



Mediation & Procedural Justice

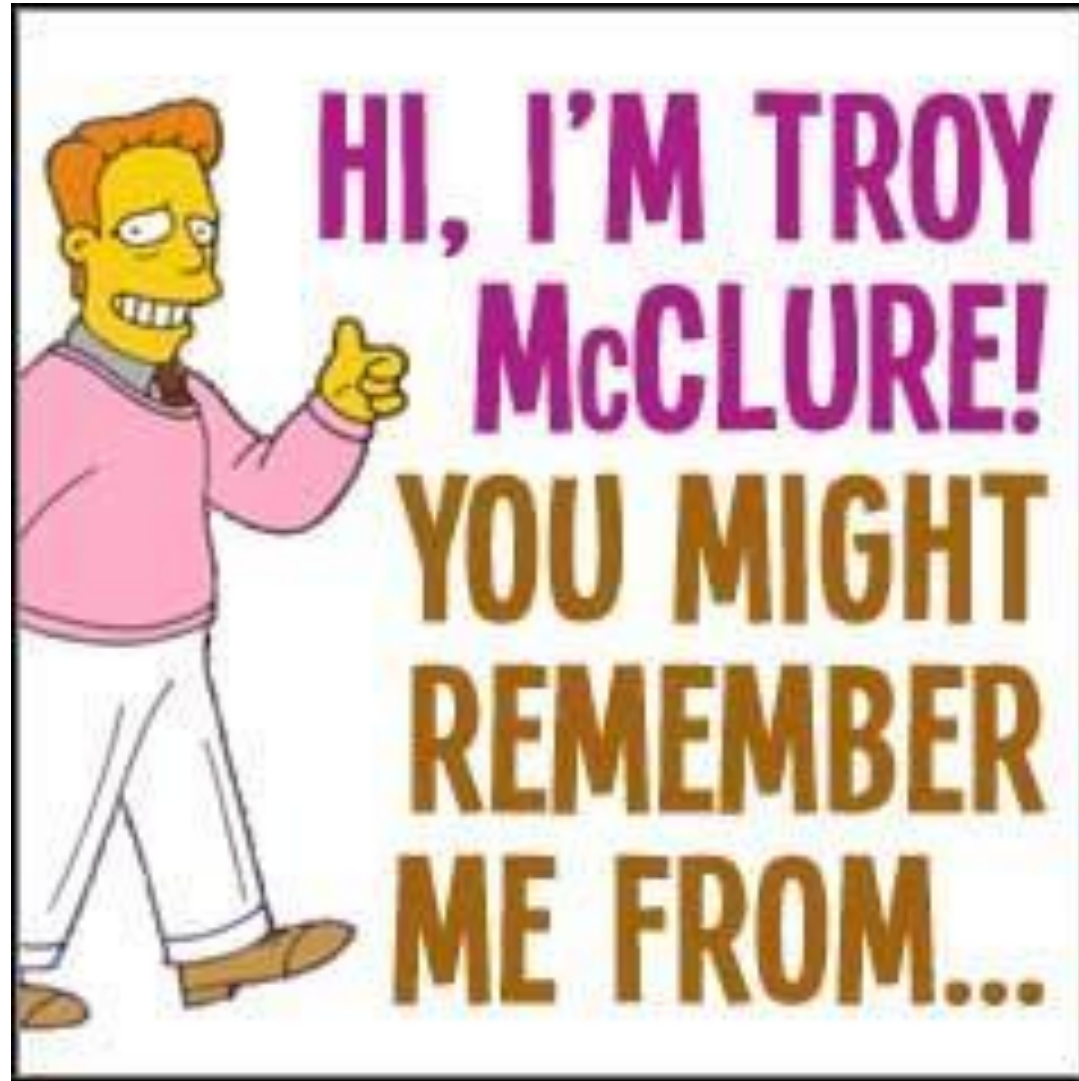
Better Process ↔ *Better Outcomes*

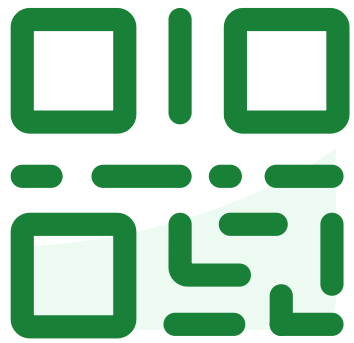
SVENSON'S FAMILY LAW CPD DAY

27 MARCH 2026

BETH WARNOCK

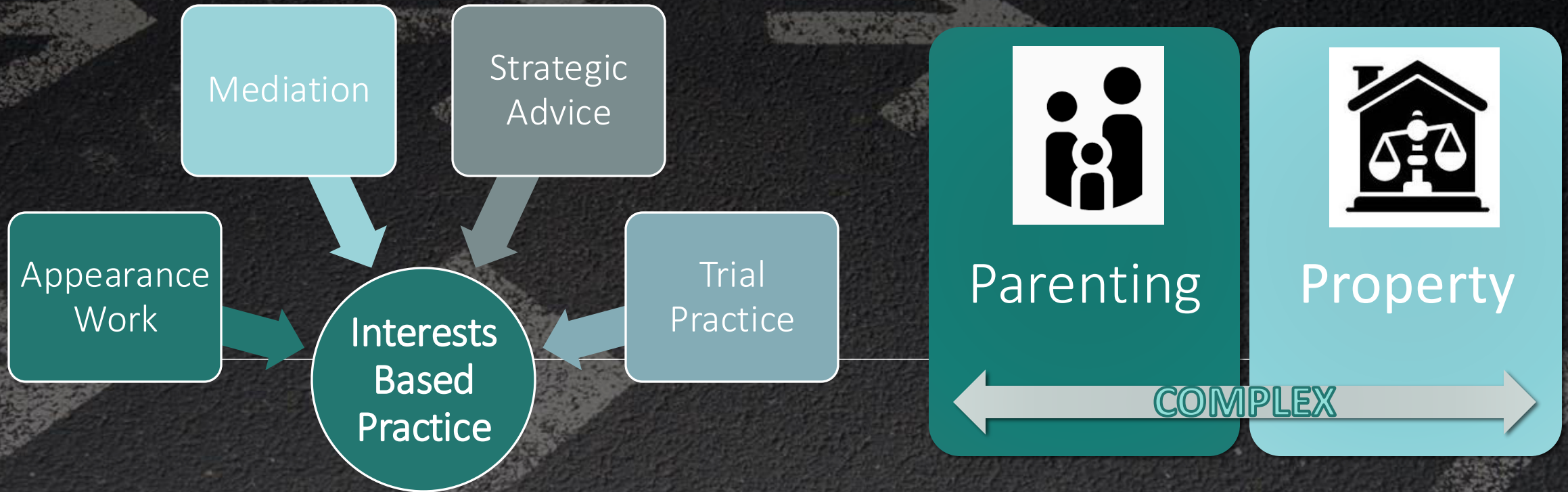






**Join at slido.com
#1558664**

Context: My Practice



What is an Interests Based Approach?

Separate	Separate People from the Problem
Focus on	Focus on Interests, Not Positions
Generate	Generate Options for Mutual Gain
Use	Use Objective Criteria
When?	Best for long-term relationships where both parties need to maintain trust and collaboration

Interest Based Practice *continued*

Values:

- **Outcome (substance):** as well as
- **Relationship**

Goal=

- **mutually beneficial (win-win) outcomes**

Focuses

- on **meeting both parties' interests**

Approach?

- Be **hard on the problem, not the person**
- Use **objective, fair criteria**

Results in?

