

Preparing for Mediation

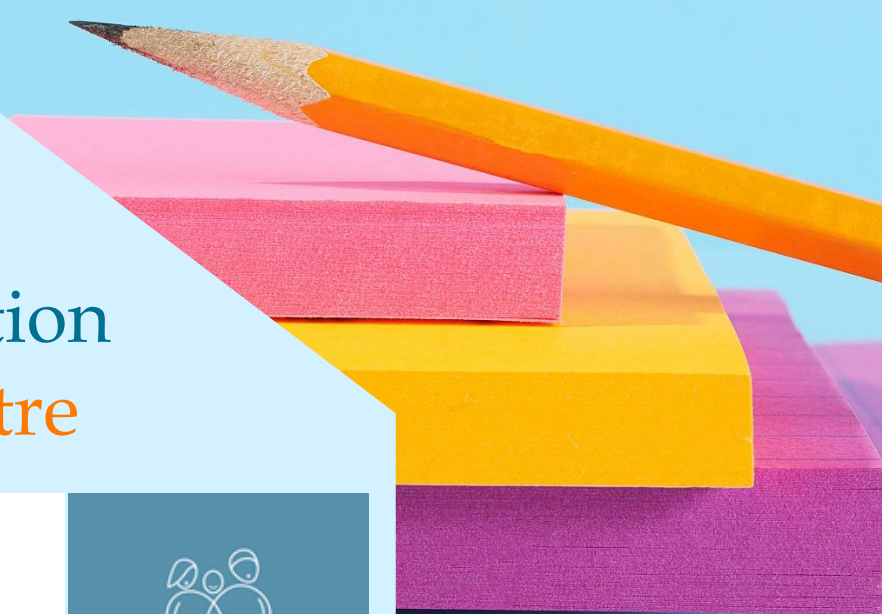
Family First Mediation
The Mediation Centre



THE MEDIATION CENTRE
BIGGER. BETTER. MEDIATION SPECIALISTS



FAMILY FIRST
MEDIATION AND DISPUTE RESOLUTION



PARENTING MEDIATION

What do you want to discuss?	3
What Options are you Considering?	4
Where are you Willing to Compromise?	4
Mediation Etiquette	5
How to Make a Proposal in Mediation	5
How to Make Mediation Successful	6
Is there a Polite Way to Disagree with a Proposal?	6

PROPERTY MEDIATION

Full and Frank Financial Disclosure	7
Exchange of Financial Information	7
Legal Advice	8
Financial Advice	8

OTHER

Preparation for Mediation Checklist	9
My Proposals Worksheets	10
<i>Family Law Act 1975 - Best Interests of Children</i>	15
<i>Family Law Act 1975 - Major Long-Term Decision Making</i>	16

PARENTING MEDIATION

What Do You Want to Discuss?

It is important to come to the mediation session with a clear list of topics or issues that you would like to discuss.

You will be asked to send your list of topics to your Mediator at least 48 hours before your mediation. This list will be shared with the other party so that you are both aware of what topics you want to talk about in the mediation.

Some possible topics include:

- Parental Responsibility;
- Living arrangements for the child/ren;
- Time the child/ren spend with each parent including:
 - Routine time;
 - School holidays; and/or
 - Special days such as birthdays, Mother's Day, Father's Day, religious holidays etc.
- Changeover;
- Education;
- Safety;
- Health;
- Communication:
 - Between parents; and/or
 - With child/ren when they are in the care of the other parent
- Costs of raising child/ren; and/or
- The process for making changes to any agreements reached in the future.

What Options Are You Considering?

Mediation is a chance to brainstorm **ALL** possible solutions. You will find it easier to reach an agreement in Mediation if you come prepared with **several** possible solutions for each of the topics you wish to discuss.

If you are finding it difficult to come up with several options, you may like to seek advice from a Family Law Lawyer, a Psychologist or a Child Consultant. You could also talk further with your Mediator about the solutions they have seen other families adopt.

Remember though, that your Mediator cannot tell you what you should do or what will work. They can only give you options based on what other families have done in similar situations.

Where Are You Willing to Compromise?

At some point in the Mediation process, it is likely that both parties will be thinking about whether they can reach a compromise.

Mediation rarely results in one person getting everything they ideally want, but hopefully it will allow you to reach agreements that you can live with and that are in the best interests of your child/ren.

You will find this less stressful if you come to the mediation session with a clear view regarding the areas in which you are willing to compromise and the areas in which you are certain that you would get the outcome you are hoping for if you chose to pursue a Court determination.

[It is important that you obtain legal advice from a Family Law Lawyer to help you decide where to compromise before Mediation.](#)

You may want to ask your lawyer the following questions:

- What is the range of possible outcomes if you were to take this matter to Court?
- What is the most likely outcome?
- How long is it likely to take to receive a judgment and orders if you were to commence Court proceedings?

