



BARLING MEDIATION

Preparing for Mediation

USEFUL PHONE NUMBERS

Police, Fire and Ambulance for immediate emergency	000
Victoria Legal Aid	1300 792 387
Lifeline – 24 hrs Help Line	13 11 14
Interpreter Services	13 14 50
Suicide Helpline - 24 hrs	1300 651 251
Kids Help Line	1800 551 800
Parent line	13 22 89
Safe Steps Family Violence Response Centre – 24 hrs	1800 015 188
Men’s line – 24 hrs	1300 041 612
Victoria Sexual Assault Crisis Line	1800 806 292
Seniors Rights Victoria / elder abuse helpline	1300 368 821
Disability Services	1800 800 110
Direct Line Drug & Alcohol Services – 24 hrs	1800 888 236
Victims Support Agency	1800 819 817
Centrelink	13 24 68
Victorian Aboriginal Legal Services	1800 064 865
Child Support Agency	13 12 72
Women’s Legal Service	1800 133 302
Financial Counselling Victoria	03 9663 2000

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What is mediation?

Mediation is a process which can be used in many situations where people are struggling to reach an agreement or resolve a dispute. Mediation is facilitated by a person who doesn't have any personal involvement in the problem being resolved.

Mediators help people who are in conflict and have not been able to agree about something. The mediator will support you to discuss the issues, understand each other's point of view and explore possible options for resolving the problem. When an agreement is possible the mediator will write up the points of agreement. Each person will then have a copy of the agreement that was reached and what they and the other people involved have committed to do.

Julia Barling, founder of Barling Mediation, is a nationally accredited mediator and is also a Family Dispute Resolution Practitioner accredited by the Australian Government Attorney-General's Department.

What does a mediator do?

The mediator's job is to help you to talk to the other person about the issues that are causing problems for both of you. They make sure that it is safe for you to meet and that the conversation is respectful.

As your mediator, Julia will help both of you to:

- have your say
- be heard equally and fairly
- work out what issues are important to each of you and why
- find areas of agreement and common ground
- work with both of you to help find solutions for the identified issues

Julia will **not**:

- give you advice – legal, counselling, financial or personal advice
- judge you or decide who is right or wrong
- take sides or make decisions for you
- tell you what agreement you should make

Mediation is a voluntary process. You are both responsible for finding workable solutions to your issues. The mediator will help you to test these solutions and to clarify who needs to do what. These solutions may not be perfect, but are solutions that you can live with, and will help you to move forward with your life.

Why mediate?

Trying to sort out problems in mediation is better than going to Court for many reasons, including:

- **Commitment** - Mediation is a voluntary process. That means that if you each agree to mediation you both want to resolve the issues between you.
- **Confidentiality** - Mediation is private and confidential. Going to Court is not. Even if you are not able to reach agreement in mediation, nothing said during mediation or options considered during mediation can be used as evidence in a Court. The mediator is bound by strict confidentiality rules, as outlined in Section 10H of the Family Law Act 1975 and cannot speak about anything discussed in mediation with others without your permission, except where there is a need to protect persons or property from harm.
- **Cost** - Mediation costs are a tiny fraction of the cost of going to Court.
- **Time** - Mediation can be arranged at short notice – the process can usually get started within a week or two.
- **Flexibility** - Mediation is a flexible, informal process. You decide what you will discuss and can take a break when you need, unlike Court processes which are very formal and controlled by a Judge.
- **Honesty** - Mediators are skilled in creating a safe environment where you can speak honestly about the impact the conflict has had on you and what you need for it to be resolved. This allows you to discuss issues, explore options and reach agreements that meet your needs and interests.
- **Inadmissibility** – offers made, information shared, and the things discussed and considered in mediation are not admissible as evidence in Court.
- **Support** - Non-participating support persons are welcome to attend the mediation, subject to the agreement of all parties.
- **Agreement** - Depending on the issues between you, your agreement may be a simple handshake agreement, a written reminder, a signed agreement which has some legal weight, or you can take further steps to turn your agreement into a contract or register it with the Court.
- **Finality** - Agreements reached in mediation are your decisions about what will work for each of you. Because of this, the agreements are generally much more likely to be successful in the long run and will not require further resolution or legal intervention.

What type of issues can be mediated?

