator may be present in those private sessions if requested.
- If a mutually agreed solution of all of the differences between the parties is not reached, then the mediator may attempt to resolve as many differences as possible.
- If you have any questions, concerns or special requirements for the mediation, you should raise those matters with the mediator a reasonable time before the mediation.

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