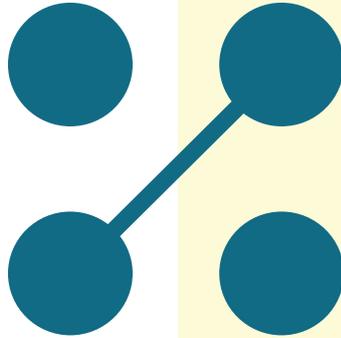


BRISBANE MEDIATIONS



BRISBANE FAMILY MEDIATIONS

# GUIDE TO MEDIATION

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Follow Us  

Hello

We have developed this introductory pack to address a range of needs. In it you will find a cross-section of information explaining mediation and the way we practise it at Brisbane Mediations:

- » Mediation Across the Board
- » Mediation Facilitates Ongoing Relationships
- » Mediation in the Workplace Saves Jobs & Money
- » Introduction to The Family Law Act
- » Resolution of Domestic Conflict the Brisbane Mediations Way
- » Mediating Prenuptial and Cohabitation Agreements Protects Relationships
- » Children's Adjustment To Repartnering of Parents
- » Hearing the Voices Of Young People at Mediation
- » How to Contact Us

Remember that if you require any additional information or support we are just an email or phone call away. Take a look at our website - [www.brisbanemediations.com.au](http://www.brisbanemediations.com.au), like us on Facebook [www.facebook.com/BrisbaneMediations](http://www.facebook.com/BrisbaneMediations), and follow us on Twitter - @BrisMediations.

Best wishes,

**Denise Britton**

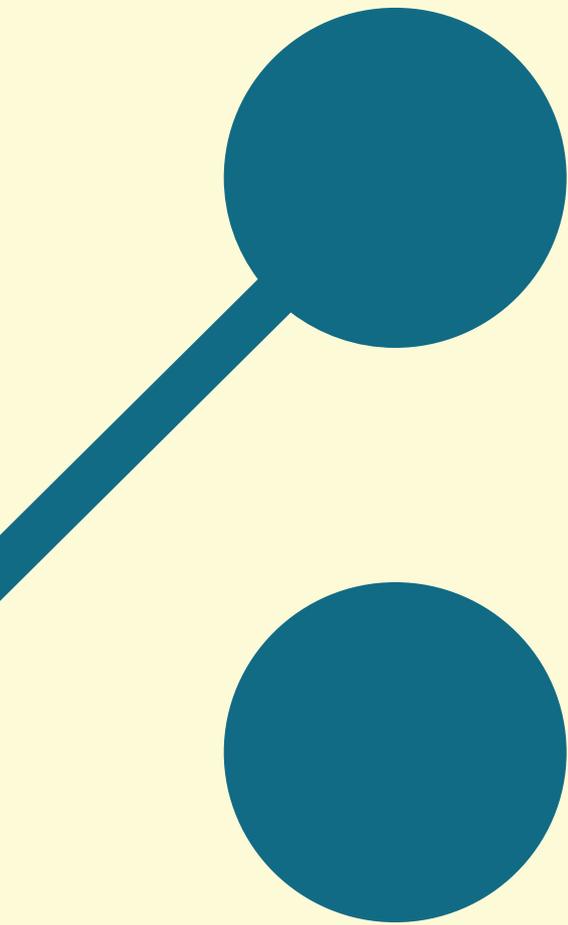
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**(Co-Principals)**



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# MEDIATION ACROSS THE BOARD

## IN CONFLICT? MEDIATE!

Things work out best for the people who make the best of the way things work out.  
(Linkletter)

As indicated in our email address - [resolve@brisbanemediations.com.au](mailto:resolve@brisbanemediations.com.au)  
- we resolve conflict.

### CONFLICT BETWEEN, FOR EXAMPLE:

#### » SEPARATED COUPLES

Married, de-facto, casual, same sex, younger, older and all ages in between. About property, children and any other issues that might have arisen as a result of the breakdown of the relationship.

» **EXTENDED FAMILY MEMBERS** Over estate division and administration, care of elderly relatives, running family businesses and any matter likely to cause disagreement within a family.

#### » COUPLES IN LOVE

Prior to marriage or cohabitation. Over property, blending families or any disagreement which might occur within a relationship. Sometimes in the context of negotiating prenuptial or cohabitation agreements.

