



Preparing for Mediation Information Booklet

Email: ken@fdrmediation.com.au | Mobile: 0404 072 330

SOME USEFUL PHONE NUMBERS

Police, Fire and Ambulance for immediate emergency	000
Queensland Ambulance Service	13 74 68
Lifeline – 24 hr Help Line	13 11 14
Interpreter Services	13 14 50
Suicide 24 hr Helpline	1300 651 251
Kids Help Line	1800 551 800
Parent line	1300 301 300
Domestic Violence Women line	1800 811 811
Men's line	1300 789 978
Sexual Assault Helpline	1800 010 120
Elders Abuse Prevention Unit Hotline	1300 651 192
Disability Information Service	1800 177 120
Drug Arm	1300 656 800
Victims Counselling & Support Service	1300 139 703
Legal Aid	1300 651 188
ATSI Legal Services	1800 012 255
Seniors Enquiry Line	1300 135 500
Women's Legal Service	1800 677 278
Financial Counsellors Association of Qld	1800 007 007

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What is mediation?

Mediation is a voluntary process which can be used in many situations where people are unable to reach an agreement to resolve a dispute. Mediation is facilitated by a mediator, that is 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, 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, so each person has a copy of what they and the other people involved have agreed to commit to.

All mediators who work with FDR Mediation are nationally accredited mediators and are registered Family Dispute Resolution Practitioners with 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 keep the conversation respectful.

The mediator will help both of you to:

- have a chance to 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

The mediator will **not**:

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

Mediation is a voluntary process, in which both of you are responsible for finding workable solutions to your issues. These solutions may not be perfect, but are solutions that you can live with, and move forward with your life.

Why mediate?

Trying to sort our 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 – usually within a week or two so that you are not forced to live in a conflict situation for a long time.
- **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 are able to 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.
- **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 so are generally much more likely to be more successful in the long run and not requiring further resolution or legal.

What type of issues can be mediated?

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

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

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 from a court decision?
- How long will going to court will take? Knowing that it will 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?

Mediation will happen at FDRM offices or it can be done by video conferencing using a computer or tablet device; if there are any safety concerns or other issues that makes face to face mediation not possible.

Your mediator will hold a meeting with each of you before any joint meeting is conducted. Part of that pre-mediation process is designated to decide if 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 Family Dispute Resolution (FDR)?

Family Dispute Resolution (FDR) is a dispute resolution process where Family Dispute Resolution Practitioners assist people who are ending their relationships to resolve issues related to the ongoing care of their children and/or the division of their property and other financial matters.

Family Dispute Resolution Practitioners are accredited mediators who have post graduate studies at the Graduate Diploma of Family Dispute Resolution level or above and have been approved by the Attorney-General's Department to mediate these 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 highly 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.

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 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 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 be forced to go to court for a Court Order. Talk to your lawyer about the expected time and cost involved in going to court in your area.
- **Section 60I Certificate (S60i):** are only for FDR Parenting, and cannot be issued for FDR Property or other purposes. A S60i certificate can only be issued by a registered Family Dispute Resolution Practitioner with 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 on the basis of failure to attend or not making a genuine effort.

What happens in the pre-mediation session?

In the private pre-mediation session, the mediator will meet with you to explain the mediation process, find out if your dispute is suitable for mediation and make sure you are prepared and ready to participate. During the pre-mediation session, you and the mediator 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 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 or advice 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 an hour and are totally private and confidential.

What happens in the safety screening session?

Safety screening sessions are required for all Family Dispute Resolution mediations, including FDR Parenting and FDR Property.

In the private safety screening session, the mediator will meet with you and together work through a safety screening procedure / questionnaire. During the safety screening session, you and the mediator will work through the questionnaire discussing your situation to ascertain:

- Your safety
- The safety of the other party
- The safety of others involved including any children

Safety screening sessions typical last around an hour and are totally private and confidential.

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. You can prepare by thinking about the following:

- What issues are in dispute, including the facts and sources of conflict?
- What is important to you to resolve the dispute? 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 your child/ren 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 them to do? What could you offer to do?
- What is the reality of your situation? What has the dispute cost you already? 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?