Mediation is used to resolve issues and establish mutually beneficial agreements in a range of different situations including:

- Issues between family members;
- Disputes between business owners;
- Disputes between businesses and customers;
- Family Law matters (Parenting Plans and Property/Financial Settlements)
- Workplace issues;
- Issues with or about older family members;
- Wills and estates;
- Community disputes including neighbourhood issues;
- Parent/adolescent disputes.

Do I need to get legal advice?

Getting legal advice before mediation is helpful because the mediator does not provide legal advice. The mediator may recommend that you get legal advice for certain types of disputes. Make sure you ask the lawyer:

- What is the best, worst, and most likely outcome if we can't reach an agreement?
- How long will going to Court take? Knowing that it may take months or even years for a Court decision may be something to take into account when considering possible offers in mediation.
- How much time and money would going to Court cost you?

Where does mediation happen?

Barling Mediation can arrange a face to face mediation at a venue suitable for all, or it can be done by video conferencing using a computer or tablet device. This is an approach that is often taken if there are any safety concerns, a long distance between the people involved or other issues that makes face to face mediation not possible or ideal.

Your mediator will hold a meeting with each of you before any joint meeting is conducted. Part of that pre-mediation process is designed to make sure that mediation is a safe and suitable process for you and the issues involved. In some cases, the mediator may decide that mediation isn't the right process for you. During this process, your mediator will discuss with you where, when and how the mediation will be run.

What is a pre-mediation session?

Before booking in a mediation, the mediator will meet with each of you to explain the mediation process and find out if your dispute is suitable for mediation. The mediator will also make sure you are prepared and ready to participate. During the pre-mediation session, you will:

- Discuss your situation and what you would like to achieve in mediation.
- Talk about the mediation process so that you can make an informed decision to participate or not.
- Talk about the history of your dispute.
- Work through the safety screening questionnaire and identify any risks associated with meeting with the other person.
- Find out if there are any Court Orders or other legal proceedings in place that are relevant to the mediation.
- Ensure that all parties are capable of making decisions freely and willing to participate in the mediation process voluntarily.
- To discuss any additional information that may be beneficial to acquire before the mediation e.g. legal, financial, notes or documents.
- To make sure that you are prepared and ready to participate in mediation.

Pre-Mediation sessions typical last around 1 hour and are totally private and confidential.

Mediation Etiquette

At the start of the mediation, we ask all participants to agree to the following simple rules:

- **Focus on the future:** We will not dwell on things that did not work in the past, but instead will focus on the future you would like to create. The mediator is given permission to redirect the discussion when necessary, without making judgements.
- **Take turns:** We agree to take turns speaking and not interrupt each other.
- **First names:** We agree to call each other by our first names, not "he" or "she."
- **No put downs:** We agree not to blame, attack or engage in put-downs and will ask questions of each other for the purposes of gaining clarity and understanding.
- **Show respect:** We agree to listen respectfully and sincerely to try to understand the other person's needs and interests.
- **Constructive mediation:** We agree to make a conscious, genuine effort to refrain from unproductive arguing, venting, or commenting and agree to use our time in mediation to work toward reaching a workable agreement.
- **Respectful Communication:** We agree not to swear or use aggressive language during mediation. We also agree to not be disruptive during the process.
- **Break:** We will request a break when we need to.

The mediator will make sure that everyone sticks to the rules that you have agreed to follow.

How do I prepare for mediation?

Because you are the person in control of what you say at the mediation it is important to prepare and think about the best way to approach the discussion. It is also useful if you think about some of the following questions:

- What issues are in dispute?
- What are the sources of conflict?
- What is most important to you? What do you really want? And why?
- How can you communicate this information, both to the mediator and the other participant?
- What will you say at the start of the mediation to help identify the key issues and create an agenda?
- What do you think the other participant wants? How might they see the issues?
- Is what you want in the best interests of any children involved? Is it appropriate for their age and physical and emotional needs?
- What are some ways that the issues that concern you could be resolved? What could you ask the other participant to do? What could you offer to do?
- What is the reality of your situation? What has the dispute cost you already – thinking about a dollar cost and a personal toll? What will it cost you if it isn't resolved? What would it cost if you can't sort it out in mediation and have to go to Court?
- What are the possible outcomes if you did go to Court?