#### » BUSINESSES

Over interpretation of contracts and leases and all manner of issues that can develop in the course of running a business.

#### » WORKERS

Between bosses and staff, co-workers, workers and contractors, workers and customers/clients or between managers. These disputes have the potential to reduce productivity, raise insurance and litigation budgets and destroy lives.

#### » MEMBERS OF SCHOOL COMMUNITIES

Between teachers and students, parents, other teachers, principals or management. Between boards of directors and management and between parents and other parents or students and other students. Over everything from bullying claims to appeals against appointment of staff.

# MEDIATION FACILITATES ONGOING RELATIONSHIPS

**Mediation is less likely to harm on-going relationships than litigation** - commercial arrangements between suppliers and customers; parenting relationships between separated parents with mutual parenting responsibilities to fulfil; or working relationships between co-workers / workers and managers who have clashed in the workplace.

**In mediation, disputing parties enlist the assistance of a neutral person** (the mediator) to help identify issues in dispute and explore options and alternatives to reach an agreement that will accommodate their respective needs.

With litigation, however, courts review opposing versions of disputes and provide a decision based on the evidence in each side's affidavits or stories about the dispute and what they say in court. The decision almost always endorses one view of a case and rejects the other, costs often being awarded to the successful party, thereby punishing the other.

Litigation by its very nature highlights and accentuates differences, with barristers' cross-examinations exposing weaknesses in the other side's version of events. **Mediation on the other hand, looks for common ground and strives for agreement.**

Litigation encourages a winner take all approach. **Mediation looks for a win/win outcome.**

Considerable damage is inevitably done to ongoing personal relationships (for example, between parents or between beneficiaries under a will) when each person, in seeking to have their version accepted, tries to destroy the other's case. Similarly, in the commercial field, time in court is highly unlikely to engender an ongoing relationship - particularly when at the end of the day one party is the victor and the other the vanquished, left to pick up the pieces.

When a result is imposed by a court, one party may leave the courtroom happy and the other disgruntled and bitter. The trial process has most likely eroded the previous relationship even more and increased the chance that these people will struggle indefinitely to relate into the future - personally or commercially, as the case may be.

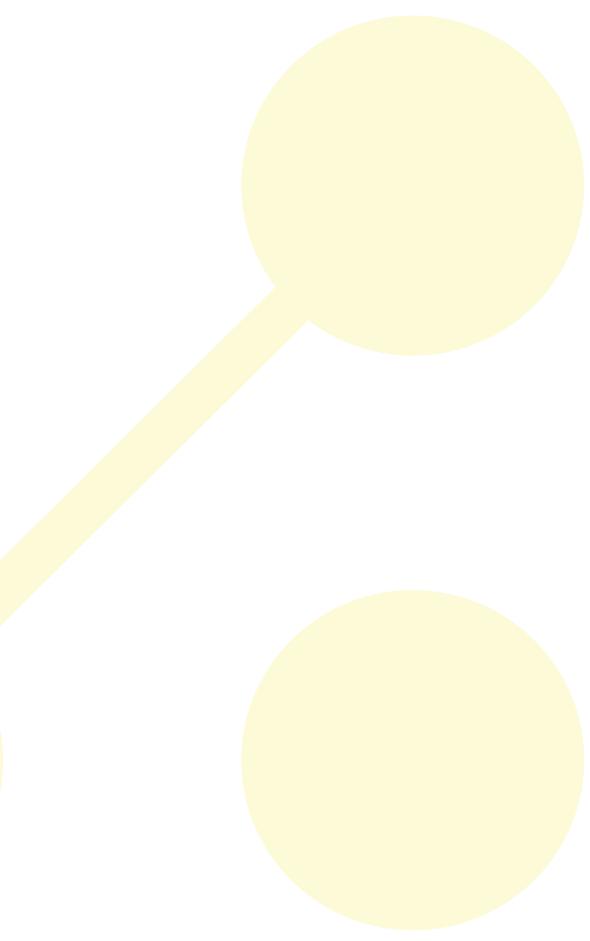
At Mediation, however, seemingly warring parties often shake hands or communicate in a genial manner at the end of the day, a copy of the signed agreement in hand as they leave. **A result has been reached by consensus rather than by being imposed by a stranger.**

Dignity has been maintained and the vestiges of a relationship remain intact with a chance of enrichment in the future. In the commercial arena there is every chance that the parties will continue their mutually beneficial relationship, particularly where they have found a solution which ultimately accommodates the needs of both.

