

Simply Speaking *Seanachai*

Mediation

What is it?

Mediation is a process which involves people in dispute talking to one another about their conflict. It provides them with the assistance of a Mediator to work towards a mutually satisfactory resolution. It assists people to hear and consider each others needs and interests as they work to reach a shared understanding about what needs to happen to allow them to reach a mutually acceptable agreement to the conflict.

Mediation is a confidential process entered into without pressure or prejudice. Once mediation has concluded the mediator does not disclose any information discussed or provided during the mediation conference. The only documents made available to both parties are the “Agreement to Mediate” and the “Final Mediation Agreement”.

The mediation session is conducted by a neutral third party called a “Mediator” who facilitates the discussion between the parties (staff) in dispute. The aim of the Mediator is to assist the parties to reach an agreement. The Mediator is neutral and mutual and does not decide which party is right or wrong or tell the parties what to do. The Mediator will not act as a messenger for the parties and does not make any decision for the parties and does not create an agreement should the parties be unable to do so.

Process

The process of mediation involves a structure which provides the maximum chance for an equitable solution. There are a series of stages to mediation. Each stage is explained briefly below and further explanation is provided prior to the commencement of the mediation session and throughout the process. A session generally takes about 2 – 3 hours to conduct. The number of sessions required depends on the individual circumstances.

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Pre-mediation

There are a number of activities that generally take place as part of the pre-mediation phase. The key activities that time will allow for in this instance are the:

- Provision of information on the mediation process, and
- The signing of an *Agreement To Mediate*

The *Agreement to Mediate* is not a legally binding document. It is used to gain commitment to the process and guidelines for the mediation.

Joint Mediation Session

The first session is a joint one with all the parties and the mediator. The mediator explains the process and guidelines for mediation and then commences the mediation with the following activities:

- Mediator's opening statement (about 5 minutes)
- Each party presents a brief opening statement, ie. why they have come to the mediation (up to 5 minutes per person) while everyone else listens
- Summary of each statement by the Mediator
- List of items for discussion drafted by the Mediator on the whiteboard based on the summaries
- An agenda developed out of the items list and agreed to by all parties for discussion
- Discussion held on all agreed items, ie. "get it all out on the table".

When all items have been discussed to the satisfaction of the parties, the joint session is adjourned.

Individual Reflections Session

Generally the process at this point is to allow for individual sessions with the Mediator to allow people to speak in confidence if they choose to do so. However, if the mediation is between a group of people, the size of the group and time constraints will determine how this happens.

The alternative is to provide individual private time for each person to reflect on the discussions and ways of resolving the conflict and come back into a joint session to discuss options for resolution.

Final Joint Session

When all parties are ready to discuss options for resolution of the conflict, the Mediator will bring them back into joint session.

The possible outcomes for this session are:

1. Agreement on options for resolution are reached and a Mediation Agreement is signed by all, or
2. Partial agreement on a number of options for resolution is reached; an interim Mediation Agreement is signed and all agree to another meeting to resolve outstanding issues, or
3. No agreement is reached and one more session is organised in an attempt to resolve the conflict,
4. Or the parties move to an alternative form of dispute resolution where a resolution is negotiated or imposed on them by a third party.

Based on the outcomes of the final joint session, further activities will be discussed such as, implementation of the agreed options, or a date for a second session, or recommendations for a third party to take on the role of alternative dispute resolution.

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