Documents that may be relevant, depending on the particular situation are:

- Notes (Including things you want to say, discuss, proposals, advice from advisors)
- Quotes, valuations, appraisals, invoices and photographs
- Formal documents (For example, noise complaints)
- Notebook and pen for taking notes

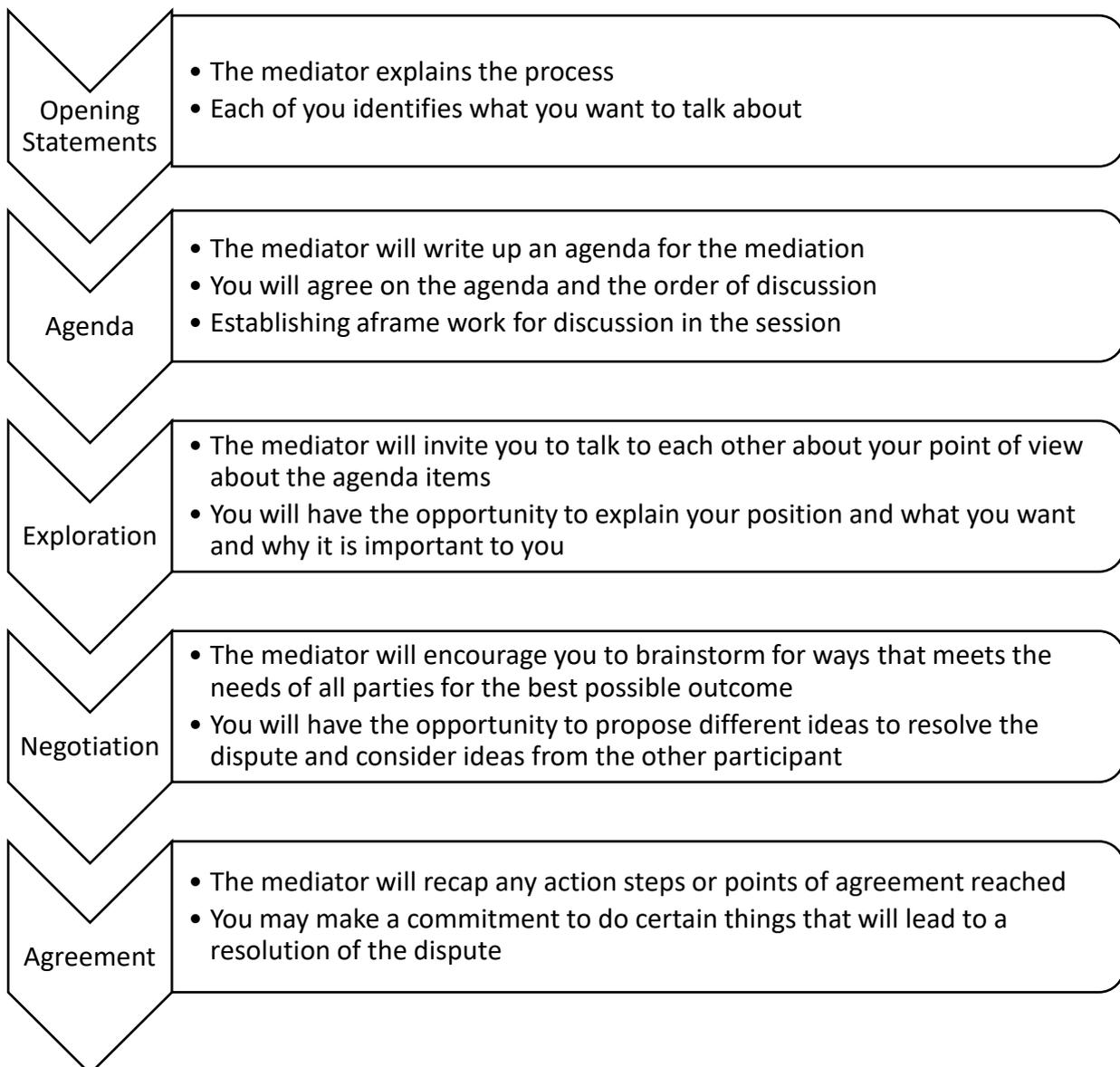
Mediation Etiquette

1. **Focus on future:** We will not dwell on things that did not work in the past, but instead will focus on the future we would like to create. The mediator is given permission to redirect discussion when necessary, also without making judgements.
2. **Take turns:** We agree to take turns speaking and not interrupt each other.
3. **First names:** We agree to call each other by our first names, not "he" or "she."
4. **No put downs:** We agree to not blame, attack, or engage in put-downs and will ask questions of each other for the purposes of gaining clarity and understanding.
5. **Show respect:** We agree to listen respectfully and sincerely try to understand the other person's needs and interests.

6. **Constructive mediation:** We agree to make a conscious, sincere effort to refrain from unproductive arguing, venting, or narration, and agree to use our time in mediation to work toward what we perceive to be our fairest and most constructive agreement possible.
7. **Respective Communication:** We agree to not swear during mediation or use aggressive language. We also agree to not be disruptive during the process.
8. **Break:** We will request a break when we need to.