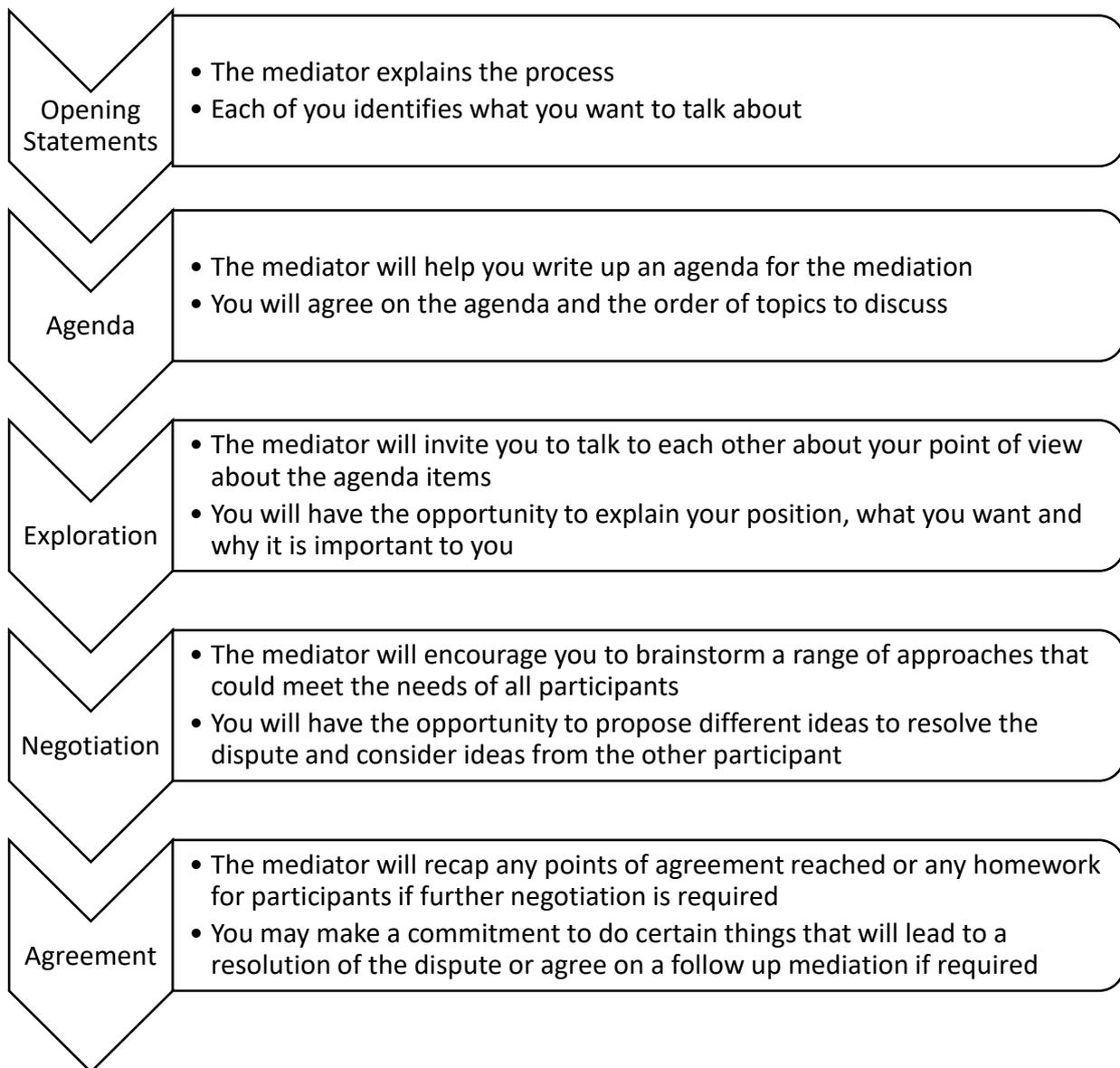
What do I need to take to the mediation?

Documents and information to bring to mediation are any that may help to progress discussions or that will help you remember what you want to say. Depending on your situation, these may include:

- Notes (Including things you want to say, discuss, proposals, advice you have received)
- Quotes, valuations, appraisals, invoices and photographs
- Formal documents (For example, previous agreements or Court Orders)
- Notebook and pen for taking notes

What happens in the mediation session?

