

# MEDIATION PROTOCOL

**1. MEDIATION AGREEMENT:** I utilize the standard LEADR/Resolution Institute ([www.resolution.institute](http://www.resolution.institute)) wording, which I will prepare and bring to the mediation for execution by all in attendance (before the mediation commences). A copy of the wording can be viewed at [www.caporalemediations.com.au](http://www.caporalemediations.com.au) and is a drop down at the end of Mediation Protocol. (In addition, the National Mediator Practice Standards can be accessed at the website of the National Mediator Accreditation System (NMAS)).

**2. FEES and TERMS OF APPOINTMENT:**

- From 1 January 2022 the daily fee for **all day** mediations is \$7,200 for any part or all of one day where there are 2 'parties'; \$9,000 where there are 3 'parties'; \$10,500 where there are 4 'parties', & where there are 5 or more 'parties' the daily rate is \$2,500 for each party.
- The number of '**parties**' is defined as the number of legal firms representing the disputants, and not the number of parties in the pleadings. (I do not conduct mediations unless all parties are legally represented, or the parties are themselves practising or retired solicitors or barristers).
- The fee for considering position papers and the Agreed Bundle of Documents prepared by the parties is \$650/hour (per minimum 6 minute intervals). This is in addition to the applicable fee for the mediation, except in relation to a mediation where there are 5 or more parties, in which case no preparation is charged.
- Both the daily fee rate and the hourly rate are exclusive of GST.
- There are no extra charges for liaising with the parties beforehand, such as accommodation, taxis, meals, long distance phone calls, faxes, copying or couriers. I will advise if air fares are to be charged and obtain consent beforehand from the parties.
- In relation to matters agreed for **half day mediation** (whether morning, afternoon or evening) the daily rate applies unless I am able to secure another half day mediation on the same day, in which case the half day rate is \$4,500 where there are 2 'parties', & \$6,000 for 3 or more parties, plus GST and the hourly preparation rate remains \$650. Both rates are exclusive of GST.
- **CANCELLATIONS:** A cancellation fee will apply if I am notified:
  - 1-2 days prior: 75% of the applicable rate, unless I secure another booking for that day.
  - 3-14 days prior: 50% of the applicable rate, unless I secure another booking for that day.
  - 15+ days notice: nil cancellation fee.

**3. VENUE:** The parties should agree and arrange a mutually convenient venue at the parties' cost (If the mediation is not being conducted by teleconferencing).

4. **PRELIMINARY CONFERENCE:** In preparation for the mediation I am happy to hold a preliminary conference if the parties so wish. The aims of the preliminary conference are for the parties to become familiar with the mediation process and the Mediator, and to ensure that all administrative matters are attended to so that as far as possible the mediation can begin productively. Let me know if you would like a preliminary conference, otherwise we shall proceed by way of agreed timetable and communication by email.
5. **MEDIATOR'S ROLE:** All parties should be aware that it is not the role of the mediator to make a determination of the dispute or decisions for the parties. It is, therefore, very important that the disputants and their legal advisers come to the mediation fully equipped and prepared to negotiate on the issues and with the authority to sign an agreement should one be reached.
6. **AUTHORIZATION:** It is essential that each party have in attendance at the mediation a person who is able to provide instructions and is properly authorized to make offers and settle the matter. That person can be on the phone if they are located regionally, interstate or overseas, but please inform me well beforehand if this is the case.
7. **POSITION PAPERS:** Position papers should be as short and to the point as circumstances allow, making reference to facts and case law relied upon where necessary. The document should be marked "Without prejudice and for the purpose of mediation only" or words to that effect and **emailed** to me and all the other parties.
8. **AGREED BUNDLE OF DOCUMENTS:** The parties should confer and as far as possible agree upon the relevant documents. As a general rule, they should only include substantive pleadings, expert reports which have been served or are intended to be relied upon and evidentiary documentation only if it is critical to an important point or issue in dispute (this does not usually include tax returns).
  - The agreed bundle should be emailed to paul\_caporale@bigpond.com or a hard copy delivered to me at level 13, 111 Elizabeth St Sydney or DX 803 Sydney.
9. **INVOICES:** Within one week after the mediation I will invoice each party c/- their solicitors. Please inform me if any party is not contributing equally to the fees and I will amend the mediation agreement accordingly.

Paul Caporale

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LEADR Advanced Mediator

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