What happens in the mediation session?

Mediation is a structured process where the mediator facilitates the process while you are responsible for what you choose to talk about and the agreements you reach.



Mediation is flexible in that you are able to take a short break during the process and/or you or the mediator may 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 started to make offers of how the dispute could be resolved.

What else do I need to know about mediation?

The key things that make mediation unique and so powerful are:

- **Confidentiality** – mediation is a confidential process. That means that the mediator can only speak about your mediation to other people with your permission. It also means that the mediation parties also can only talk about what they learn in mediation with their advisors or close support people.
- **Release of Information** - the mediator may only release information at the end of mediation in accordance with instructions agreed to by both parties (or when obligated to by law or to prevent harm or injury to persons or property). For example, the mediator may write up and send to you the points of agreement from your mediation session or supply a copy of your agreement to your employer or legal advisor if the mediating parties have given permission to do so.
- **Ground rules** – the discussion in mediation is to be respectful and without threats or abuse. This is facilitated by both of you agreeing to a set of ground rules about how you will treat each other in mediation. These ground rules will be maintained by the mediator.
- **Neutrality of Mediators** - the mediator is a neutral and impartial third party. This means that they do not get a benefit from a specific outcome of the dispute or have/show a preference or bias towards any party to the mediation. The mediator must disclose and discuss with you any real or potential conflict of interests that they become aware of and you should immediately raise any concerns you have if you become aware of any.
- **Mediators – do not provide legal and other advice** - the mediator's role is to assist you to reach an informed and voluntary agreement. The mediator will not provide legal, other advice or judgement. The mediator may assist, in a non-advisory manner, with making an informed decision or may suggest/refer you to independent advice or counsel.
- **Inadmissibility** – offers made, information shared, and the things discussed and considered in mediation are not admissible as evidence in court. That means you can consider your options without fear that you are going to be forced to do something you haven't fully agreed to.
- **Agreements** – agreements reached in mediation are done so freely. If this is not the case, then ask to speak privately with the mediator and share your concerns with them. If the agreement is written, signed and dated it will have some legal weight and be able to be admitted as evidence in court. It will be up to the judge to decide if they will order that you follow the agreement you reached.

- **Parenting Plans** – agreements about any aspect of care, welfare or development of the child or any other aspect of parental responsibility for a child, that are signed and dated by the parents or carers are called Parenting Plans. Unless a Court Order says that it can only be replaced by another Court Order then a Parenting Plan can replace a Court Order allowing you to reach an agreement to replace the terms of a Court Order that no longer works for your family. A Parenting Plan is not enforceable, but it must be considered by the court if you do go back to the court for new orders.

Support people at the mediation

If agreed by all parties involved, legal or personal support persons may be present during mediation. This will be discussed during the pre-mediation and risk assessment 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.

Getting the most out of mediation

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

- Approach it with an open mind, listening carefully to what is being said.
- Take responsibility for your actions and decisions and for being clear about what is the dispute.
- 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 may 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 during it, especially in the initial stages.
- Listen to the other participants' point of view and suggestions and share your own.
- Don't focus on the blame game or what has led to this point rather focus on the way forward from here creating win-win solutions that enable the matters to be resolved quickly and effectively.

Understanding conflict

One definition used to describe conflict is when something or someone creates obstacles to you achieving your goals or desires. When this happens, conflicts can quickly escalate into a dispute when, in an attempt to remove that obstacle, it creates an obstacle for another person in the pursuit of their goals or desires and so the cycle begins.

If left to continue down this path the conflict escalates as more people and more issues are drawn into it.

Before it gets to that point it may be helped by:

- Talking and listening to each other;
- Considering the impact of your words and actions;
- Trying to understand each other's points of view.