- Trust and credibility
- Stronger ongoing relationships

Position-Based (Traditional):

Competitive

win-lose

"fixed-pie" mentality



Interest-Based:

Collaborative

win-win

"expanding the pie"

Interests Based vs Position Based

Position Based

Focus on	the item/problem (substance only)
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Other party	seen as opponent/enemy
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Parties push	fixed, predetermined solutions
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Concessions	feel like losing
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Often leads to:	Resentment
	Ongoing conflict
	Damage to long-term relationships

Example: “I want 50/50”

POSITION BASED

Accept position/instruction at face value

Advice: A court would/wouldn't make that order

Focus on limits and risks

Advice: feels directive

INTEREST BASED

Explores meaning for client:

- What 50/50 means to them
- How it is linked to their situation & identity
- Whether there are underlying fears
- Whether 'fairness' is a driving factor & what 'fairness' means to them & why

Advice: There are a few ways things could play out – can we look at what options are available & how they address what matters most to you?

Integrates legal reality with client goals

Advice supports informed decision making

“I want 50/50 *continued*”

POSITION BASED

Negotiations: Single outcome focus

- We are seeking “x”
- Harder to move without ‘losing’

Responding to Offers:

- “That offer is unacceptable/rejected”
- “Take it or leave it”
- Escalates conflict, movement is seen as concession

Focuses on: best/worst case

- Limited focus on ‘why’

INTEREST BASED

Negotiations: Ideas of potential pathways

- Our client is focus on stability for the children and financial security – these options may achieve that.
- Built in flexibility

Responding to Offers:

- “Can you help us understand how that proposal addresses #ADD ISSUE”
- “One possible way to address #ADD ISSUE is...”
- Curious & information seeking, opens spaces for movement

Focuses on: priorities, triggers, decision making capacity

- Identifies underlying concerns
- Preparation is strategic

Practical Adjustments

Redefine Lawyers Role

Emotion

- don't shy away from it

Taking instructions

Reframe advice

- away from outcomes
- towards needs

Preparation

- Non-negotiables: interests rather than positions
- Areas of flexibility
- Consider other side's interests (olive branches)

Validate then Reality Test

Build compliance into outcomes

Why make the adjustment?

The proof is in the pudding

Instructors:

- The client is very grateful with the outcome. Thank you for your efforts.
- Our client's is *extremely* happy and very reassured by your work (her remark about you was "she's absolutely sensational")
- Thanks for the wonderful job you did with not just the client, but also the Mother in this matter, who so desperately needs the kind of support and guidance you gave her.

Clients:

- Without your pragmatic thinking, negotiation skills and honesty...we wouldn't have settled today. You lived up to the shining recommendations made from **Practioners** that you would settle on the day :) I'm so relieved that I can now start the next chapter of my life, in my home with my boys.





Modern Mediation & Procedural Justice



Procedural Justice: have you heard of it?

