



BRIESE LAWYERS FACTSHEET
Family Law Matters
Mediation & Conciliation



The Family Law Rules now require that all prospective parties to a Family Court case genuinely try to resolve their dispute before filing any Application in the Family Court.

Before filing an Application to Start a Case, all parties must participate in dispute resolution services, such as family counselling, negotiation, conciliation or arbitration in a genuine effort to resolve the dispute.

It is important to realise that many family law disputes can be settled in an amicable, fair and efficient manner. Our role as your Solicitor is to not only advise you, but to assist and guide you towards resolving your matter, other than through Court litigation,

It is a fact that very few matters (only about 4%) proceed to Trial before a Judge in Court.

It is important to realise that having your matter decided in Court can be extremely time consuming, stressful and very expensive. However, there are instances in which we may recommend that an Application be filed when negotiations are jammed or stalled.

It is important to remember that even after an Application is filed in the Court, the vast majority of those applications will settle before reaching a final Trial. The negotiation process is an on-going one.

Mediation

Mediation is a co-operative problem solving process where a neutral professional assists family members in clearly defining the issues in dispute and reaching agreements that are in the best interests of the family.

Mediators are not in a position to provide the parties with legal advice. They facilitate negotiations and may provide guidance and suggestions on how the matter can be resolved. Parties can attend mediation with their partners only, or with their Solicitors.

Mediation involves appointing an independent person (usually a lawyer) who is a specialist and experienced mediator. A mediator's role is to facilitate and encourage both yourself and your partner to reach an agreement that you are both satisfied with.

The mediation process can take place through the Family Court or by the use of private independent mediators.



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Conciliation Conference

Where Court proceedings have been commenced, a Settlement Conference usually occurs after a Case Assessment Conference and/or Procedural Hearing if there is disagreement about financial issues, although sometimes parenting issues can be considered as well.

Attendance is usually compulsory for the parties in a property case in the Family Court.

The Court will usually give you instructions about what you must do before the Conference at the initial Procedural Hearing. These instructions include that, at least seven days before the Conference, each party must as far as practicable, exchange prescribed information.

A Conciliation Conference is conducted by a Registrar (Court Lawyer). A joint Conference may be conducted by a registrar and a family consultant when the dispute involves both parenting and financial issues. A family consultant is a psychologist and/or social worker who specialises in child and family issues.

At the Conference, the Registrar (and, when involved, the family consultant) will look at the case from both sides and can help you explore options for settling your case without any further legal action. A Registrar cannot give legal advice, however, they can talk with you about the legal principles that are applied in deciding cases.

The settlement negotiations during the Conference are privileged. This means that what is said cannot be used in Court later. There are some exceptions to this privilege. For example, Court staff are required by law to report a suspicion or risk of child abuse and violence or threats of violence to the relevant child welfare authority.

The Conference will last about one and a half hours and will comprise three stages:

1. Introduction;
2. Settlement Discussions; and
3. Conclusion.

If an Agreement is Reached:

It is extremely important once a resolution is reached, that the terms of the agreement are recorded in writing in the proper way to ensure they are legally binding on the parties. This can be in the way of Consent Orders or Binding Financial Agreements. To read more on the importance of formalising negotiated agreements and the risk of not doing so, refer to our Factsheet entitled "**Formalising Negotiated Agreements & Settlements**".

Further details with respect to Mediation and Conciliation in Family Law matters may be obtained by contacting one of our Solicitors, who can offer you practical legal advice and guidance.



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