

Family Law Mediation

The long delays and backlogs in the Family Courts have been well-publicised. These delays no doubt cause frustrations, and can be very costly for the parties involved. For this reason, the court endorses that parties resolve their disputes privately through Family Mediation, one of the more popular Alternate Dispute Resolution ('ADR') processes.

This Plain English Guide will take a closer look at the concept of mediation, and how Family Mediation can be beneficial in Family Law matters.

What is ADR?

ADR is an 'umbrella' term used to describe a variety of different processes, including Family Mediation and Arbitration, which parties can use to resolve their disputes outside of court.

There are many benefits of ADR processes. For example, as compared to court proceedings, ADR:

- Is faster;
- Is more cost effective;
- Is confidential;
- Promotes the interests of the parties;
- Empowers the parties; and
- Is flexible and less formal than traditional court process.

One of the most commonly used ADR processes within Family Law is Family Mediation.

What is Family Law Mediation?

Family Law Mediation is a process where the parties involved in a dispute are assisted by a Family Mediator (a neutral and impartial third party) to help resolve their dispute. A Family Mediator typically listens to the parties and helps to identify the disputed issues, as well as the needs, goals and options available to sort through each issue.

The aim of Family Law Mediation is to assist the parties to engage in discussions relating to their dispute, in a setting within which they feel comfortable. The Family Mediation will help the parties move towards achieving certain outcomes, and will possibly enable an agreement to be reached with the capability to finalise the dispute, avoiding ongoing court proceedings.

When can Family Mediation be used?

Parties in Family Law matters can participate in Family Mediation to resolve a dispute at any time, either prior to instituting court proceedings, or whilst proceedings are taking place. Family Mediation can help the parties to reach agreements on:

- Property disputes;
- Parenting disputes;
- Spousal maintenance;
- Interim property matters;
- Child support issues;
- Contravention/breaches of existing orders;
- Issues relating to the implementation of orders; and
- Disagreements over issues relating to parental responsibility (e.g. passports and overseas travel involving children, school enrolment, and medical issues relating to a particular child). This can include instances when parties already have court orders in place.

Family Mediation is now a widely used and preferred dispute resolution option within the Family Law Courts. Courts will now order parties to attend Family Mediation in the majority of matters that come before the court, prior to the court hearing matters and making decisions for the parties.

What are the different models of Family Law Mediation?

A Family Mediator is not an advisor, and is not permitted to make a determination. There are different models of Family Mediation which are likely to be more suitable and appropriate than others in certain cases. Below, we take a closer look at the models of Facilitative Family Law Mediation and Evaluative Family Law Mediation.

Each of our Family Mediators is trained in using both the Facilitative and Evaluative models.

What is a Facilitative Family Law Mediation?

Also known as the 'problem-solving' model of Family Mediation, Facilitative Family Mediation is the most commonly used model of Family Mediation in Australia. This model of Family Mediation focusses on the interests of the parties (i.e. what the parties want to achieve).

Facilitative Family Mediation focusses on party autonomy and self-determination, with the overarching goal being for the parties to reach a resolution themselves. The Family Mediator's role in a Facilitative Family Mediation is to identify all of the disputed issues, and to have the parties come up with their suggested options for resolving the issues. These options are then evaluated in the hope of finding an acceptable resolution.

Facilitative Family Mediation is particularly useful when:

- Parties wish to continue their relationship (e.g. because they have children together);
- Parties wish to negotiate on a level playing field; and
- Time constraints are not a factor in finding a resolution.

What is an Evaluative Family Law Mediation?

Also known as 'Expert Advisory Family Mediation', the goal of Evaluative Family Mediation is to quickly and efficiently deliver settlements between the parties.

Evaluative Family Mediators are typically experienced senior lawyers who are selected due to their expertise. They will often evaluate the legal merits of each parties' case and provide their opinion, before the matter has the chance to escalate into long and costly court proceedings.

Evaluative Family Mediation is particularly useful when:

- The matter involves complex and technical issues;
- Parties have unrealistic views of the legal merits of their case;
- Parties wish to hear an objective third-party opinion; and
- Parties wish to seek a quick resolution.

How does the process work?

Prior to a Family Law Mediation occurring and with the assistance of the Family Mediator, both parties are required to undertake certain preparations. For more information on how to prepare for a Family Law Mediation, you may wish to read our Plain English Guide to Preparing for Family Mediation.

