

FEDERAL COURT OF AUSTRALIA

MEDIATION





What is mediation?

Mediation is a way of settling cases without having a hearing in court. It is supervised by the Federal Court.

It is cheaper and less formal than having a case heard by a Judge. Mediation is also called alternative dispute resolution (ADR).

If the case does not settle at the mediation it can be heard by a Judge later. The parties will then have a better idea of the issues and facts of the case.

Mediation can also help to reduce the stress of going to court.

The first step in starting a case in the Federal Court is filing an application form. This means a person sends or delivers his or her application form to the Court by bringing it to the Court, or by posting or faxing it or by sending it by the internet.

Once an application form has been filed, a Judge may order that the people involved in the case meet in a mediation.

Usually, but not always, everyone agrees to this.

The people involved in the case are called the parties. At the mediation there is a neutral person, called the mediator, who helps the parties settle their differences through negotiation. The mediation is confidential and all discussions are 'without prejudice'. This means that anything said during the mediation cannot be used against a party if the case is heard by a Judge at a later time.

Why mediate?

Mediation is usually:

- cheaper for the parties;
- less formal;
- less stressful; and,
- quicker;

than having a case heard by a Judge.

What types of cases can go to mediation?

Any case may be mediated but cases about business practices, discrimination, shipping, patents, copyright and designs are more likely to have a mediation.

After an application form has been filed, the Federal Court will arrange a directions hearing. At the first directions hearing the Judge will decide whether the case is appropriate for mediation and tell the parties what procedures are to be followed.

Any party can also ask the Judge to refer the case to a mediation. It is a good idea to discuss this with the other parties first.

Who does the mediation?

Most mediations are conducted by a Registrar of the Federal Court. Registrars are lawyers employed by the Federal Court who are skilled in mediation.

At the directions hearing the Judge will also order that all parties deliver relevant documents to the Court (this is called filing the documents). The parties also need to send the documents to the other parties in the case (this is called serving the documents).

The Registrar reads all of these documents before the mediation. Sometimes the Court orders the case be sent to a mediator outside the Federal Court. This is usually a lawyer that the parties agree on.

What does the mediator do?

The mediator is not a decision-maker. The mediator does not express a view on the strengths and weaknesses of each party's argument.

The mediator's role is to encourage open discussion about the matters in dispute.

During the mediation the parties are the negotiators and the mediator may help by suggesting possible solutions.

The mediator does not discuss the mediation with a Judge or anyone else. The mediator will not disclose information to any party unless the relevant party agrees to the information being disclosed.

At the end of the mediation all of the Registrar's notes are destroyed and the only record which is kept on the Federal Court's file is a note that the mediation took place.

If only part of a case is settled at the mediation, the Federal Court's Rules allow the mediator to report to the Court on the agreement reached between the parties.

Who comes to the mediation?

The following people must come to the mediation:

1. The parties.
2. Their lawyers, if the parties have lawyers.
3. If a party does not have a lawyer, the party can come to the mediation with a support person if he or she wishes.

The people attending the mediation must have the authority to make decisions on any proposed settlement.

For example, a person attending a mediation as the representative of a company or partnership must have the authority to reach an agreement on behalf of the company or partnership.

What needs to be done to prepare for the mediation?

Mediations only work if the parties are prepared.

To prepare, parties need to:

- Make sure that they and their lawyers (if they have lawyers) are thoroughly informed about the case. This includes reading all the documents that have been filed by all of the parties.

- Discuss with their lawyers (if they have lawyers) what the result could be if the case is heard by a Judge.
- Think about how they could negotiate to settle the case. What kind of compromises could be made?
- Be aware of their own legal expenses and their ability to pay them.
- Be aware of the fact that they may have to pay the legal expenses of the other parties if the case is heard by a Judge and they are not successful.
- For cases where they are asking other parties to pay money, make sure that they have documents which justify the amount of money that they are asking for.

What happens at the mediation?

A mediation is less formal than a hearing before a Judge. This means that the parties can make suggestions about how the mediation should work.

The mediation starts with the mediator explaining the process to the parties. The mediator may ask the parties and their lawyers questions. This helps to clarify the issues and provides information which has not already been included in the documents filed with the Federal Court.

The applicant or their lawyer usually speaks first.

The respondent or their lawyer then has an opportunity to speak. As part of this process the parties can 'put on the table' various ideas to settle the case.

Many cases settle at the mediation. The Registrar can arrange another mediation if necessary (for example, if the parties run out of time).

Sometimes further information, such as an expert report, is needed to settle the case. The parties can agree to get this information in time for the next mediation.

During the mediation the parties can take a break to talk to their lawyers in private, or they may ask the mediator to leave the room for a short time so that they can talk between themselves in private.

