

FEDERAL COURT OF AUSTRALIA
MEDIATION





How are Federal Court cases managed?

In the Federal Court judges actively manage cases so that they are quickly and efficiently resolved. Parties are expected to assist in bringing about this result. If you are a party to a dispute you should expect that in the early stages of your case the judge will consider whether alternative dispute resolution, including mediation, is likely to assist. In some cases a judge may decide to order the parties to attend mediation even when they don't agree to it.

What is mediation?

Mediation is a structured negotiation process in which an independent person, known as a mediator, assists the parties to identify and assess options and negotiate an agreement to resolve their dispute. Mediation is an alternative to a judge imposing a decision on the parties.

What cases are suitable for mediation?

All cases, regardless of their complexity or number of parties, are eligible to be referred to mediation. The types of matters commonly mediated at the Federal Court include corporations law, intellectual property, industrial law, trade practices, human rights, admiralty, tax and costs.

Some factors about your dispute may indicate that it is particularly suited to mediation, such as:

- A willingness to participate in mediation;
- The possibility that a judge's decision will not end the dispute;
- The need for parties to find a way to preserve their relationship;
- The existence of non-monetary factors; and
- The potential for a negotiated outcome that better suits the needs and interests of the parties than a judge's decision.

Why mediate?

Mediation offers many benefits over a trial by a judge, including:

- **Time:** ordinarily a dispute can be resolved more quickly through mediation than through a trial.
- **Cost:** if a dispute can be resolved through mediation, the costs of preparing and running a trial can be avoided. Additionally, after a trial the unsuccessful party may be ordered to pay the legal costs of the successful party.
- **Flexibility:** mediation offers parties more control over the outcome. A mediation process which is customised to your needs can be arranged with the mediator.
- **Stress:** mediation is less formal and less intimidating than appearing in court.
- **Confidentiality:** mediation is private. The judge is not informed of the contents of the mediation. It is also usually unable to be used against a party if the case goes to trial. (The Court recommends you discuss mediation confidentiality with your lawyer).
- **Satisfaction:** because the parties decide and agree on the outcome of their dispute they are more likely to be satisfied with the result and to comply with what has been agreed.
- **Finality:** settlement agreements can usually only be modified with the agreement of all parties.

Who attends mediation?

The parties are in ultimate control of any decision to resolve their dispute. It is essential that the people attend the mediation with sufficient knowledge of the relevant issues in dispute and the authority to make decisions about how it might settle after the mediation. If attending on behalf of an organisation the Court requires the attendee be an authorised officer who is able to make a decision about how the dispute might be settled.

If you are not legally represented you may ask to bring someone for support.

Who will be the mediator?

Ordinarily the mediator will be a registrar of the Federal Court. The Court has adopted the Australian National Mediator Standards for its registrars. This means that those who mediate have been accredited as having obtained a certain level of qualifications, skills, knowledge and experience. Registrars are also required to undertake ongoing professional development of their mediation skills. The Standards are available via the Court's website at www.fedcourt.gov.au/litigants/mediation/mediation.html.

Parties may agree to use an external mediator at their own expense.

How do I prepare for mediation?

You can improve the quality of your mediation by considering:

- What issues are in dispute, including the facts and sources of conflict;
- What is important to you in any resolution of your dispute. The interests that you wish to preserve or pursue may be different to an outcome sought through a trial;
- How best to communicate this information, both to the mediator and the other party;
- Whether a statement made by each party at the start of mediation will assist, and if so what can be said;
- What the other party's aspirations might be and how these might be accommodated in any offer of settlement;
- Possible contents of an offer and methods of communication;
- What costs have already been incurred, are likely to be incurred and what part of these might be recovered; and
- The possible outcomes if the matter were to proceed to a trial, including the dollar value of any damages claimed and any limits on the Court to award these.

What happens at mediation?

Before commencing mediation the mediator will consider the best process for mediating your dispute, taking into account suggestions from all parties where possible. The mediation will commence with an explanation of the process, followed by a discussion about the background of the matter and issues in dispute.

The mediation itself is flexible and can be tailored to the circumstances. Mediators may assist negotiations by asking questions, encouraging open discussion, offering different perspectives and expressing issues in alternative ways. Parties may be encouraged to identify and test the consequences of potential solutions. It is common for the mediator to meet with the parties jointly and separately and further mediation sessions can be scheduled if necessary.