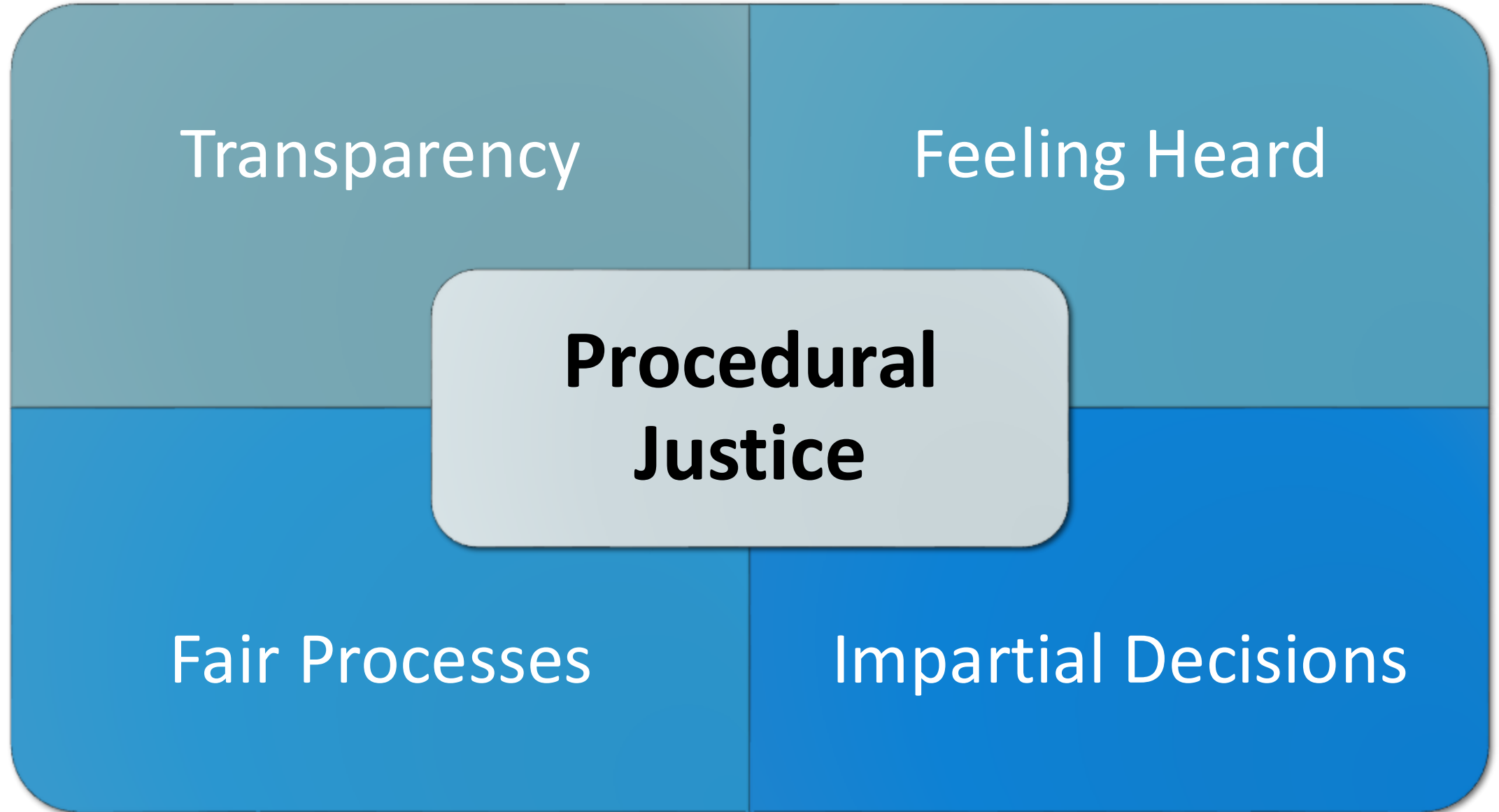
Transparency

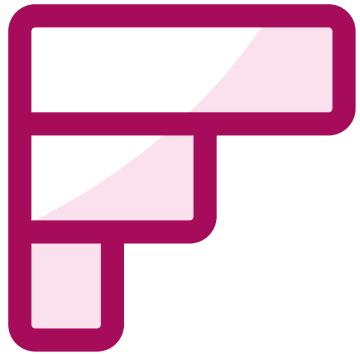
Feeling Heard

**Procedural
Justice**

Fair Processes

Impartial Decisions





Select the top 5 things you think have the greatest impact on outcomes at mediation

Benefits of a Modern Mediation Approach



Adopt an Interests-Based Approach:

Improve outcomes & experience



Step away from adversarial system

experiment with collaboration & inquiry



Provide a Bespoke Service

By engaging with Emotional Intelligence



Agency in Outcomes:

Not limited to traditional outcomes

Pre-Litigation Mediation

Upsides

- Opportunity to explore issues without Affidavit Material
- Clients narrative likely to be less informed by lawyers advice

Potential downsides

- Due to timing, parties may be less ready to resolve – still processing
- Reality testing potentially more difficult – if no independent material



What other things do you think impact the outcome of mediations

Mediation Style: Does it Matter?



Jill Howieson Article (Murdoch University): "Perceptions of Procedural Justice and Legitimacy in Local Court Mediation"

Facilitative &
Transformative

Evaluative &
Settlement-
Orientated

Shuttle vs Joint



Shuttle Mediation



Joint Mediation

Pre-Mediation Conferences





Other Important decisions

Online
In Person
Hybrid

Choosing a
Mediator

Whether to brief
Counsel?



