



D S Mediation

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Elder Mediation Agreement

This agreement for mediation (**this Agreement**) is made between Daan Spijer (**the Mediator**) and each of the parties (**the Parties**) whose names and signatures appear at the end of this Agreement.

This Agreement is made on the _____ day of _____ 20__.

Elder Mediation Process

1. Daan Spijer is a nationally accredited mediator and is trained to mediate disputes within families, including those involving older persons (**Elders**), as well as disputes between Elders and institutions providing age care.
2. The Elder Mediation (**Mediation**) process referred to in this Agreement is based on training under the auspices of the Elder Mediation Australasian Network (EMAN).
 - 2.1 It is a voluntary process by which the Parties, with the assistance of the Mediator:
 - 2.1.1 systematically isolate the issues in dispute (**the Dispute**);
 - 2.1.2 develop options for the resolution of those issues;
 - 2.1.3 explore the usefulness of those options and consider alternatives with the aim of reaching an agreement between the Parties.
 - 2.2 Any agreement reached must accommodate the interests and needs of the Parties and must take into account he wishes, needs and best interests of the Elders involved and has the effect of resolving the Dispute or of agreeing on some of the issues.
 - 2.3 The Mediation may have to be conducted over a number of sessions.
3. Elder Mediation is conducted having regard to the provisions of the Commonwealth *Aged Care Act* and other legislation that relates to the rights of Elders.

Appointment of Mediator

4. The Parties appoint the Mediator to conduct the Mediation in accordance with the terms of this Agreement. The Mediator accepts this appointment.

Payment of Session Fees and Other Fees

5. The fee to be paid for the Mediation (**Mediation Fee**) for the first session is the amount set out in Schedule 1 (a) and this shall be paid by the Parties before the first session in a manner directed by the Mediator, with each Party paying an equal portion of the fee or in such proportions as decided by the Parties. This fee includes an intake interview with each Party, subject to clause 9.1 .
6. If a subsequent session is needed, the fee to be paid for this (**Follow-on Mediation Fee**) is the amount set out in Schedule 1 (b) and this shall be paid by the Parties before any subsequent session in a manner directed by the Mediator with each Party paying an equal portion of the fee or in such proportions as decided by the Parties.
7. The Mediation Fee and any Follow-on Mediation Fee are non-refundable except, at the discretion of the Mediator, in the event of the Mediation not proceeding or of any scheduled session not proceeding.

8. The Mediation Fee and any Follow-on Mediation Fee are not refundable if the Mediation or any subsequent session proceeds and no final agreement is reached by the Parties.
9. **Other Fees**
 - 9.1 The Mediator may charge the **Preparation Hourly Fee** set out in Schedule 1 (d) for any extensive preparation required due to the complexity of the Dispute and the Parties agree to pay such fee if charged. There will be no charge for an initial intake interview with each Party, unless no Mediation session is subsequently held for any reason, in which case each party will pay the **Intake Fee** set out in Schedule 1 (h).
 - 9.2 If a venue needs to be hired for the Mediation, the Parties agree to pay this fee (**Venue Costs**) as set out in Schedule 1 (f).
 - 9.3 In the event that a session in the Mediation extends beyond the time set aside for its conduct as indicated in Schedule 1 (c) (the **Expected Duration**), the Parties agree to pay **the Mediation Hourly Fee** set out in Schedule 1 (e) for any such extended time, subject to the Mediator's right to waive any or all of the Mediation Hourly Fee.
 - 9.4 If the Mediator needs to travel farther than 50 kilometres from Mount Eliza to conduct the Mediation, the Parties agree to reimburse him for the costs of travel and any accommodation he may require (**Travel Costs**).
 - 9.5 If payable, the Parties agree to each pay an equal proportion, or such other proportions each as the Parties may decide, of any Preparation Hourly Fee, Venue Costs, the Mediation Hourly Fee and Travel Costs.

Role of the Mediator

10. The Mediator will:
 - 10.1 be neutral and impartial;
 - 10.2 not make decisions for any Party or impose a solution on the Parties;
 - 10.3 not bind the Parties by any comments, suggestions or statements made by the Mediator;
 - 10.4 not give legal, financial or other professional advice to any Party;
 - 10.5 not arbitrate between the Parties or make any rulings in relation to the issues in dispute between the Parties;
 - 10.6 not act as an advocate for any Party;
 - 10.7 offer information about useful resources as appropriate;
 - 10.8 throughout the Mediation, determine when he may meet with the Parties together or separately; and
 - 10.9 not draft or draw up any final agreement between the Parties; any final agreement between the Parties should be drafted by their respective lawyers.

Commitment to Mediation

11. Each Party agrees to co-operate with the Mediator and the other Parties in the Mediation with a commitment to negotiate in good faith towards achieving a resolution of the Dispute.
12. Each Party acknowledges the right of every other Party to be heard and agrees to behave with courtesy and respect towards every other Party and towards every person participating in the Mediation, including towards the Mediator.
13. Once a date or dates have been set for any session of the Mediation, any changes may only be made with the consent of the Mediator and all Parties.