On the day of the Family Mediation, the Family Mediator will usually start by meeting with both parties (and their lawyers) together in the same room. The Family Mediator may, however, deem this unsuitable in certain circumstances. The Family Mediator will take the time to explain the Family Mediation process to the parties before inviting each party to give an opening statement. This allows each party to give the Family Mediator a brief outline of why they have agreed to participate in Family Mediation, and what they hope to achieve. This process will be further explained to the parties in the lead up to the Family Mediation, usually at the pre-mediation conference.

During the course of the Family Mediation, parties will have the opportunity to break-out into private sessions with their lawyer, as well as with the Family Mediator. This gives the parties an opportunity to reflect upon what has been said in the joint session, and to consider the options they might wish to put forward as a means of resolving the matter.

In the event of any agreement being reached, the Family Mediator can assist the parties in determining how best to document their agreement, as well as what further actions will be required of each party. This can involve the parties' lawyers drafting the documentation necessary in officially recording the agreement. If there are legal proceedings already taking place, the agreement can be lodged with the court and the proceedings will end, thus further court attendances will be unnecessary.

How long does it take?

The duration or frequency of Family Mediation largely depends on the complexity of the matter and level of conflict between the parties. For example, less complex disputes may only require half a day, whilst others may require a full day.

Parties might also agree to pursue further Family Mediation at a later date so as to trial any interim agreements which they have reached during the initial mediation.

Where is the Family Mediation held?

Our modern Family Mediation rooms located in Parramatta, Norwest and Penrith are fully serviced to conduct Family Law Mediations, and are included as part of the Family Mediation fee. There are boardroom facilities with video/tele-conferencing connectivity, as well as rooms for the parties to break-out into during the Family Mediation to allow for private discussions.

Catering is provided for full day Family Mediations, and participants also have access to bathroom facilities, free Wi-Fi and barista style coffee machines.

Our Family Law Arbitrators are also happy to travel to other locations if required, or alternatively, can organise facilities in Sydney CBD.

Is the outcome binding?

Since the aim of Family Law Mediation is to assist the parties in being able to reach an agreement themselves, the Family Mediator is not permitted to make a determination, nor do they have the power to ratify any agreement reached.

If the parties are able to reach an agreement at Family Mediation, they will then have the option to formalise their agreement, which is usually done with the assistance of lawyers.

What happens if Family Law Mediation doesn't result in any agreement?

If the parties are unable to reach an agreement during Family Law Mediation, the parties will generally continue to negotiate between themselves, either directly or through their respective lawyers. As stated earlier, the parties may agree to participate in Family Law Mediation again in the future.

Where parties are unable to resolve matters themselves, even after having attempted Family Law Mediation, they can pursue their matter through a court process where a Judge will ultimately make a decision for the parties. Alternatively, the parties may wish to attempt Family Arbitration, another form of ADR (see our Plain English Guide to Family Arbitration).

How is Family Law Mediation different to collaborative Family Law?

The key difference between the two is that collaborative family law has no neutral third party (or Family Mediator), rather, both parties are represented by lawyers who, with the parties, will attempt to enter discussions surrounding the resolution of a dispute. The process usually occurs over a period of time, whereas the key to Family Law Mediation is that the parties (usually with their lawyers) convene on a single day, with the aim of attempting to resolve the matter with the assistance of the Family Mediator.

Under the collaborative law model, if the process does not result in a successful outcome and one of the parties commences court proceedings, both parties must obtain new lawyers (this is due to the fact that the current lawyers will have worked collaboratively with the other party, thus there is a conflict of interest). If Family Law Mediation is unsuccessful, however, the parties can retain their lawyers for any court proceedings that might follow.

How can Coleman Greig help you?

Coleman Greig provides a professional and accessible Family Law Mediation service specifically catering for family law matters. Our Family Law Mediators are all fully accredited through the Australian Institute of Family Law Arbitrators and Mediators as well as being Accredited Specialists in Family Law through the Law Society of New South Wales.

By also practising as lawyers exclusively in the area of family law, each of our Family Mediators is highly skilled and experienced in family law, and is therefore well equipped to mediate in this area of law.

If you have any questions regarding any of the above information, please contact:

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