Neuro-Inclusive Considerations: *Inclusive practice for different thinking styles*

Transition Time

Information Integration:

- Cognitive Load: legal complexities
- Processing Speed
- Sensory Issues
- Stress & Memory Recall
- Monotropism & Processing:
 - Interruptions
 - Rapid Context Switching
 - Transition time

Stress-Induced Compliance vs Informed Consent

Emotional Regulation & Stress Responses

- Allow time for reasoned rather than reactionary responses

PDA: Pathological Demand Avoidance – Threats to Autonomy

Executive Functioning (planning, prioritizing, decision-making)

Why engage a Modern Mediator?



Better Process = Better Outcomes



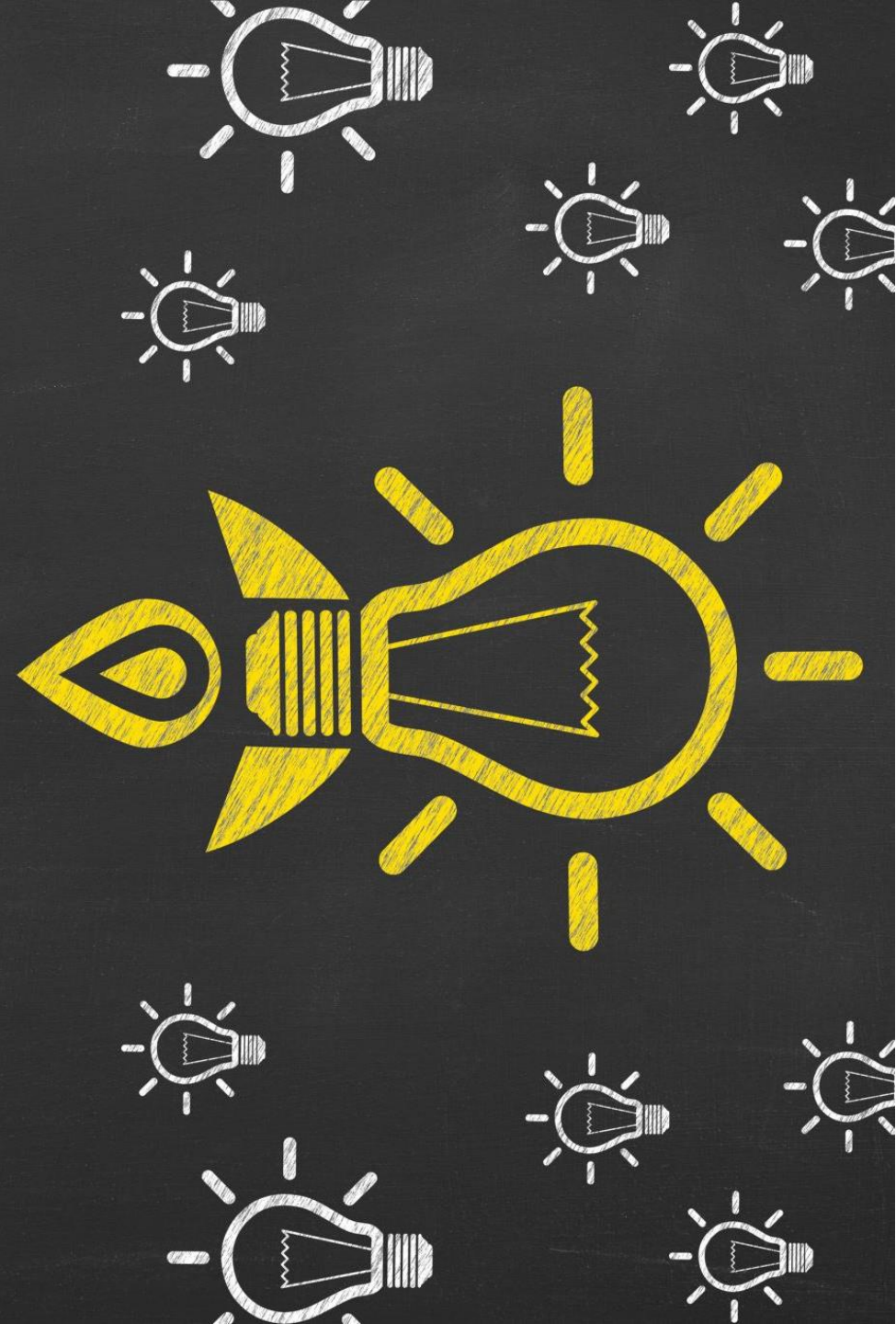
Better Outcomes = Happier Clients



Happier Clients = More referrals

Some feedback from participants:

- You helped shift my mindset, clarified my thinking, and guided me to put my biases aside to find practical, workable solutions. It changes everything. Again, thank you!
- I just wanted to say a massive thank you for making Tuesday a far less overwhelming and distressing experience. From the moment I answered the phone the day before you made me feel so validated and safe and created so much trust so quickly. It made such a difference to the experience and helped me feel a lot more closure than I was expecting to from it. A truly heartfelt thank you for not only being great at your job, but also bringing a holistic and empathetic approach to how you do



Ideas in Practice

Before Mediation

Advice

- Reality Testing
 - Alternatives if no resolution
 - Costs: to date & future
- Counsel conference?
- Client understanding: "Reflect back"

Offers

Communicate with other side

- Who is appearing
- Mode of Mediation
- Location, Time, Arrival Arrangements

Material

Counsel vs Solicitor

Support People

Draft Orders

Position Papers/Case Outlines

- Consider history
- Consider impact
- Be realistic

Property Searches

Company Searches

Procedural Fairness

Outstanding Tax Returns or other Liabilities?

Property: who wants to keep what & can they afford it?

Explore Borrowing Capacity: Mortgage Brokers & Financial Advice

Tax Advice

Structures: Consider trusts/companies

CHATTELS

Before Property Mediations

Things to tell the Mediator

Issues currently in dispute: be clear

Previous offers

Property: outstanding issues?

- Valuations?
- Disclosure?

Parenting

- Any relevant assessments/reports