- How much would the entire legal process cost?

Mediation Etiquette

At the start of the session your Mediator will provide an opening statement to both parties. This will include information that legally must be provided before negotiations commence and will also include some 'ground rules' or what we like to call 'Mediation Etiquette'.

You will be asked what 'rules' you think both parties should follow in the mediation to enable respectful and constructive conversations. Your Mediator may also add some things to the list that they feel is helpful for parties in mediation. This might include points such as using each other's first name, not interrupting the other when they are speaking and using respectful language.

There may be times throughout the mediation that your Mediator draws your attention back to the agreed Mediation Etiquette as a reminder if conversations become difficult.

How to Make a Proposal in Mediation

The negotiating will begin in Mediation when your Mediator asks you to make your proposal about a given topic to the other party. It is important that you come prepared with clear proposals in mind that you have put thought into well before the Mediation.

It is a good idea to start with your most ideal outcome and then move toward an outcome that you can live with for the sake of moving forward and remaining out of a court process.

There are several elements to include when making an informative proposal in Mediation. These elements are referred to as BIFF - Brief, Informative, Friendly and Firm (Bill Eddy, 2012).

When developing your proposal, you should include the following information:

1. Who: i.e., who are you asking to do something? You or I?
2. What: i.e., what are you asking to be done?
3. Where: i.e., at what location?
4. When: i.e., at what time?

Use this format to help develop your proposals for each of your topics. Remember to come up with several options for each topic. There are pages at the back of this workbook to help you with this.

You may like to learn more about BIFF responses which can also help you in your day-to-day co-parenting relationship by visiting www.biffresponses.com.

How to Make Mediation Successful

As discussed above, **flexible thinking** and working out several options for each of the topics you wish to discuss is important for generating options in Mediation. The more options you both bring to the table, the more chances there are of reaching an outcome you can live with. Think of Mediation as a brainstorming activity.

In addition, it is important to **manage emotions** in Mediation which can be easier said than done. However, it is not impossible. Here are some tips for how you might be able to manage emotions in mediation:

- Bring a photo of your child to help remind you of why you are mediating.
- Write a short affirmation to bring with you to Mediation to help ground you when conversations become difficult.
- Bring a fidget toy that you can hold.
- Ensure you have water to drink during the Mediation.
- Bring paper and pen to write your thoughts down.
- Anticipate what upsetting things the other person may say – being ready to hear upsetting things can make you manage your reaction more positively.
- Ask for a break if you need one.
- Remember, you cannot control anyone else's behaviour but your own.

It is important to come up with a plan for how you will manage upsetting emotions in a mediation. When we become upset it shuts down the problem-solving parts of our brain which therefore makes negotiating, problem solving and decision making near impossible. You want to make the most out of your mediation session to reach a resolution and to avoid further costs and stress.

Is there a Polite Way to Disagree with a Proposal?

Yes! There will likely be some proposals that are made by the other party that you don't agree with, or think are completely outside of the ballpark of what a reasonable outcome would be.

There are generally three responses that can be had to a proposal. They are "Yes, I agree", "No, I don't agree" or "I need some time to think about it". These are all reasonable responses. If you do not agree to a proposal, you may be asked by your Mediator to explain why you don't agree as this may allow another option to be generated and understanding to be built with the other party. This is where your BIFF skills may be helpful as you can provide a response that is brief, informative, friendly

and firm. It may also be helpful for you to offer a counter proposal if you don't agree with the proposal that was initially made.

PROPERTY MEDIATION

There are additional things to think about and prepare for when you are discussing property matters.

Full and Frank Financial Disclosure

You will need to:

- Identify what you each brought to the relationship i.e., what assets and liabilities did you have at the start of your relationship?
- Prepare a list of **current** assets and liabilities; and
- Determine a 'ballpark' value for these assets and liabilities. For some items you might be able to locate documentation such as recent statements and for others some research might be required. *The values you need are what you could sell these items for today - not the price you initially paid for them.*

The *Family Law Act 1975* (Cth) requires parties in property mediation to provide **'full and frank financial disclosure'** of all the information relevant to the situation.

At the start of the joint mediation session, you will be asked to sign an 'Agreement to Participate' which confirms your willingness to disclose financial information in a **'full and frank'** manner.

Before your negotiations begin both parties will be asked whether they have provided full and frank financial disclosure.

Exchange Financial Information

If you exchange financial information with your ex-partner and give this information to your Mediator a week or two before the joint mediation session, everyone can ensure they are prepared for the session. For example, if the two of you discover that you disagree about the value of an asset or a liability, you may want to consider getting these assets valued before the joint mediation session starts.

