

# How Does The Small Business MEDIATION PROCESS WORK?



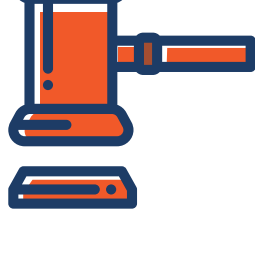
Where the two parties are involved in the dispute, they can invite a third party who is neutral to the dispute to facilitate the discussions and negotiating of an agreement between the two parties.



## The mediator will not



offer any opinions or views on the positions of the parties



suggest a likely outcome may look like in court



offer advice or guidance of any form to the parties

## The mediator will



assist the parties in examining the issues,



and to explore any hidden agendas that may be driving the dispute.



will encourage the parties to see the view-point of the other side,



and to 'reality check' their own views.

## All of this is done with a view to discover



the key issues that separate the parties,



and to try and narrow the gap that divides them

If the discussions are productive, the mediator will facilitate a negotiation, leading to an agreement.

Mediation generally will incorporate the following stages:



## Preparation

Both parties submit their position statement to the mediator, along with any supporting documents. The mediator may suggest that the parties exchange this information with each other so that both parties can come to the mediation with maximum preparedness, thereby maximising the efficiency of the mediation.

## What form does the mediation take?



In the offices of the solicitor of one party



Neutral venue with each party 'owning' a separate room.



Via email or phone.



Phased over different days and venues at the convenience of the parties.



Debate is face to face or in a conference call, with the mediator acting as chair of the 'debate'.



Mediator will then go to each party privately to explore and negotiate



Several joint meetings may be required to discuss issues that arise as the procedure progresses

## Debate



At this point, both parties will argue their case, emphasising their strengths



Respond to points made by the other party



Each can test the strength of their position and cross examine the other



Parties often hear aspects that had escaped their attention or had not fully appreciated



Both parties gain a clearer understanding of a likely outcome may be if litigation follows



Parties can form an idea of the strength of their bargaining power in negotiations

## Exploration



Mediator spends time in private with each party to explore the issues confidentially



Mediator gets a feel for each party's needs and sees where the parties stand in relation to each other

## Negotiation & Agreement



Once the mediator feels that the parties are within reach of each other, the mediator will facilitate a negotiation, which will result in an agreement.



The parties draw up the agreement and sign it, which makes it legally binding.