- History of Family Violence
- Significant needs of the children
- Relevant recent events that could effect ability to resolve

2026 Family Law CPD Day > Search

mediation

found 3 hits



Search

> Search Options

☒ Folders☒ Witness Statements

> Document Types

> Date Ranges

1. CENTRAL PRAC DIRECITON

(3 / 6 matches)

in Witness Statements

- Passage and documentation reasonably requested by the **mediator**, FDRP or arbitrator; and (iv) a Certificate of ... completion by the **mediator** or FDRP; at page 19
(b) comply with all reasonable requests made by the **mediator**, FDRP or arbitrator ... arbitrator; and (c) personally attend the **mediation**, FDR or arbitration (if applicable, by electronic
- Passage resolve disputes between the parties. Private **Mediation** and External Family Dispute Resolution 6.34 If ... private **mediation**, external FDR or at page 18
arbitration, the parties must: (a) provide to the **mediator**, FDRP or
- Passage event, they will be referred to: (a) private **mediation**; and/or (b) private, legal aid facilitated or ... 27 All forms of Dispute Resolution, including at page 17
mediation and conferences, whether court-based or external

3 more matches...

3. FCFCOA Rules

(3 matches)

in Witness Statements

- Passage conciliation conference or **mediation**; or (b) if no conciliation conference or **mediation** has been held or is at page 98
- Passage application or response. dispute resolution includes a **mediation** and a conference (including a conciliation conference) at page 26
- Passage to resolve the dispute through negotiation, **mediation** or arbitration; and (d) made reasonable efforts at page 235

5. FamilyLawAct 90AA 125 NEW

(2 matches)

in Witness Statements

- Passage 8 and 9 and in this Chapter; b facilitate, by **mediation**, conciliation or similar means, agreed solutions at page 384
- Passage Act 1990 Family Law Amendment Act 1991 Courts (**Mediation** and Arbitration) Act 1991 120, 1988 14 Dec 1988 at page 404

Ebrief: Disclosure Hack

On the Day

Communicate with other side: Be transparent

Ensure everyone understands plan & boundaries:

- Start/Finish Time
- Structure of day
 - Joint vs Shuttle vs Hybrid
 - Lawyer only sessions
 - Breaks
 - Mode of communication
- Who will be drafting and how
- How offers will be communicated
- Chattels (Property)

On the day:
*ideas for
efficiency*

Issues no longer in dispute?

