



Maintaining control of the outcomes

Anyone going through a family law dispute knows it's expensive, both financially and, more importantly, emotionally.

The Court system is overworked and under resourced and, therefore, delays are bad. It can take up to two years or more from the time you start proceedings to getting a final result. Having your life on hold for this length of time is simply untenable.

Which brings me to the benefits of mediation.

First, you should know that the Court expects you to attempt some kind of alternate dispute resolution before embarking on litigation. The reason for this is that over 95% of matters settle without the need for Court proceedings and the Court is very aware that outcomes which are tailored by the parties to a dispute themselves, rather than outcomes imposed by a Judge, are usually better for families. This is especially the case in parenting matters. Why would a Judge who doesn't know you or your kids, be able to make better decisions for your children than you, as parents,

can make? Why would you ever want to admit to your kids that you and their other parent weren't able to come to an agreement about what is best for them and that you had to turn to someone else to help with that decision?

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Secondly, no litigation is certain. The family law jurisdiction is a discretionary one. The Judge hearing your case has a wide ambit of options available to him or her. A Judge is not bound by either yours or your partner's position and can impose a decision on you which neither of you wants. Maintaining control of your own outcome, whether it be the living arrangements for your children or the division of your relationship assets, will

be better for you and your family in the longer term. Usually, parties who figure things out themselves are more likely to be compliant with the arrangements they agree to and better able to have an amicable relationship as time progresses.

So how does mediation work?

In each case, your mediator is someone neutral who is skilled at helping to facilitate an agreement between you. They are not there to force you into an agreement or to give you legal advice, or to take one party's side over the other's, but to help you communicate with each other in the hope any impasses between you can be bridged. Most mediators offer either a shuttle or face to face mediation.

If you are able to be in a room with your ex, then face to face may be the way to go. You and your ex will be in the same space and be able to talk to each other about your respective

positions with the mediator present to moderate things. There will be an opportunity for each of you to have private sessions with the mediator during the day to discuss things you may not be comfortable talking about in the presence of your ex.

A shuttle conference involves you and your ex being in separate rooms and the mediator going between you, passing on your respective views and any offers of settlement you may like to make. This is a better model if there is a history of family violence which makes being in the same room impossible.

Many of my clients choose to do a lawyer assisted mediation. This means that your lawyer goes with you to the mediation to advocate on your behalf rather than you doing it alone. This is especially useful if there is a power imbalance between you and your ex. An experienced family lawyer may be able to suggest alternate options to help you come to an agreement if you and your ex are coming to a stalemate during the mediation. Your lawyer can advise you about relevant legal principles which might arise during the day and will ensure that anything you do agree to is workable and possible under the law.

If your kids are at an age where they are expressing strong views about what they want in terms of your living arrangements and they are mature enough that those views should be taken into account, a child inclusive mediation might be helpful. Often hearing your child's views and seeing the impact the ongoing dispute is having on them, promotes more child focussed outcomes between parents. Your child won't be part of your mediation but will meet with your mediator prior to your mediation and your child's views will be fed back to you at or before your mediation to enable you to consider their opinion in your negotiations with your ex.

So how do you go about it?

- It is important to get legal advice before your mediation so you have reasonable expectations about what you're entitled to in any property settlement and what is workable for your kids. Your lawyer can recommend good mediators with whom they have probably worked before, including good child inclusive mediators.
- Be prepared. If your matter is about property, make sure financial disclosure has been fully exchanged so the balance sheet from which you'll be working on the day is as accurate as possible. Your lawyer will be able to advise you about the need for any formal valuations of property, businesses and other assets.
- With your lawyer, work out your best case/worst case scenario before your mediation. This makes it easier for you to hold your position rather than making impulse decisions due to fatigue or anxiety during the mediation.



- Keep in mind the commercial reality about what your legal fees will be if you have to go to Court and how your life will look going forward while you wait for a judge to make a decision if you're not able to come to an agreement. Factor this in when you're weighing up options to settle.



Fiona is a nationally accredited mediator with years of family law experience. She is happy to work with couples with or without their lawyers present and has access to good child consultants who can speak to your children if you want to engage in a child inclusive mediation.

FREE 20 Minute Consultation

Fiona is offering a FREE 20 minute consultation to prospective clients who mention this article when they make an appointment for their initial conference. Call Fiona on **9091 0220** or email fiona@reidfamilylawyers.com.au.

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