

The benefits of mediation in a commercial dispute

Lawyers are often stereotyped as being interested in prolonging an expensive Court action. More often the opposite is true.

Lawyers know that Court cases are expensive and that clients are fearful that legal costs could escalate to an intolerable level. Lawyers interested in preserving long standing relationships with their clients will often recommend alternative dispute resolution options - mediation being one.

Mediation allows parties to remain in control of their own disputes and outcome while facilitating parties to tell their side of the story to the other party and the mediator.

What exactly is mediation?

Mediation is one form of alternative dispute resolution. Other dispute resolution processes include Early Neutral Evaluation, Expert Determination and Arbitration.

In essence mediation is an informal conflict resolution process brought before an independent, neutral third party.

Mediation gives the parties the opportunity to discuss their issues, clear up misunderstandings, and find areas of agreement in a way that would never be possible in a court case.

Mediation is often voluntary. Typically the mediator has no authority to make a binding decision *unless* both parties agree to give the mediator that power which is dealt with in advance of the mediation commencing.

When parties should consider mediation

In practical terms mediation is likely to be quicker and more cost-effective than the more formal processes of arbitration or litigation (in Court). Mediation should be considered as early as possible after a dispute has arisen. It is particularly appropriate where a dispute involves complex issues and/or multiple parties.

In addition, mediation can be implemented prior to, or in conjunction with, other forms of dispute resolution such as arbitration or court proceedings.

In circumstances where privacy and confidentiality are important, mediation enables parties to preserve these rights without public disclosure. This often leads to more satisfactory outcomes for both parties.

Advantages of mediation

There are many advantages, in summary these can be described as:

- **You get to decide:**

The responsibility and authority for coming to an agreement remain with the people who have the conflict. The dispute is viewed as a problem to be solved. The mediator doesn't make the decisions, and you don't need to "take your chances" in the courtroom.

In doing this however, naturally you need to understand your legal rights so that you can make decisions that are in your own best interests.

- **The focus is on needs and interests:**

Mediation examines the underlying causes of the problem and looks at what solutions best suit *your* unique needs and to satisfy *your* interests.

- **For a continuing relationship:**

Colleagues, business partners, and family members have to continue to deal with each other co-operatively. Going to court can divide people and increase hostility. Mediation looks to the future. It helps end the problem, not the relationship.

- **Mediation deals with feelings:**

Each person is encouraged to tell their own story in their own way. Discussing both legal and personal issues can help you develop a new understanding of yourself and the other person. You are encouraged to see things from the other person's perspective.

- **Higher satisfaction:**

Participants in mediation report higher satisfaction rates than people who go to Court. Because of their active involvement, they have a higher commitment to upholding the settlement than people who have a judge decide for them. Mediations end in agreement about 80% of the time and have high rates of compliance.

- **Informality:**

Mediation can be a less intimidating process than going to Court. Since there are no strict rules of procedure, this flexibility allows the people involved to find the best path to agreement. Although it is normal for any dispute resolution to be taxing emotionally, mediation is a process that is much less confronting and is conducted in a much more comfortable environment than litigation.

- **Faster than going to court:**

Years may pass before a case comes to trial, while a mediated agreement may be obtained in a couple of hours or in sessions over a few weeks.

- **Lower cost:**
The Court process is expensive, and costs can exceed benefits. It may be more important to apply that money to solving the problem, to repairing damages, or to paying someone back. Mediation services are available at low cost for some types of cases. If you can't agree, other legal options are still possible. Even a partial settlement can lessen later litigation fees.
- **Privacy:**
Unlike most Court cases, which are matters of public record, most mediations are confidential.

Where mediation is not the solution

With mediation a resolution is not guaranteed. There is the potential that parties may invest time and money in trying to resolve a dispute out of Court, and still end up having to go to Court. Ultimately it is a call that should be made in consultation with an experienced lawyer.

Mediation should not be a solution in circumstances where it is not appropriate. For example where a Court remedy is necessary such as an injunction or seeking specific urgent Court orders.

It must also be remembered that the mediator has no power to impose a binding decision on the parties. Therefore even after the mediation the matter may be unresolved and you may still need to go to Court. (This is where the selection of the Mediator requires careful consideration by all parties).

Fundamentally, mediation rarely produces a satisfactory resolution **unless** both parties to a dispute are committed to a resolution.

Conclusion

Mediation is an alternative to financially and emotionally costly and time-consuming processes such as using the Court system. It is suitable for people who are willing to communicate with the other party and attempt to better understand and settle their dispute with the help of a trained third party.

If you or someone you know wants more information or needs help or advice, please contact us on (03) 9459 5764 or email admin@rtlegal.com.au.