Issues in Dispute: Proposed orders pre-drafted

Property: Chattels

Parenting: Child Support

Heads of Agreement/Orders



Collaboration Tools

Joint Minute: live word document *via OneDrive*

Joint Agenda:

- Live word Document; OR
- Zoom whiteboard

Joint Ebrief?



Agenda

Sets the tone

Created & shared beforehand = Mental Preparation

Keeps track of each side's 'to-do's

Can track offers

Preparation of Orders

MEDIATION AGENDA - Zoom

←

→

↺

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MEDIATION AGENDA

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Meeting name

MEDIATION NAME

Location

LOCATION/ZOOM

Date and time

ADD DATE

Mediator

Beth Warnock

Mediator Items

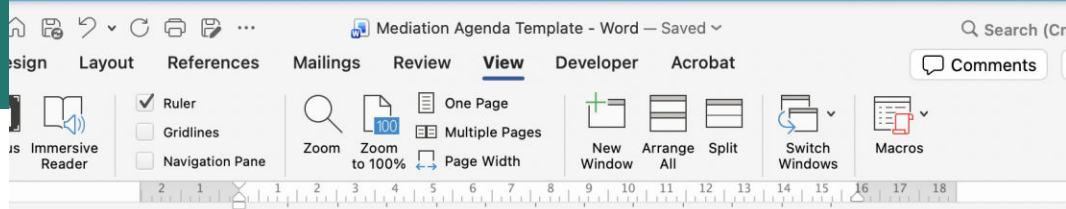
Signed Mediator Agreement by both parties

Missing disclosure?

Party1 Follow up items (5)	Party2 Follow up items (1)	Issues with Pool (3)	COMPLETE (0)
Tax consequences - transfer of X	Collate list of Chattels to keep	Inclusion of Boat?	+ Add
Bank accounts from X date	+ Add	Value of Crypto:	
Accountant - CGT estimate		Inclusion of Loan	
TEST ITEM		+ Add	
TEST ITEM			
+ Add			

List of orders to include:

- Mutual indemnities - tax (to cover CGT)
- Transfer of vehicle
- Default sale



Mediation Agenda

PARTIES NAMES: DATE

House keeping:

- **Mediation agreement**
- **Introduction: reminder – confidentiality**
- **Lawyer Session: Property Pool**

Mediator questions:

- **ADD HERE**

TO DO LIST	
PARTY 1	PARTY 2

Offer #1

PARTY 1 keep:

- **add**

PARTY 2 keep:

- **add**

Other Orders/Conditions

- **add**

Counter Offer #1

PARTY 1 keep:

- **add**

PARTY 2 keep:

- **add**

Other Orders/Conditions

- **add**

Joint Document Tutorial

JOINT MINUTE - WITHOUT PREJUDICE

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JOINT MINUTE - WITHOUT PREJUDI...

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ParagraphList ParagraphCalibri, 12

FindReplaceSelect EditingDictate VoiceEditor ProofingAdd-ins Add-ins

FAMILY LAW ACT 1975
IN THE FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA
AT #ADD

No. #ADD

BETWEEN

APPLICANT PARTY

Applicant #

and

RESPONDENT PARTY

Respondent #

PROPOSED MINUTE OF # ORDERS / HEADS OF AGREEMENT

Orange: Orders sought by Applicant
Blue: Orders sought by Respondent
Purple: Creative Orders to consider

IT IS ORDERED BY CONSENT THAT:

Sub heading
1. ADD
 a) Add
 i. ADD

Sub heading
2. ADD]



Audience Q&A

① The Slido app must be installed on every computer you're presenting from

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