This can make the mediation process more cost and time effective. If it is discovered in the joint session that there is a disagreement about the value of an item/s, further joint sessions will be required, thereby leading to further costs.

If you are currently not able to talk with your former partner, you can ask your Mediator or your lawyer to facilitate the exchange of financial information.

Legal Advice

The *Family Law Act 1975 (Cth)* seeks to make a 'just and equitable' distribution of marital assets based on:

- The contributions that each person made to the acquisition of assets, before, during and after the relationship, including both financial and non-financial contributions as well as negative contributions; and
- The needs that each person will have in the future.

It is important to speak with a lawyer, ideally a Family Law Specialist, to understand how these principles are likely to be applied by a Court in your case. This will help you understand where you should compromise in your negotiations.

In addition, it could be worth asking the following questions:

- What is the range of possible outcomes if you were to take this matter to Court?
- What is the most likely outcome?
- How long is it likely to take to receive a judgment and orders if you were to commence Court proceedings?
- How much would the entire legal process cost?

Financial Advice

It might also be worth your while obtaining independent financial advice before attending a joint mediation session to ascertain what you are able to financially manage moving into the future.

This might entail whether you are able to continue paying the mortgage if you wish to retain the family home, whether you are able to refinance or whether you will require a loan to meet future financial needs and how this might impact you moving forward.

All this information will help you to make informed decisions during the mediation process.

PREPARATION FOR MEDIATION CHECKLIST

1. Have I received independent legal advice from a family law lawyer? If so, what is it?
2. What are the likely outcomes if mediation is unsuccessful?
3. What will I bring with me to the mediation to help manage my emotions?
4. Do I have paper and pens to take notes and capture my thoughts as the other person is talking?
5. Am I clear about the details of my proposals?
6. Have I written out my proposals in advance of the mediation?
7. How will I respond if I don't agree to a proposal?

8. How will I respond if I become upset with something that is said in the mediation?

9. Do I have up to date valuations?

10. Have I exchanged financial documents?

11. Have I obtained financial advice in readiness for mediation?

12. Have I disclosed ALL assets and liabilities, whether in my sole name or joint names?

13. What is my ideal outcome?

14. What is an outcome that I can live with for the sake of moving forward and reducing costs?

15. How long will a Court take to decide and what will it cost me?

MY PROPOSALS

Topic: _____

Proposal: _____

Topic: _____

Proposal: _____

Topic: _____

Proposal: _____

Topic: _____

Proposal: _____

Topic: _____

Proposal: _____

Topic: _____

Proposal: _____

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Topic: _____

Proposal: _____

Topic: _____

Proposal: _____

Family Law Act 1975 – Best Interests of the Child

From 6 May 2024 section 60CC of the *Family Law Act* 1975 requires families in dispute resolution processes and the Court, when asked to make orders about parenting, to consider the best interests of children according to the following:

- a) What arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect or other harm) of:
 - i. The child; and
 - ii. Each person who has care of the child (whether or not a person has parental responsibility for the child).
- b) Any views expressed by the child;
- c) The developmental, psychological, emotional and cultural needs of the child;
- d) The capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;
- e) The benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so;
- f) Anything else that is relevant to the particular circumstances of the child.

This includes consideration of any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child) and any family violence order that applies or has applied to the child or a member of the child's family.

NOTE: *The Family Law Act* 1975 makes no reference at all to a child spending equal time or "50/50" with each parent. The Act says that a child's time arrangement with each of their parents or other family members should be determined when considering the above factors.

THIS IS NOT LEGAL ADVICE

Family Law Act 1975 – Making Major Long-Term Decisions for Children

From 6 May 2024, there is no longer a presumption that parents have equal shared **parental responsibility** for making long-term decisions for children. Instead, section 61CA of the Family Law Act 1975 says the following:

If it is safe to do so, and subject to any court orders, the parents of a child who is not yet 18 are encouraged:

- a) *to consult each other about major long-term issues in relation to the child; and*
- b) *in doing so, to have regard to the best interests of the child as the paramount consideration*

Section 61D(3) goes on to say:

A parenting order that deals with the allocation of responsibility for making decisions about major long-term issues in relation to the child ... may provide for joint or sole decision-making in relation to all or specified major long-term issues.

FURTHER:

Section 61DAA discusses the effect of an order (or agreement) about joint decision making on major long-term issues as follows:

- 1) *If a parenting order provides for joint decision-making by persons in relation to all or specified major long-term issues in relation to a child, then, except to the extent the order otherwise specifies, the order is taken to **require** each of the persons:*
 - a. *to **consult** each other person in relation to each such decision; and*
 - b. *to **make a genuine effort** to come to a joint decision.*

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