**Mediation involves savings, not only in material costs, but also in costs to relationships.**



# MEDIATION IN THE WORKPLACE SAVES JOBS AND MONEY



How often do helping professionals deal with people in **conflict within the workplace**? Perhaps it is “a personality clash”. Perhaps different interpretations of regulations or procedures. Or maybe there has been a serious breach of protocol by a boss and a grievance should issue, but the worker fears reprisals or impact on future plans for occupational advancement.

How much **time and money** is lost because workers feel they are not being heard? How much stress related sick leave and how many WorkCover claims would not ensue if issues in the workplace were dealt with in a timely and effective manner at an early stage?

**Brisbane Mediations'** mediators have **experience** in dealing with disputes of all kinds, including those which originate in the workplace. Even where there are multiple parties and stakeholders, we know we can make a difference, as we have done on many occasions before.

Large and small companies, government departments and organisations such as private and state schools and colleges as well as their employees have benefited from our interventions.

We can work with support people who are not lawyers - for instance with psychologists who are supporting workers through conflictual situations in their employment. Your clients could benefit enormously from a collegial relationship between you and **Brisbane Mediations**.

We help all involved **save money and save face**.

# INTRODUCTION TO THE FAMILY LAW ACT

The Australian Family Law Act originated in **1975**, at which time its 'no fault divorce' tenet was controversial. **The best interests of the child** have, since 1975, been the paramount consideration in disputes over children and Australian Family Law remains at the forefront of world trends.

**In the 1970s and 1980s** the role after separation of fathers in the lives of their children (particularly under fives) was less well understood and less encouraged than that of mothers.

**In 1995**, amendments to The Act still held "the child's best interests" as paramount, but also included a statement to the effect that children had a **right to regular contact with both parents** and / or significant others.

**After 1995**, with the assistance of the Courts, **separated fathers were playing a greater and greater role** in their children's lives – seeking opportunities to establish attachments to their infants, having toddlers sleep over and generally being more involved in day to day parenting. The norm for time with non custodial parents – usually fathers - had by this time become every second weekend and half the school holidays for children of school age and younger.

Men's lobby groups, concerns about the role of some mothers in alienating children from their fathers and research about the importance of fathers to their children's healthy development all contributed to a groundswell of public opinion which led to **major legislative changes** in **2006**.

Most notably, these reforms actively promoted equal sharing of time post-separation. There is now a presumption of 'equal shared parental responsibility' for major parenting decisions, except where it is not considered to be in a child's best interest and when there is too great a risk of abuse or exposure to domestic violence. Where there is **equal shared parental responsibility**, the Courts are also required to consider **equal shared care**.

Parents must now obtain a Certificate from a **registered Family Dispute Resolution Practitioner (FDRP)** by attending mediation before they can litigate children's issues. Exceptions include family violence and urgency.

**In 2012**, further amendments to The Act are expected to strengthen the role of the family courts, advisers and parents in **preventing harm to children**.

The specialist FDRPs at **Brisbane Mediations** understand the legislation and the issues for children caught in the crossfire between disputing parents. Our aim is always to facilitate as amicable and child friendly a resolution as possible, without litigation. We are, however, also qualified and registered to issue **Section 60I Certificates** should parties be unable to reach agreement on children's issues and require a judicial determination.

# RESOLUTION OF DOMESTIC CONFLICT THE BRISBANE MEDIATIONS' WAY

When there is conflict between separated couples over parenting and/or property, **mediation can be adapted to the needs of the mediating parties and the nature of their dispute.**

Sometimes, it is to the advantage of all concerned for a mediation to be conducted and completed over the course of one day, a comprehensive agreement being signed that same day.

In other cases, because of: the personalities of the parties, the stage they have reached in their emotional separation, the complexities of their dispute or the availability of the parties or their legal advisers, mediation might be best conducted in smaller chunks over several sessions.

The latter approach allows people struggling to adjust to separation to deal with and adapt to changes in their lives one step at a time. For some, to attempt to make overarching decisions about financial and / or children's matters once and for all at their first mediation session is too daunting and simply overwhelming.