One of the purposes of mediation is to allow the parties to approach the dispute as a business or commercial problem, rather than a legal one, so it is better to keep the discussion of legal issues to a minimum.

At the mediation parties are encouraged to speak for themselves, rather than depend upon their lawyers.

This helps the parties to talk about the issues that are important to them.

What happens after the mediation?

The mediation may help the parties to settle the whole case or some parts of it. The promises that each party makes to settle the case are often called the terms of settlement. It is a good idea to write these down and for each party to sign them before the end of the mediation.

In some cases, legal documents will have to be prepared by the lawyers and signed by the parties. The parties can also choose to sign another document called a Consent Order. The Consent Order is signed by a Judge and becomes a final order of the Court.

The Court will then close its file and make a note that the case has settled but only the parties themselves know the terms of the settlement of the case.

If the matter is not settled at the mediation it goes back to the Judge to decide what should happen next. The fact that a case goes to mediation does not mean that it will take longer for the case to be heard by a Judge.

How much does mediation cost?

There is a fee for mediations conducted by Registrars of the Federal Court. The party that started the case by filing an application is the one that pays the fee. Sometimes the Judge will order another party to pay the fee. If the party cannot afford this fee then he or she can ask the Court to waive it. Some people are also exempt from paying fees (for example, if they have been granted Legal Aid or are the holder of a health care card). A form to ask the Court to waive the fee or grant an exemption is available from the Court Registry.

There is no additional fee for further mediations.

If the case is not settled by mediation, the fee for the hearing by a Judge is reduced by the amount of the mediation fee.

There is no Court fee if the mediator is from outside the Federal Court. However, in that case the parties pay the outside mediator the fee that he or she agrees with the parties. A party with a lawyer will usually have to pay his or her lawyer's fee as well.

Interpreters

The Court may arrange for an interpreter to come to the mediation. If you need an interpreter you must contact the Registry at least one week before the mediation. If you do not contact the Registry they may not be able to get an interpreter and the mediation will be delayed. You can also call 131 450 and speak to a telephone interpreter.

What other information can the Court provide?

The Court can give you information about:

- where to get legal help or legal representation;
- court procedures.

You can also find this information on the internet at www.fedcourt.gov.au

FEDERAL COURT REGISTRIES

ACT Registry

Commonwealth Law Courts Building
Childers Street
Canberra City ACT 2601
Telephone: (02) 6267 0566
Fax: (02) 6267 0625
TTY: (02) 6267 0537
Email: actman@fedcourt.gov.au

NSW Registry

Level 17, Law Courts Building
Queens Square
Sydney NSW 2000
Telephone: (02) 9230 8567
TTY: (02) 9230 8270
Fax: (02) 9230 8535
Email: nswdr@fedcourt.gov.au

NT Registry

Level 3, Supreme Court Building,
State Square, Darwin NT 0800
Postal address: PO Box 1806
DARWIN NT 0801
Telephone: (08) 8941 2333
Fax: (08) 8981 6081
TTY: (08) 8982 0838
Registry Filing Fax: (08) 8981 9421
Email: ntreg@fedcourt.gov.au

QLD Registry

Level 6, Commonwealth Law Courts
119 North Quay
Brisbane QLD 4000
Postal Address: P.O. Box 13084,
George Street Post Shop
Brisbane QLD 4003
Telephone: (07) 3248 1100
Fax: (07) 3248 1260
TTY: (07) 3248 1272
Email: qldreg@fedcourt.gov.au

VIC Registry

Commonwealth Law Courts
305 William Street
Melbourne VIC 3000
Telephone: (03) 8600 3333
Fax: (03) 8600 3281
TTY: (03) 9670 0320
Email: vicreg@fedcourt.gov.au

SA Registry

Level 5 Commonwealth Law Courts
3 Angas Street Adelaide SA 5000
Postal address: GPO Box 1350
Adelaide SA 5001
Telephone: (08) 8219 1000
Fax: (08) 8219 1001
TTY: (08) 8219 1011
Email: sareg@fedcourt.gov.au

TAS Registry

Commonwealth Law Courts Building
39-41 Davey Street
Hobart TAS 7000
Postal address: GPO Box 903
HOBART TAS 7001
Telephone: (03) 6232 1715
Fax: (03) 6232 1701
TTY: (03) 6232 1865
Email: tasreg@fedcourt.gov.au

WA Registry

Commonwealth Law Courts
1 Victoria Avenue
Perth WA 6000
Postal address: GPO Box A30
PERTH WA 6001
Telephone: (08) 9268 7100
Fax: (08) 9221 3261
TTY: (08) 9325 7053
Email: waregistry@fedcourt.gov.au

Principal Registry

Level 17, Law Courts Building
Queens Square
Sydney NSW 2000
Telephone: (02) 9230 8542
Fax (02) 9223 7706
Email query@fedcourt.gov.au