Mediation is a structured process, facilitated by the mediator. You are responsible for what you choose to talk about and the agreements you reach.



Mediation is a flexible process. You can take a short break during the process or you can ask for a private session with the mediator. This is a chance to talk confidentially with the mediator and is often suggested by the mediator after you have finished exploring the issues and are starting to make suggestions of how the dispute could be resolved.

What is Family Dispute Resolution (FDR)?

Family Dispute Resolution (FDR) is a dispute resolution process where Family Dispute Resolution Practitioners assist people who have ended their relationship to reach an agreement about the ongoing care of their children and / or the division of their property and other financial matters.

Julia Barling is a Family Dispute Resolution Practitioner. She is also an accredited mediator who has completed postgraduate studies and has been awarded a Graduate Diploma of Family Dispute Resolution. She has been approved by the Attorney-General's Department to mediate these types of matters. FDR Practitioners are bound by rules of conduct and a code of ethics as outlined by:

- The Family Law Act 1975;
- Family Law (Family Dispute Resolution Practitioners) Regulations 2008;
- Relevant State and Territory laws;
- The Attorney-General's Department.

When attending family dispute resolution, it is recommended that you seek professional advice.

When is FDR mandatory?

FDR must be attended before applying for a Court Order in relation to a child, unless an exception applies. If you want to apply to the Court for an order in relation to a child you will need to obtain a Section 60i Certificate (S60i Certificate) from a FDR practitioner before applying, unless an exception applies. A Court may take into account the type of S60i certificate you are issued when deciding whether to make an Order referring you back to FDR or to award costs against a person.

Best Interests of a child

Your FDR Practitioner must encourage FDR participants to consider the best interests of any children likely to be impacted by decisions made.

When a Court considers what is in the best interest of a child the primary considerations are:

- The benefit to the child of having a meaningful relationship with both parents, and
- The need to protect the child from physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence.

In applying these considerations, a Court must give greater weight to protecting the child from harm resulting from family violence, abuse or neglect.

Family Violence: Family violence means violent, threatening or other behaviour that coerces or controls a family member or causes a family member to be fearful.

Safety screening is required for all Family Dispute Resolution mediations to make sure mediation is safe and appropriate for your family.

Types of FDR documents and agreements

- **Parenting or Property Agreement:** a written agreement reached in a FDR mediation and is a record of what you have agreed to. It is not legally enforceable.
- **Parenting Plan:** If your Parenting Agreement is written, signed and dated it becomes a Parenting Plan. It is not legally enforceable but can sometimes replace the terms of a Court order and a Court must take into consideration any Parenting Plan that replaces Court Orders. If you have been to Court previously the FDR Practitioner will look at your most recent Court Orders during pre-mediation and advise you if a Parenting Plan can modify the terms of the Order.
- **Consent Orders: Parenting and/or Property:** If you would like the agreement you reach in a FDR mediation to be made legally enforceable you can apply to the Court for Consent Orders. You can do this yourself with a do-it-yourself kit from the family Court or ask a lawyer to assist you. Once a property order is made it is generally a final order. Parenting Orders can be modified via a Parenting Plan or new Consent or Court Orders.
- **Binding Financial Agreements:** these agreements are a way of making a legally enforceable agreement about property settlement without registering it with the Court. These agreements will require the assistance of two independent lawyers as you will each require a signed statement of advice from independent lawyers. The agreement must be made voluntarily without any threat or coercion.
- **Court Orders: Parenting and/or Property:** if you are unable to reach agreement in FDR you may apply to the Court for a Court Order. Talk to your lawyer about the expected time and cost involved in going to Court about your issue in dispute.
- **Section 60I Certificate (S60i):** apply only to FDR Parenting Orders and cannot be issued for FDR Property or other purposes. A S60i certificate can only be issued by a registered Family Dispute Resolution Practitioner accredited by the Attorney Generals Department. S60i certificates serve the sole purpose of allowing people to file an application in Court. There may be consequences attached, such as Courts may award costs against a party based on failure to attend or not making a genuine effort.

Support people at the mediation

If agreed by all parties involved, lawyers or personal support persons may be present during mediation. This will be discussed during the pre-mediation session.