Conflict of Interest

14. The Mediator must, prior to the commencement of the Mediation, disclose to the Parties to the best of his knowledge any prior dealings with any of the Parties as well as any interest in the Dispute and any other possible conflict of interest.
15. If, during the Mediation, the Mediator becomes aware of any circumstances that may affect his capacity to act impartially, he will, to the extent that he may do so, immediately inform the Parties of this situation, and he may decide that he should not continue to mediate in the Dispute.

Confidentiality

16. To the extent allowed by law, the Mediator and the Parties agree to keep confidential all information and documents concerning the Dispute which are disclosed during the course of the Mediation, including during any intake interview and during any other private communication between the Mediator and any Party.
 - 16.1 Any disclosures, exchanges and all aspects of any communication occurring within the Mediation shall be 'without prejudice', which means they cannot be used in any subsequent legal proceedings.
 - 16.2 The confidentiality requirement does not preclude a Party from disclosing information to that Party's own legal or financial advisers or to a therapeutic counsellor.
17. In order to preserve confidentiality, audio or video recording of any session of the Mediation by anyone attending such session is strictly prohibited, including during any online session or discussion.
18. Subject to any limits imposed by law, including to ensure the safety of any person, the Parties and the Mediator agree that the following will be privileged and will not be disclosed or be the subject of a subpoena to give evidence or to produce documents in any proceedings in respect of the Dispute:
 - 18.1 any settlement proposal made in the course of attempting to resolve the Dispute, whether such proposal be made by a Party or by the Mediator;
 - 18.2 the willingness of a Party to consider or accept any such settlement proposal;
 - 18.3 any admission or concession made within the Mediation by a Party;
 - 18.4 any views expressed, suggestions made or exchanges passing (orally or documentary) between any of the Parties and the Mediator or between the Parties themselves;
 - 18.5 documents brought into existence for the purpose of the Mediation that have not been or are otherwise incapable of being discovered or subpoenaed for the purposes of legal proceedings.

Communication between the Mediator and the Parties

19. Any information disclosed by a Party to the Mediator in private is to be treated as confidential by the Mediator unless the Party who makes the disclosure authorises the Mediator to disclose the information to any other Party. This includes any information communicated by any Party to the Mediator during any private session between the Mediator and any Party before the Mediation commences, including any intake interview.
20. The Mediator may communicate with the Parties or their representatives or both, separately or in conference, before the Mediation, in order to agree on:
 - 20.1 the suitability of the matter for Mediation;
 - 20.2 the collation, disclosure and presentation of documentation and other material for use in the Mediation;
 - 20.3 the setting of a time, date and venue for any session of the Mediation;
 - 20.4 any other planning or administrative arrangements and considerations to enable the Mediation to take place.

Authority of the Parties

21. Before the Mediation commences, in order to come to the Mediation fully informed, each Party will seek any relevant professional advice in relation to:
 - 21.1 legal matters, including:
 - 21.1.1 relevant provisions of any law in Australia;
 - 21.1.2 the likely costs of the Dispute being taken to a court or tribunal; and
 - 21.1.3 the prospects of success if the Dispute were to be taken to a court or tribunal;
 - 21.2 anything else that may affect that Party's ability to negotiate and settle the Dispute;
22. Each Party shall attend the Mediation on their own behalf and not attend to represent or speak for any other person.
23. If, during the Mediation, a Party needs to seek further advice, the Mediator will facilitate this as far as is practicable.

Support People at Elder Mediation

24. It is not common for a person participating in a Mediation to be accompanied by any other person. However, a Party may wish to have someone accompany them if:
 - 24.1 there is a need for an interpreter because of difficulty with language, hearing, speaking or understanding;
 - 24.2 an Elder has a **Registered Supporter** under the *Aged Care Act*;
 - 24.3 the Party needs a support person for some other reason.
25. If any Party objects to the another Party being accompanied at the Mediation by a support person:
 - 25.1 this will have to be resolved, with the help of the Mediator, before Mediation can take place;
 - 25.2 the Mediator will make a decision whether the objecting Party may be accompanied by a support person and any conditions that such support person may have to be subject to.

In any case:

 - 25.3 the Mediator reserves the right to speak before a Mediation session with any support person suggested by a Party; and
 - 25.4 the Mediator may impose conditions that any or any specific support person will be subject to.
26. Anyone attending the Mediation who is not a Party, may only attend after signing a third-party confidentiality agreement.
27. Any support person present at the Mediation does not have the right to speak on behalf of the Party they are supporting, unless they are a Registered Supporter or the Mediator has otherwise allowed this.