Time to consider and adapt is something that should never be denied to mediating parties if this is what they believe they need.

Most experienced mediators sensitive to their clients' needs know that some people need to discuss the options on the table with trusted advisers before signing off on an agreement.

Others like to trial the success of new arrangements (particularly in respect of children) before reviewing them and taking a further step. This is especially the case in matters involving very young children whose routines may be significantly altered by any change of parenting arrangements.

Some parties will want their mediator to give them advice on what is best for their children or what is likely to happen should they not agree at mediation and go to court instead. Others, however, want a mediator to use their mediation skills only - to effect a resolution - and prefer to seek counsel from their own advisers.

Some want their children's views ascertained by a qualified child consultant who informs the mediation. Others see this as unduly stressful for their children.

A mediation service with a "One Size Fits All" approach is concerning. Mediation is about the needs of parties, not those of the mediator. **Brisbane Mediations'** mediators are well qualified, experienced, flexible, and willing to tailor process to client need. Remember, "If all the workman has in his toolkit is a hammer, then every job he does will require a nail."

# MEDIATING PRENUPTIAL AND COHABITATION AGREEMENTS PROTECTS RELATIONSHIPS

Couples planning to marry or to live together are usually caught up in the romance of the moment and the wondrous prospect of a life together. This is what makes the world go round and should not be discouraged or diminished.

Statistics tell us, however, that a high percentage of first marriages and significantly higher percentages of second and subsequent marriages end in divorce. The figures for marriage-like or de-facto relationships are less reliable, but there is every reason to believe that the incidence of breakdown is at least as high as for marriages.

## THERE ARE VERY GOOD REASONS FOR MANY COUPLES TO CONSIDER A PRENUPTIAL OR COHABITATION AGREEMENT WHEN ABOUT TO MOVE TO A NEW STAGE OF TOGETHERNESS:

1. With the average age at marriage increasing and with many partners having previously been married or in marriage-like relationships, it is common for one or both to bring significant property assets into the relationship. A properly prepared agreement can protect these assets.
2. Many partners need to consider children from previous relationships. An agreement may protect the financial interests of these children well into the future.
3. It makes sense to negotiate financial matters at a time when trust is high and arguments rational and logical rather than tinged with the illogicality, intransigence, grief, loss, guilt and bitterness that often accompany relationship breakdown.

4. Discussing financial matters before making a major commitment into the future can be enlightening as to each partner's attitudes and values. There will either be a resolution which takes the pressure off the relationship or a decision that this union might not have been the best idea after all. There is a lot of truth in the old adage, "Better now than later".
5. Preparation and planning in the form of a prenuptial or a cohabitation agreement may reduce unrealistic expectations and increase the sustainability of the relationship. In the unfortunate event that the relationship does end later, however, such agreements can significantly reduce the emotional anguish, financial uncertainty and cost of a property settlement.

Because negotiation of prenuptial or cohabitation agreements occurs in a unique romantic context, mediation is the ideal facilitation process.

**Mediation** is not divisive and is user friendly, placing as little stress as possible on fledgling relationships. **Brisbane Mediations** has the qualified and sensitive mediators to assist.

Legal advice remains vital for each partner before a mediated agreement is signed.



# CHILDREN'S ADJUSTMENT TO REPARTNERING OF PARENTS

When separated parents re-partner, their children react in a range of ways - some healthy and others destructive.

Each child's unique grief reaction and adjustment to their parents' separation should be considered before introducing them to even the idea of new partners.

After separation, it is most important to maintain open communication between children and parents. Whilst being as honest as possible with them, however, parents should not expect their children to instantly applaud or even accept a decision to re-partner, especially if the other parent sees the new partner as responsible for the end of the parents' relationship. Similarly, children should not be expected to immediately treat a parent's new partner as a parental figure.

If expected to cope with such a major change prematurely, there is a risk that children will recoil from or even refuse a relationship with the re-partnering parent and that they will align themselves - sometimes exclusively - with the other parent.

The good news is that given time and sensitive support, most children adapt to new parenting situations, including quite complex blended families in more than one household. The key to success is to introduce such changes at the child's pace, with support, and with sensitivity.

