

Property Mediation



FREQUENTLY ASKED QUESTIONS



1. What is mediation/family dispute resolution?

Family Dispute Resolution (FDR), often referred to as family mediation, can cover all types of mediation post-separation, including property/financial mediation. It is a process designed to provide separated couples a confidential, voluntary and neutral platform to discuss issues relating to their property settlement. It is an opportunity to explore proposals, and finalise their property settlement in a relatively quick, low-cost and less-adversarial process than the court system.

2. Do I have to do mediation?

Mediation is a voluntary process in Australia, unless you intend to take the matter to court. You won't be able to make your court application unless you have attempted mediation first, and disclosed all relevant documents to the other party. If you make a court application, you will need to provide evidence of your mediation attempt(s) in relation to the property settlement.

3. What happens if the other party doesn't respond or refuses to mediate?

If the other party doesn't engage in the process, we can provide you with a letter that confirms what happened in the process. You and/or your lawyer will fill out some additional paperwork to attach to your court application about the attempted mediation.

4. What is 'disclosure'?

All separated couples have a duty to disclose relevant information and documents to one another. They must make timely, full and frank disclosure. The duty applies to court proceedings and pre-action procedures, which includes mediation.

This might include a schedule of assets, income and liabilities; as well as a range of relevant documents.

There may be serious consequences for failing to disclose, including punishment for contempt of court with a fine or imprisonment. The court may order costs against someone or take the non-compliance into account when determining the property settlement.

5. Why does the mediator need to decide if it is appropriate to mediate?

Mediators are required to assess matters for appropriateness under Section 20 of the Family Law (Family Dispute Resolution Practitioners) Regulations. Not all matters are appropriate for mediation. There are various reasons why a matter might be deemed inappropriate by the mediator. We do not provide reasons as to why a matter was deemed inappropriate. We encourage people to get legal advice if they have questions around this.

6. I have an AVO, can I still mediate?

This will depend on the conditions of your AVO. We will review your AVO and advise whether you can proceed with mediation. If your AVO does not allow for mediation, you can ask the Court to amend the conditions, and we would encourage you to seek legal advice about this.

7. What if I don't feel safe mediating?

Safety is of paramount importance. Our staff will assess your safety at the time of your Request for Service, and again in detail during the confidential intake with your mediator. This is an ongoing assessment throughout the mediation process. We can facilitate various forms of mediation to ensure safety, such as shuttle mediation or online/phone mediation. The mediator will also make an assessment as to whether it is safe to proceed to mediation. In some cases, this may result in the mediation not proceeding.

8. Do I need a lawyer?

We always encourage people to seek legal advice prior to mediation so that they are fully informed when they are negotiating agreements. We will ask you to obtain legal advice either before the first and/or second session of mediation. We can provide you with a list of lawyers in the region, as well as details for free services for you to receive some initial advice.

9. Can I bring my lawyer to the mediation?

Generally, we require both parties to be legally represented, to ensure that there is a balance of power, and everyone is fully informed when they are negotiating. We encourage you to talk to your mediator ahead of time if you wish to bring your lawyer to mediation, so that this can be discussed with the other party. Lawyers are paid for at your own expense. Often, people will opt to have their lawyer available on the phone during the mediation, so that they can take breaks and step aside to call their lawyer before coming back into the session to continue negotiations.

10. Can I bring a support person to the mediation?

In some cases, it may be agreed by the mediator and the other party that support people can be present. Support people are there to support you to conduct yourself in the mediation. They are unable to speak for you or involve themselves in the mediation. Support people need to be discussed and negotiated ahead of time, so please talk to your mediator about this in advance of your mediation.

11. How long does the mediation session go for?

We allow 3 hours for a mediation session. You can use as little or as much time of that 3 hours as you need. If it looks like we need more time, we will schedule another session.

Usually you will have two mediation sessions. The first session usually covers off the first step of property settlements, which is identifying the net asset pool. There will usually be one or two offers made in this session. People then generally go and obtain some independent legal advice, before returning to a second mediation session for further negotiations and hopefully agreement.

12. What is the timeframe for getting to mediation?

This depends on the level of engagement from both parties. We usually try to have the mediation process completed within 90 days. The quicker each party books into their intake session, discloses their documents, and obtains independent legal advice, the quicker we will be able to book your mediation session. Timeframes may unfortunately be extended during particularly busy periods, but we will do our best to accommodate any urgent matters.

13. Will I be in the same room as the other party for mediation?

Not necessarily. Your mediator will discuss this with you in detail during your intake. The mediator will get the views of both parties, but the structure of how the mediation is held is ultimately a decision for the mediator. Where distance plays a factor, we can conduct the mediation via phone/video link.

14. What happens if we reach agreement?

If you reach agreement during mediation, your mediator will draft a Heads of Agreement. You will need to speak to a lawyer about formalising your Heads of Agreement into either Consent Orders or a Binding Financial Agreement to ensure that your financial relationship with your ex-partner is severed and that the bank and/or other organisations or institutions accept the terms of the settlement.

15. What happens if we don't reach agreement?

Sometimes parties can't reach agreement on all the issues they discuss at mediation. We will often encourage parties to seek some legal advice and return to mediation if they wish. If no agreement is reached and/or a party doesn't want to continue with mediation, the process will end.

16. I haven't got childcare, can I bring my child/ren?

Unfortunately, no. Children are not able to be present during any of the intake sessions or mediation (including if you are doing the session/s by phone or video and have them with you). Our staff will work with you to find a suitable time to do the session when you don't have the children with you.

17. I have special needs, can I access any support?

Yes, of course. Please discuss your needs with our staff when you contact us. We can offer a range of supports within the Family Law Services program and other programs to ensure we are meeting your needs.

Contact us today!

We are here to help you!



02 6762 9263 or freecall 1800 372 826



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<https://www.centacareenw.com.au/family-services/>



start the process by filling out this online form: <https://centa.care/mediationrfs>

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