

Mediation –

What is it and how can
it help you?



Settling a dispute

Mediation can offer a practical solution to parties in a dispute.

The court process can not only be very costly but can also take a long time. Mediation offers an informal, time and cost saving 'hands-on' alternative where the disputing parties work with a mediator to resolve their dispute.

This booklet is here to help you understand the mediation process and why mediation is becoming an increasingly popular process for dispute resolution in New Zealand.



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What is mediation?

Mediation has become an increasingly used and effective process for helping resolve disputes. It is a process where the disputing parties sit down with a mediator and discuss options that can hopefully resolve the dispute.

Mediation can help resolve disputes in a broad range of different areas, including commercial, family, employment, public policy or even community disputes to name a few.

Mediation is also a voluntary process requiring both of the disputing parties agreeing to take part.

Why might mediation be right for you?

Going to court can be not only a costly venture, but also place a large amount of stress upon the parties going to Court. Mediation takes place in a far less intimidating setting where the disputing parties can sit down and discuss their issues allowing far more flexibility to be taken in their options.

Mediation is not only far more cost effective and flexible but can also save a lot of time compared to the more lengthy judicial options.

Mediation is not bound by any formal procedures or rules of evidence. The mediator may become informed in relation to any matter in such a manner as they think fit.

The first port of call

Mediation is quickly becoming the preferred first option to resolving disputes in a number of different fields.

It is become increasingly common for employment contracts to including a provision that requires mediation as the first step if an issue arises before matters are to be taken to a civil claim.

The objective of a mediation is to find the best possible options that are practicably available in resolving the dispute.

The mediation process

While there is no strictly enforced routine, there is a general process most mediations follow.

How to begin

As the process is voluntary, both of the disputing parties must decide and agree upon going into mediation to try and resolve their issues.

A written agreement between the parties regarding their decision to enter into mediation can be drawn up once both parties are in agreement.

Choosing your mediator

This is a decision that should be made and agreed upon between the disputing parties. However if the parties are unable to agree upon a mediator, they can request for one to be chosen for them by an impartial third party.

In deciding who should be the mediator, the following should be taken into account:

- **Independence**

The mediator should have no personal relationship with the disputing parties and should have no interest in the dispute and its outcome.

- **Authorised mediator**

The mediator should have undergone Arbitrators' and Mediators' Institute of New Zealand INC training. Interpersonal and communication skills are also very important to look at in deciding who should be your mediator.

- **Knowledge**

While this may seem obvious, it is important to make sure that your mediator is knowledgeable in the subject matter field. For instance you would not get a commercial mediation expert to mediate an employment dispute.

The mediation meeting

The disputing parties and mediator must all agree upon and arrange a time, date, and place for their mediation.

Face to face mediations are the most common and best way to conduct a mediation, however if not practicable then mediation via the likes of video call can also be arranged.



Written submissions outlining key facts and issues should be exchanged between the disputing parties prior the meeting.

The process of the meeting itself should be kept as flexible as possible allowing the parties and mediator to discuss and develop solutions for the dispute.

There does not have to be an outcome and solution come to at the first meeting with further meetings being an option if needed. Separate meetings such as the mediator with just one of the parties is also an option.

However the meetings are run, the objective will always be to narrow and resolve the issues that are separating the disputing parties.

It is the mediator's job to conduct the mediation in the manner that is best fit for the situation. The mediator will take into regard the nature and circumstances of the mediation when making this decision.

After mediation

If a resolution can be reached during mediation, the agreement may be either oral or written. A written agreement is highly recommended to try and avoid any misinterpretations over the agreement the parties may have. Most mediation agreements are considered to be enforceable contracts.

However sometimes agreement between the parties cannot be reached through mediation. In these cases the parties still have the option to pursue their claim in other forms such as through arbitration or through the courts.



Mediation admin

Expense

Mediation can be a cost effective way to resolve a dispute, especially when compared to the court based alternatives.

Hourly rates are generally charged by mediators with the parties usually splitting the costs equally.

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The individual parties will cover their own legal expenses in relation to the mediation.

Confidentiality

Mediation is a private process with the parties and the mediator keeping confidentiality over the process and not discussing the dispute with anyone who is not involved in the process.

The mediator cannot disclose information from one party to the other without consent from the party who gave the information.

Enforcement of mediation agreement

If the agreement is a contract, then it is subject to the rules of contract. Sanctions may also be put in place in the agreement. For example in an employment context, if the party fails to meet their obligations under the agreement they will be dismissed as an employee.

Termination of mediation proceeding

The mediation proceeding may be terminated:

- If full or partial resolution of the issues has been reached; or
- By the mediator, for whatever reason; or
- If a party withdraws from the mediation proceedings (no party can be forced to take part in or continue with a mediation proceeding).

Preston Russell Law Senior Solicitor David Stoevelaar is
a registered arbitrator and mediator.

Get in touch with David if you have any mediation
queries or if you are seeking a qualified mediator.



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Questions?

Nobody wants to end up in a dispute or disagreement, however at times they are unavoidable.

If you are considering or about to enter a mediation to resolve your dispute it is crucial you are well prepared and aware of your options.

From preparing for a mediation meeting to seeking a mediator, Preston Russell Law is here to help.

If you have any further questions or are unsure about any of the information contained in this booklet then please do not hesitate to get in touch with us.

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