The support person(s) role is advisory to that party only and while present will not, in general, take part in the mediation itself. Support and advice can be given within private sessions with the party, not in the mediation itself. A support person is someone who can:

- Give you emotional and practical support.
- Help you understand the issues in dispute and what is important to you.
- Gently challenge you if you get stuck on one idea.
- Take notes or remind you later of things said.

Your support person could be:

- a family member
- a friend
- a work colleague
- a social worker
- a union representative
- a counselling psychologist
- a professional adviser (for example, your lawyer, accountant, financial adviser or financial counsellor)

You must give notice before a support person will be allowed into the mediation and will only be allowed to attend upon agreement of the mediating parties and the mediator. It is necessary that any support person attending the mediation sign a confidentiality agreement before the session.

If both participants would like to have their lawyer attend the mediation, the lawyers can be more involved in the discussions and the process, but participants will also be expected to be actively involved.

Getting the most out of mediation

For mediation to have the best possible outcome for you it is recommended that you:

- Approach the process with an open mind.
- Listen carefully to what is being said by the mediator and the other participant.
- Take responsibility for your actions and decisions.
- Be clear about what needs to be resolved.
- Be genuine in wanting to resolve the dispute. An early resolution is a win for all.
- Seek support when you need it.
- Be informed. Gather the advice and information you need prior to going into the mediation.
- Gather your thoughts before speaking and speak clearly and calmly.
- Be prepared to take turns at speaking and not interrupting the other party or speak over them. If there is something you need to respond to, write it down.
- Make sure that you understand what is being said and ask questions if you aren't sure of something.
- Stay positive and trust in a process which has been proven repeatedly to be successful – even if it's not feeling like that, especially in the initial stages.
- Listen to the other participant's point of view and suggestions and share your own.
- Don't focus on the blame game or what has led to this point. Instead, focus on the way forward from here and creating win-win solutions that enable the matters to be resolved quickly and effectively.

How do I proceed from here?

You can book in for your pre-mediation and risk assessment session by contacting Julia at Barling Mediation by email julia@barlingmediation.com.au or calling 0478 253 201.

All information provided is for your benefit and is not intended to be a substitute for professional advice on the topics covered. Some of the topics may not be relevant to your situation.

Professional Fees Schedule

Julia Barling is an accredited Family Dispute Resolution Practitioner, who can issue Section 60i Certificates where appropriate under the Family Law Act, 1975.

Barling Mediation Fee Schedule	Fees
Pre-Mediation Intake and safety screening: Time allocated is 60 minutes per party	\$385 (per participant)
3-hour Mediation Session: up to 3 hours is set aside for the mediation at a cost of \$1,100 per party	\$2,200 (\$1,100 per participant)
Issue of Section 60i Certificate (FDR Parenting only): In parenting matters where requested and issued to each requesting party.	Included

Payment should be made to:

Barling Mediation

BSB: 063 533

Account number: 1094 2515

Please use your name as the reference

Email payment confirmation to julia@barlingmediation.com.au

Note:

- All services are to be paid in advance of the service delivery.
- Fees are payable to the mediator regardless of an agreement being reached.
- We invoice each of the participants separately, unless alternative arrangements are made in advance.
- We are open to one participant, or another person paying the full cost for both participants and note that this has no impact on the impartiality of the mediator or the process.
- In some cases, more than one mediation session is required to resolve all issues in dispute. If this is required, additional fees are charged.



Julia Barling

Lawyer with 18+ years of experience
Nationally Accredited Mediator
Family Dispute Resolution Practitioner
Founder, Barling Mediation

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Email: julia@barlingmediation.com.au

Website: www.barlingmediation.com.au



Qualifications & Education

- Registered Family Dispute Resolution Practitioner – Cth Attorney General Office (FDRP)
- Accredited Mediator under the National Mediation Accreditation Standards (NMAS)
- Graduate Diploma of Family Dispute Resolution – Mediation Institute
- Bachelor of Laws (Hons) – Bond University
- Graduate Diploma of Leadership and Management – Australian Institute of Management

Services

- Family Dispute Resolution – Parenting
- Family Dispute Resolution – Property
- Family business mediation
- Workplace Mediation
- Facilitated discussions