As children are treated with respect by new partners, trust can grow and relationships independent of either parent will hopefully develop. This process cannot be forced and relies on the maturity and patience of the re-parenting parent, step-parent and, of course, the other parent.

The professional mediators at **Brisbane Mediations** have an understanding of such complex interpersonal issues and are equipped to guide disputing parents in building parenting plans which allow children's adjustment to new family dynamics to proceed at a pace comfortable for the child.

Separated parents who consider the needs of their children first tend to reap the benefits.

# HEARING THE VOICES OF YOUNG PEOPLE AT MEDIATION

Separated parents trying to resolve conflict over children's issues often say that their offspring should "have a voice". The Family Law Act also supports children having a say in outcomes which impact them, to the degree warranted by their level of maturity and cognitive capacity.

In the **latter primary school years**, along with greater physical size, strength and coordination, more abstract reasoning ability, and the clearer adoption of sex-typed roles, children achieve greater independence and their value system for life is established. There is evidence that children whose parents encourage exploration, explain what they are doing, listen to their children and have realistic expectations of them, are more successful in many areas of life.

The major developmental tasks of **adolescence** are individuation or emancipation from parental control and development of a new identity based on changed physical appearance and a developing capacity for hypothetico-deductive reasoning. The sense of self established during adolescence is reflected throughout adulthood and influences the degree to which adolescents ultimately achieve their potential.

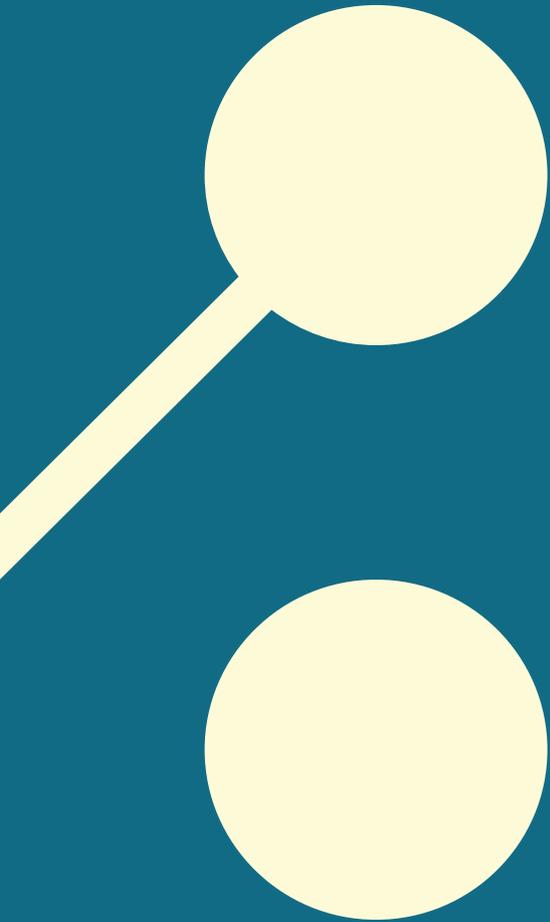
The role of parents at this time ideally involves a delicately balanced gradual relinquishment of control in favour of the self control of their offspring, whilst remaining available as benevolent advisers. Adolescents remain closer to their parents, achieve better at school, are happier, demonstrate better mental health, and are less likely to engage in delinquent behaviours if their parents are authoritative in parenting style rather than authoritarian or excessively permissive, indifferent or uninvolved.

What better way to reassure a child or adolescent that he / she is being heard than to choose a child inclusive process to mediate children's issues post separation? At **Brisbane Mediations** we cater to this need by providing **child inclusive mediation** services.

Several of the **Brisbane Mediations** specialist registered Family Dispute Resolution Practitioners are also qualified to act as Child Consultants. These practitioners are registered psychologists and / or qualified social workers.

When one of our mediators deems a child inclusive interview appropriate, the interview occurs prior to the parental mediation. Our Child Consultants use a variety of age appropriate communication tools and projective instruments to establish rapport and elicit the views and needs of the children interviewed. Some also chat with each parent, whilst others confer with the mediator once the parents' concerns and proposals are known.

**The child consultant attends the first part of the mediation, allowing the child or adolescent a voice without becoming directly embroiled in the dispute.**



# CONTACT US

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