Settlement of the Dispute

28. In the event that the Dispute is settled, an informal settlement agreement may be drafted by the Parties at the Mediation session. The Mediator will not draft any settlement agreement, but he may, at the end of the Mediation or later, give the Parties a document setting out his understanding of the matters the Parties have agreed to.
29. A settlement agreement may be informal, in order to give the Parties a clear record of what they have agreed, or it may be a draft for the Parties to take to their respective Lawyers for formal drafting later.
30. The parties will not sign any formal settlement agreement at the Mediation.

Enforcement of an Agreement

31. If the Parties take steps to have a formal Agreement drafted by their respective lawyers, that formal Agreement may form the basis of a consent order in court proceedings.

Adjournment or Termination of the Mediation

32. The Parties and the Mediator may mutually agree to an adjournment of any session of the Mediation.
33. The Mediator may terminate his involvement in the Mediation if, after consultation with the Parties, the Mediator decides he is unable to further assist the Parties to achieve resolution of the Dispute.
34. If the Mediator terminates the Mediation for any reason, confidentiality considerations may preclude him from giving his reasons for the termination and he will not be compelled by any Party to give reasons.
35. Any Party may withdraw from the Mediation at any time after consultation with the Mediator.
36. If the Mediation is terminated without reaching an agreement, any future Mediation of the Dispute between the Parties will be a new Mediation and not a continuation of the current Mediation. However, a Mediation session may be adjourned to be continued at a future date.

Exclusion of Liability and Indemnity

37. The Mediator will not be liable to any Party for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
38. The Parties together and separately indemnify the Mediator against any claim for any act or omission in the performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
39. If a Party requires the Mediator to give evidence in a court or tribunal concerning anything said or done in the course of the Mediation, or to produce documents created for the purpose of or during the Mediation, that Party will:
 - 39.1 indemnify the Mediator for all costs and expenses incurred by the Mediator (including the Mediator's legal costs, such legal costs to be assessed on a solicitor-client basis, and any legal costs the Mediator is ordered to pay to any other person) in connection with the appearance at the court or tribunal, the giving of evidence or the production of documents;
 - 39.2 pay the Mediator at the **Hourly Rate** specified in Schedule 1 (g) for the time expended by the Mediator in connection with the appearance, the giving of evidence or the production of documents; and
 - 39.3 reimburse the Mediator for any travel or other expenses properly incurred by the Mediator in connection with the appearance, the giving of evidence or the production of documents.
40. For the purposes of any dispute handling between any Party and the Mediator, the Mediator is a professional member of the Resolution Institute (<https://resolution.institute/>), which may be called upon by a Party or by the Mediator to handle any such dispute.

Online Mediation

41. The Mediator will decide whether to hold any session of the Mediation or any pre-mediation interview in person (face-to-face) or via an online platform. If a session of the Mediation or any intake or other interview is held via an online platform, the Parties and the Mediator undertake:
 - 41.1 not to record audio or video of the Mediation or the interview or any part of it;
 - 41.2 not to have any undisclosed people in the room with them or within hearing of the Mediation or the interview;
 - 41.3 not to make a screen capture of any part of the Mediation or the interview without the consent of the Mediator and the other Parties.
42. If the Mediation takes place using online technology:
 - 42.1 the Mediator will take all possible steps to ensure that the platform used and the Mediator's connections to that platform are secure;

- 42.2 as far as he is able, the Mediator will assist the Parties and any other person ‘attending’ the Mediation to obtain a secure connection to the platform being used;
- 42.3 the Mediator will not be liable for any breach of security, whether involving breach of confidentiality or not, that may arise from the Mediation being conducted online.

Schedule 1 – Mediation Costs (all inclusive of GST)

- a. The **Mediation Fee** to be paid for each session under clause 5 is \$_____
- b. The **Follow-on Mediation Fee** to be paid for each session under clause 6 is \$_____
- c. The **Expected Duration** of each Parenting FDR session is _____ hours
- d. The **Preparation Hourly Fee** to be paid under clause 9.1 is \$_____
- e. The **Mediation Hourly Fee** to be paid to the Mediator in relation to clause 9.3 is \$_____
- f. The **Venue Costs** to be paid per session under clause 9.2 is \$_____ per half-day session
- g. The **Hourly Rate** to be paid by a Party under clause 39.2 is \$_____
- h. The **Intake Fee** to be paid by each Party under clause 9.1 is \$_____

Fees will be invoiced and payment details will appear on each invoice.

	Name of Mediator:	Daan Spijer
	Signature of Mediator:	

[continued next page – details and signatures of Parties]

Execution of Agreement

1.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

2.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

3.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

4.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

5.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

6.	Name of Party (please print):	
	Address of Party (please print):	
	Signature of Party:	

Details of any Proposed Support Persons to Attend the Mediation

1.	Name (please print):	
	Address (please print):	
	Phone Number (please print):	
	Email (please print):	

2.	Name (please print):	
	Address (please print):	
	Phone Number (please print):	
	Email (please print):	

3.	Name (please print):	
	Address (please print):	
	Phone Number (please print):	
	Email (please print):	

4.	Name (please print):	
	Address (please print):	
	Phone Number (please print):	
	Email (please print):	