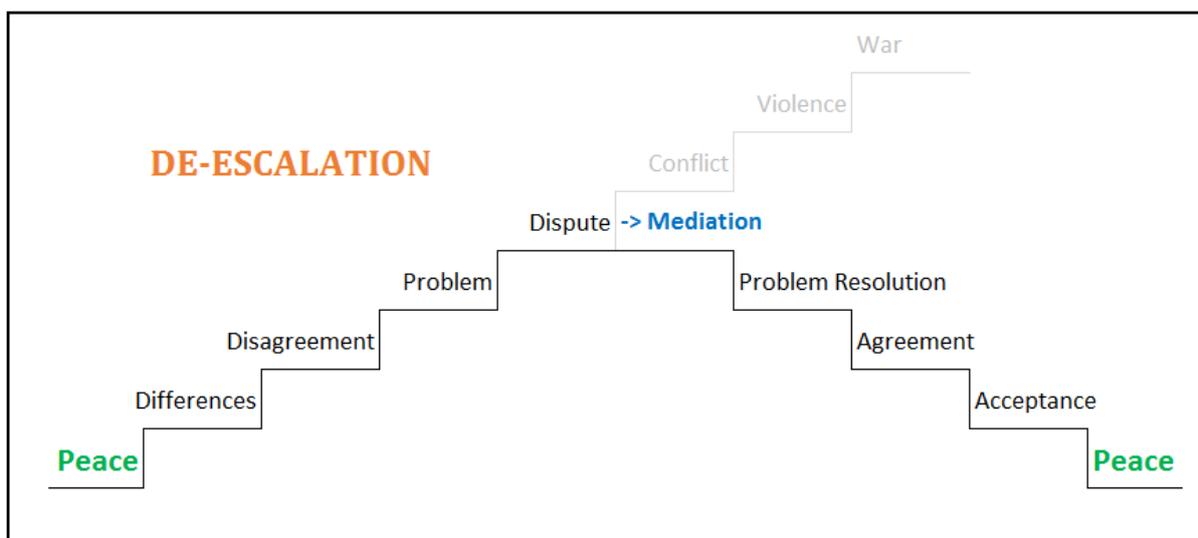
To show how a difference can quickly develop into a dispute consider the following progression of a problem and think about:

- Where does the matter currently sit?
- What will be gained / lost if it is allowed to continue to escalate?
- What can I do to change the course it is on towards the destructive pathway?

Escalation of Tension Stages:

- **DIFFERENCE:**
Acceptance of difference – harmony or balance without unhealthy tension
Unreconciled difference – in approaches, attitudes, values, beliefs or goals identified. Out of rapport.

- **DISAGREEMENT:** Unreconciled differences lead to competition between different goals, approaches, beliefs or attitudes.
- **PROBLEM:** Competition and disagreements cause problems in behaviour, attitudes and approaches to one another.
- **DISPUTE:** Problems escalate into disputes. More people get involved. Life and/or work is affected.
- **CONFLICT:** Dispute escalates to open conflict and greater negative behaviour and attitudes. Vindictive behaviour in which the other party becomes 'the enemy'.
- **VIOLENCE:** Unresolved conflict can lead to physical, sexual or emotional violence used to attempt to control the 'other'.
- **WAR:** Violence can lead to tragedy and atrocities occurring. A win-at-any-cost style thinking and decision making.



Living 'Above the Line'

When seeking to resolve conflicts that are impacting your life the quickest and easiest place to start is to consider your own behaviour and involvement in what has happened, as we are each able to only change ourselves. Are you staying 'above the line' and remaining open to resolving, or occasionally falling 'below the line' which may be creating further conflict?

Accountability

being accountable and being able and readily give explanations for your actions

Responsibility

taking responsibility and being in charge of all your actions, reactions, and decisions

Ownership

taking ownership for your actions and decisions. Good and bad

(above the line)

(below the line)

Blame

blaming others for your problems and the situation you are in

Denial

denying that you have acted or made decisions that have impacted yourself or others negatively

Excuses

make excuses for your words, decisions or actions

Making apologies and accepting apologies

Nothing can begin a way forward in conflict better than a sincere apology of something you have done wrong. It can often be the beginning of a more productive and helpful discussion resulting in an amicable resolution. This can feel risky as it can feel like you are opening yourself up to being vulnerable to the other person, but mediation is about resolving the conflict not winning against the other party. As mediation is voluntary and dependant on the parties themselves desiring to resolve (and making the decisions to resolve) for it to succeed, it will mean both parties should be prepared to do this. It can help to remember that being a confidential process, that means nothing you share is to be taken outside of the mediation or used against you.

You need only take responsibility for that which you have done, but taking responsibility for your part in it, whether it is 1%, 10% or 90% is an important step in resolving issues and 'Living Above the Line'.

When offering an apology for any words or actions that you take responsibility for there are a couple of simple guiding principles:

- Address everyone involved.
- **Avoid if, but and maybe** – as soon as you start explaining you sound like you are making excuses and you void the apology.
- **Admit specifically** – don't just say 'sorry' be specific about what you are sorry about.
- **Acknowledge the hurt** – let them know that you understand what you have done and how it has hurt them.
- **Accept the consequences** – this is about taking responsibility and owning your own actions and decisions.
- **Alter your behaviour** – an apology means little if it is not backed up with changed behaviours to stop it. happening again.
- **Ask for forgiveness** – saying sorry goes a long way towards developing good and future workable relationships.

