



How is mediation different from going to court?

Court	Mediation
It costs money to file a claim with the court	No fees at any stage of the mediation
It can take months or years to resolve a court matter	Mediations can be organised within days once the parties have both agreed to mediate
Proceedings are held in a courtroom	Mediation is held in neutral mediation room
Paperwork needs to be produced as evidence	No paperwork required although parties may want to have their paperwork in order before the mediation in case it is necessary to show the other party
Rules of evidence and procedure determine what information can be produced	No rules of evidence. Parties decide what they want to talk about
Lawyers usually speak on behalf of a party at court and to the other party (or their lawyer)	Parties speak for themselves
Court proceedings are usually open to the public	Mediations are private and confidential
Courts only operate during business hours	Mediations can be organised after hours and on weekends
Lawyers need to be paid if they are hired	No need for lawyers although sometimes it may be advisable for the parties to receive legal advice about their rights before the mediation
In court the main concerns are the parties' legal rights and how the law applies to their dispute	At mediation the main concerns are the parties' <u>needs</u> , for example, a need to want to get on with a neighbour, partner or work colleague in the future, an apology or to improve communication and understanding
Judges and magistrates can tell you in general terms what the law is relating to the types of issues you may have	Mediators don't give legal advice or generate solutions
Judge or magistrate makes a decision for the parties	The parties come up with their own solutions
Judges' and magistrates' decisions are usually legally enforceable	Mediation agreements rely upon the parties' goodwill towards each other for their effectiveness. Parties also have the option to have the agreement 'made legal' after the mediation if they want to
Being involved in litigation can be stressful. Litigation does not address this stress before, during or after proceedings	Parties may sometimes feel uncomfortable in the beginning of a mediation when they are expressing their concerns, but the mediation process itself allows parties to address and resolve causes of their stress at the mediation
Courts concentrate on legal issues (substantive issues), not the underlying nature and state of the relationship between the parties	In addition to addressing the parties' underlying substantive issues, mediation focuses on exploring the personal and emotional aspects of the relationship between the parties and addresses each party's underlying psychological needs

About mediation

It's voluntary: people come to mediation because they want to. Nobody forces them to attend.

The mediators are neutral: they will never take sides.

Mediators will not give advice: they will assist the parties through a process. They will not advise, counsel or make suggestions for a solution.

Parties make their own decisions: they decide what the content of the dispute is and how to resolve it.

Co-operation: parties agree to co-operate during the process and work together to find solutions.

Guidelines are agreed to: parties agree that they will:

- o allow each other to speak uninterrupted;
- o refrain from verbal or physical abuse;
- o be honest and open about all matters relevant to the dispute; and
- o be flexible and open to all possible solutions.

Legal advice: sometimes it might be best to have obtained legal advice before the mediation to make informed decisions.

Safety: people need to feel safe at mediation so behaviours need to reflect that.

Privacy and confidentiality: nothing presented in the mediation session will be revealed by the mediators without the permission of all parties – except:

- o in cases of physical abuse where a person is clearly in need of protection; or
- o where required to do so by the NT or Federal laws.

Early termination: if parties want to terminate the mediation, they need to discuss this with the mediators and come to a decision.

The CJC can arrange mediations around the Territory at convenient venues weekdays, after hours, on weekends or via teleconference.



What if one party feels intimidated by the other party?

The CJC can conduct a shuttle mediation (where the parties are in separate rooms) if a party feels intimidated by the other.

Can a party have a support person at the mediation?

Yes, but they need to know and agree to certain things.....

- o all people involved must agree on who is attending before the session is held
- o "support people" do not participate in the session
- o witnesses and lawyers are not required as the mediators are not there to assess the situation and make decisions and mediation is not a legal process; people involved should seek legal advice before mediation if necessary
- o people need to feel safe at mediation so behaviours need to reflect that
- o support people are required to agree to and sign a confidentiality agreement

When a person contacts the CJC, its staff will:

- o assess if the dispute is suitable for mediation and if so, ask for the name and address of the other party (Party B or PB), send a standard letter to PB telling them that Party A (PA) is interested in mediating with them about a particular issue and invites PB contact the CJC to talk about mediation
- o if the CJC has not received a response from PB after 7 working days it sends a follow-up letter to PB and also one to PA to keep them updated
- o if PB does not respond after a further 7 working days, or if PB responds and declines the offer, the CJC will send a letter to PA advising this
- o if PB indicates a willingness to attend mediation at any stage of this process, a convenient time and place will be organised

Freecall	1800 000 473
Visit	1st Floor Darwin Magistrates Court
Email	cjc.doj@nt.gov.au
Fax	08 8999 6226
Telephone interpreter	131450 tell operator your language "Community Justice Centre 1800 000 473"



Freecall 1800 000 473

**a safe
Territory**
A Territory Government initiative