What are the possible outcomes of mediation?

The case may be settled in full or in part or parties may not be able to reach agreement.

If agreement is reached about part or all of the dispute, the details of that agreement will usually be recorded and signed by all parties before the end of mediation. If the dispute is settled in full the mediator will notify the judge that the matter has settled.

The mediator will not provide the judge with any details of the mediation discussions or the terms of any agreement the parties reached without the permission of the parties.

Once the agreement is finalised the parties will usually formally notify the Court that the case is not going to proceed and the case will be closed.

If the matter is not fully settled there may be discussion about what needs to be done to prepare for trial and the file will return to the judge. The mediator will notify the judge of the outcome but not the content of the mediation. Even when a matter does not settle clarification of the issues often occurs. Mediating a dispute does not mean there will be a delay in it being heard by a judge.

How much does mediation cost?

A modest fee applies to mediation when conducted by a registrar and is ordinarily paid by the applicant, unless otherwise ordered. In some circumstances fees can be reduced or deferred. If the matter is not settled the fee for hearing by a judge is reduced by the amount of the mediation fee paid.

Further information on fees, exemptions and reductions is available on the Federal Court's website at www.fedcourt.gov.au/fff/fff.html or from the Registry.

Parties are required to pay their lawyers as well as any associated legal costs in relation to preparing for and attending mediation.

Feedback

Any participant in Court mediation is welcome to provide feedback on their experience, whether it be positive or negative. This can be done in person or over the telephone, in writing or electronically. Further information on providing feedback can be obtained from the Court's website at www.fedcourt.gov.au/contacts/contacts_complaints.html.

The Federal Court is committed to resolving complaints fairly and with sensitivity.

Interpreters

The Court may arrange for an interpreter to come to the mediation. If you need an interpreter you must contact the Registry of the Court 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.

FEDERAL COURT REGISTRIES

ACT Registry

Nigel Bowen Commonwealth
Law Courts Building
Childers Street
Canberra ACT 2600
Phone: (02) 6267 0566
Fax: (02) 6267 0625
Email: actman@fedcourt.gov.au

NSW Registry

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

NT Registry

Level 3 Supreme Court Building
State Square
Darwin NT 0800
Phone: (08) 8941 2333
Fax: (08) 8941 4941
Email: ntreg@fedcourt.gov.au

QLD Registry

Level 6 Harry Gibbs Commonwealth
Law Courts Building
119 North Quay
Brisbane QLD 4000
Phone: (07) 3248 1100
Fax: (07) 3248 1260
Email: qldreg@fedcourt.gov.au

SA Registry

Level 5 Roma Mitchell Commonwealth
Law Courts Building
3 Angas Street
Adelaide SA 5000
Phone: (08) 8219 1000
Fax: (08) 8219 1001
Email: sareg@fedcourt.gov.au

TAS Registry

Edward Braddon Commonwealth
Law Courts Building
39-41 Davey St
Hobart TAS 7000
Phone: (03) 6232 1715
Fax: (03) 6232 1701
Email: tasreg@fedcourt.gov.au

VIC Registry

Level 7 Owen Dixon Commonwealth
Law Courts Building
305 William Street
Melbourne VIC 3000
Phone: (03) 8600 3333
Fax: (03) 8600 3281
Email: vicreg@fedcourt.gov.au

WA Registry

Level 6 Peter Durack Commonwealth
Law Courts Building
1 Victoria Avenue
Perth WA 6000
Phone: (08) 9268 7100
Fax: (08) 9221 3261
Email: waregistry@fedcourt.gov.au

Principal Registry

Law Courts Building
Queens Square Sydney NSW 2000
Phone: (02) 9230 8473
Fax: (02) 9223 1906
Email: query@fedcourt.gov.au

If you have a hearing or speech impairment, contact the Court through the National Relay Service:

- TTY users phone 133 677 then ask for your local registry's phone number as listed above
- Speak and Listen users phone 1300 555 727 then ask for your local registry's phone number as listed above
- Internet relay users connect to the NRS (www.relayservice.com.au) and then ask for your local registry's phone number as listed above