When receiving an apology from someone it helps to remember that true acceptance means that you accept that they are sorry and that you are willing to give them a chance to prove to you that they mean it. It means that you are saying that you will not hold it against them and that the slate is wiped clean for you with them in regard to this matter and that you will not bring it up to be used against them or speak to others about it as if it was not an accepted apology. In other words, you are saying that will not let it stand between you or hinder your relationship with them anymore.

Some helpful tips on communicating

Listen

- Listen to what you have in common. This is a good place for you and the other people involved to start looking for an outcome.
- Listen to what the other people need or are concerned about. Respond reasonably to what they are saying.
- Check with the other people involved to make sure you have understood them.

Ask questions

- Focus on opening up the conversation with a solution focus like 'How can we...' or 'What possibilities are there for...'
- To try to find out what is important to the other people involved, for example by asking 'How is that important to you?'
- Ask about how the other people involved would like to move forward.
- After listening well and making sure you understand. Remember other people have different points of view and see things differently. Ask don't assume.

Respond

- Respond only after you feel that you understand what they really think.
- Responding using less positional language like 'I think...', 'I'd prefer...' or 'I wonder whether...' instead of 'I want...' or 'I have decided...'
- Make suggestions for an outcome that meets the other people's needs and that you can accept.

Avoid

- Avoid reacting to demands or threats.
- Avoid statements or questions that accuse, such as 'You did...' or 'You told me that...' this can lead to blaming instead of focusing on how you are impacted by other peoples' behaviour. Use I statements instead 'I feel ...' 'I thought you told me ...'
- Avoid saying 'Obviously...'
- Avoid saying 'yes but...' 'but' is a negation and wipes out anything you said before it. Use 'and' instead.
- Avoid making conclusions about what the other people involved said. If you do make conclusions, check with them that your conclusions are true and accurate.

How do I proceed from here?

You can book in for your pre-mediation and risk assessment session by contacting FDRM with the contact details on the front of this booklet. 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

Our mediators are registered Family Dispute Resolution Practitioners, who can issue Section 60i Certificates where appropriate under the Family Law Act, 1975.

FDR Mediation Fees Schedule	Fees
File Creation and Administration Fee: to cover the costs associated with administration and time and resources required to contact the other party and arrange the mediation.	\$165 (per party)
Pre-Mediation Intake and safety screening: time set is 90 minutes at a cost of \$330 per hour, per party - less file creation and administration fee.	\$330 (per party)
3-hour Mediation Session: minimum time set is 3 hours at a cost of \$330 per hour, per party.	\$1,980 (usually shared equally by the parties: \$990 per party)
Issue of Section 60i Certificate (FDR Parenting only): In parenting matters where requested and issued to each requesting party.	Included

Other as Required	Fees
Travel: Distances within 20 km of Cornubia.	No charge
Travel: Interstate or regional travel.	Rates as negotiated

Note:

- All prices listed are GST inclusive.
- 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 parties separately, unless alternative arrangements are made in advance.

Mediator Profile

Kenneth J Speakman - Mediator Profile



BRISBANE, LOGAN, and GOLD COAST

Mobile: 04-0407-2330

Email: ken@fdrm.com.au



Qualifications & Education

- Registered Family Dispute Resolution Practitioner under the Family Law Act & Regulations (FDRP)
- Accredited Mediator under the National Accreditation Standards (NMAS)
- Commissioner for Declarations, Queensland (C.dec)
- Certified New Ways for Families Coach (IS Level 2 & 3)
- Certified Interact Support Consultant (IS Level 1)
- Graduate Diploma of Family Dispute Resolution (GradDipFDR)
- Graduate Certificate of Commerce (GradCertCom)
- Graduate Certificate of Neuro-Linguistic Programming (GradCertNLP)

Services (Mediation)

- Relationship Mediation,
- FDR Parenting Mediation,
- FDR Property Mediation, and
- Post FDR Mediation.

Current Experience - Other

- Guest webinar presenter on a variety of topics, from Professional Development to Specific Mediation and Conflict Resolution topics.
- Mediation Institute Pty Ltd: Student Mentor and Practical Roleplays Coordinator and Trainer.
- Co Author of Mediation and Communication Skills Manual

Associations / Memberships

- Founder of FDR Mediation Pty Ltd
- Board Member Interact Support Inc.
- Professional Association and NMAS Accreditation – Mediation Institute RMAB