

# LET'S TALK...



## MEDIATION

What you need to know



### IS MEDIATION CONFIDENTIAL?

With very few exceptions, what is said at mediation is confidential and no court records are kept of the conversation - unless agreed to by the parties. This allows you to have an honest and frank discussion about what you want to achieve and options for settlement.

**You should get legal advice before discussing the mediation with anyone who wasn't there.**

### CAN I BRING A FRIEND?



Usually, only the parties and their lawyers attend mediation. If you would like to bring a personal support person, the mediator will decide whether that person can attend the meeting or be available to you during the breaks.

### PREPARATION TIPS

- Be ready to listen and be listened to
- Think about what you want to achieve
- Speak when ready, not as a reaction
- Be familiar with what's in dispute
- Think about what you can agree upon
- Talk to your lawyer about future costs
- Develop options for resolution
- Don't be rushed - set aside a day
- Be prepared to make a decision

**Disputes can be resolved in a way that might not be able to be achieved by going to trial.**



Being involved in a legal dispute can be costly and emotionally draining. For many people, just the thought of appearing in court is extremely stressful.

However, you might be surprised to learn that most civil cases in the Supreme Court are resolved before going to trial.

One way that's achieved is through **MEDIATION**.

The court's mediation program is designed to assist you to resolve your legal dispute simply, quickly and cost-effectively. Mediations are conducted in a controlled and secure environment - and they are confidential.

### SO, WHAT IS MEDIATION?

Basically, mediation is an opportunity for the parties and their lawyers (if they have them) to talk it through and reach their own agreement, with the support of a mediator.

You may not realise that there is an alternative point of view to your own until you've heard it. The mediator will help the parties talk to each other, in a respectful and safe environment.

**Mediation empowers you to reach your own agreement.**

### WHY USE MEDIATION?

Resolving a dispute by agreement avoids the delay and additional expense involved in taking the case to trial, as well as the uncertainty of the outcome after trial.

If an agreement is reached at, or after, mediation it can take effect immediately and can be embodied in an order of the court, which can be enforced by the court. Even if the dispute is not resolved, mediation can help you to clearly define the issues in dispute, reducing the time and expense of a trial.

**Many successful mediations result in a final and binding deal being done on the day.**

### WHICH CASES GO TO MEDIATION?

Almost all cases go to mediation at some stage. Your case manager will listen to your point of view when deciding when to order mediation and you should discuss the timing of mediation with your lawyer.

### WHAT ARE THE BENEFITS?

Mediation can be a faster and less expensive option than going to trial and it gives parties the opportunity to determine how their dispute will be resolved, taking into account the things that are important to them.



### DO WE HAVE TO AGREE?

You do not have to agree to resolve your legal dispute at mediation - however, you do have to cooperate, listen to the views of other participants and consider options for resolution. Typically, mediation is used as a forum to identify issues, develop options and to explore alternatives for resolving the legal dispute - some of which might not be available to you if you go to trial.

### DO I HAVE TO BE THERE?

Mediation is about speaking face-to-face but sometimes, in appropriate cases, you may be allowed to attend via telephone or video link. However, such a request must be made to the court as soon as possible.

**Options for settlement are developed and explored.**



### WHO IS THE MEDIATOR?

A court registrar or a judge will act as your neutral and independent mediator. Once that person has mediated a case, they will not act as the case manager or trial judge for the same matter. Alternatively, the parties can agree to use and appoint their own private mediator, at the cost of the parties.

### WHAT HAPPENS IN THE ROOM?

You can speak openly. The mediator will speak directly to you and any lawyers present. Each party can explain their view of the dispute and you'll be encouraged to understand each other's perspective.

### MEDIATION COSTS

The person bringing the case to court will typically pay a fixed fee when lodging the mediation request. You can confirm the fee by speaking to your lawyer or by checking the schedule of fees on the court's website: [www.supremecourt.wa.gov.au](http://www.supremecourt.wa.gov.au)

The fee covers the listing of the matter only. There is no cost for the use of the mediation rooms or for the time of the registrar or judge. However, if you appoint a private mediator they will charge you for their time and expenses.

### WHERE IS THE MEDIATION HELD?

Most mediation hearings are held in special rooms on levels 7 or 8 of the David Malcolm Justice Centre, at 28 Barrack Street in Perth. There are eight mediation rooms and a number of interview rooms, where you can discuss matters privately before and during mediation.

Mediation can also be conducted in towns and cities across Western Australia, where appropriate.

