

JENNY RIMMER MEDIATIONS
Mediation and Family Dispute Resolution Services

Principal:

Jennifer Rimmer LLB; Grad Dip Legal Practice



Nationally Accredited Mediator
Registered Family Dispute Resolution Practitioner

MEDIATION AND FEE AGREEMENT - TERMS AND CONDITIONS

APPOINTMENT OF THE MEDIATOR

1. The parties to this agreement appoint Jenny Rimmer (“the mediator”) and the mediator accepts an appointment to mediate the dispute between the parties in accordance with the terms of this agreement (“the agreement”).
2. The Mediation will be conducted in person where possible. For parties where it is impossible or inconvenient to travel, they may participate in the mediation by video conference and/or telephone.
3. The Mediator, the parties, lawyers and any other person attending the mediation, including any experts and/or support persons agree to the following:
 - a) Not to electronically record any aspect of the mediation on any device;
 - b) To inform the Mediator and the other party/s of the name of anyone they have present with them during the mediation, including by telephone and/or video conference, and to ensure it is agreed for these persons to be present.
 - c) That the parties to the mediation will sign the Mediation and Fee Agreement Consent Form, or in the case of a support person, the Support Person Confidentiality Agreement.
 - d) Not to share the content of any online chat or other document or communication with anyone not part of the mediation process.
 - e) To immediately bring to the attention of the mediator if they can hear and/or see any content of a private session or breakout discussion that does not include them, including breakout rooms on video conferences.
 - f) Not to share the video or telephone conference link and/or password with any person not part of the mediation.

PURPOSE OF THE MEDIATION

4. The mediation is an informal process designed to assist parties to resolve matters in issue between them.

MUTUAL OBLIGATIONS

5. The mediator will fairly and neutrally assist the parties to identify and discuss matters in issue between them with the objective of resolving the dispute.
6. Each party agrees to make a genuine effort to resolve the matter and to act in good faith at all times.

7. Each party agrees that by the time of, or at the mediation, they will make truthful, full and frank disclosure to the other party and the mediator of all relevant information about the issues in dispute, including, but not limited to, documents relevant to financial matters or their children, if applicable.
8. If at any time during the mediation a party does not understand the process fully or feels that they are under pressure in any way, they shall raise this with the mediator at the time and, if applicable, with their legal advisors, so these matters can be addressed.

CONDUCT OF THE MEDIATION

9. The mediation will be conducted in a manner the mediator considers appropriate to an efficient and expeditious resolution of the dispute.
10. The mediator is a facilitator who will assist the parties to reach their own settlement. She will not make decisions about “right” or “wrong”, decide the truth of any disputed facts or tell the parties what to do.
11. Despite her legal training, the mediator does not offer legal advice. Each party is advised to retain their own lawyer in order to be fully and properly advised about his/her legal interests, rights and obligations. The mediator may reality test any position you hold at the mediation about the outcome of your dispute by expressing an opinion or making a recommendation based upon her expertise, knowledge and experience.
12. While the mediator may express opinions, reality test each party’s position and make recommendations, this is not legal advice.
13. Any information offered, opinions expressed or recommendations made by the mediator is/are of no legal effect and is/are provided subject to the parties obtaining their own independent legal advice in relation to such matters.
14. The mediator may give directions in relation to the conduct of the mediation and each party agrees to comply with any reasonable directions so issued.
15. Once the mediator has acted as mediator, the mediator cannot subsequently act for either party as a lawyer in relation to those same or analogous disputes between the parties.
16. When an agreement is reached, the mediator, or the lawyers for each party, will prepare and/or review a document called a Heads of Agreement. Each party is strongly advised to review this document with his/her own lawyer before the agreement is placed in any final form. The mediator will not prepare any documents which bind the parties, such as Consent Orders, Binding Financial Agreements, Binding Child Support Agreements as all such statements require independent legal advice.
17. No agreements reached at the mediation will be enforceable unless and until they are reduced to writing and signed by both parties.

CONFIDENTIALITY AND PRIVILEGE

18. The mediation is conducted on a without prejudice basis and all written and oral communications, negotiations and statements made during the mediation will be treated as privileged settlement discussions and are absolutely confidential and will not be

19. disclosed to anyone or relied upon or be the subject of a subpoena to give evidence or to produce documents in any subsequent legal proceedings by any person attending the mediation.
20. Subject to any legal obligation, the mediator will not disclose any information or document provided to her on a confidential basis to another party unless she is authorised to do so by agreement of both parties to the mediation or an order of a court or an act of parliament.
21. If parties to the mediation attend with others, either in person or virtually, as their legal advisors or support persons in the mediation, then the parties will ensure that those persons will treat all written and oral communications, negotiations and statements that they become privy to or they hear made during the mediation as privileged settlement discussions and are absolutely confidential and are not to be disclosed to anyone or relied upon or be the subject of a subpoena to give evidence or to produce documents in any subsequent legal proceedings. Any relevant party to the mediation will ensure that those support person/s sign a separate Support Person Confidentiality Agreement before the mediation commences.
22. It is understood that the mediator is not required to maintain confidentiality if she has reason to believe that a child is in need of protection or if either party is in danger of bodily harm.
23. If at a later time either party decides to subpoena the mediator, the mediator will defend such subpoena. That party agrees to reimburse the mediator for whatever expenses she incurs in such an action (including all legal fees) plus \$550 per hour (plus GST) for all time that is taken by the mediator to attend to such matters.
24. The exception to the above is that this agreement to mediate may be produced in any subsequent Court proceedings.

BOOKING AND TERMINATION OF MEDIATION

25. A mediation date has been confirmed by agreement with both parties.
26. As the mediation is booked and agreed to jointly, confirmation from both parties will be required before the mediation can be cancelled and the date on the calendar released. Should a cancellation fee apply, both parties will be responsible for the cancellation fee unless the mediator has been informed in writing that one party has agreed to pay the full cancellation fee. However, if a fee is overdue by either party the mediator reserves the right to vacate the date without the agreement of both parties.
27. The mediator may terminate the mediation if the mediator determines in her sole discretion that the mediation process is not going to resolve the matters in issue between the parties or that a party has failed to comply with the reasonable directions of the mediator or is otherwise not acting in good faith and the normal cancellation fee will apply at the discretion of the mediator.

EXCLUSION OF LIABILITY AND INDEMNITY

28. The mediator is not liable for any act or omission in connection with the mediation or this agreement other than fraud and the parties jointly and severally indemnify the mediator in respect of all other liabilities, claims and associated costs arising from the mediation.

MEDIATION FEES

29. The mediator's fees payable by the parties are as follows:

- Daily fee of \$5,450 (plus GST); being \$2,725 (plus GST) per party for a two-party mediation.
- Daily fee of \$6,450 (plus GST); being \$2,150 (plus GST) per party for a three-party mediation.
- The cost of any mediation rooms, at cost.
- Travel fee to cover the time taken to travel for mediations held outside greater Brisbane area.
 - For mediations within SE Qld, a travel fee will be charged at \$600 plus GST.
 - For mediations outside SE Qld the travel fee will be by arrangement.
- The daily fee includes up to an hour of reading time and assumes that the mediation will be conducted during normal business hours.
- An administration fee of \$300 (plus GST) will apply for a party that does not have legal representation as it is normal for the lawyers to deal with the administrative arrangements.
- There will be no mediation room hire or travel fee if all parties attend by video conferencing.

30. Unless otherwise agreed to in writing, each party agrees to pay one half of the daily mediation fee and other mediation related expenses as may be applicable. Any court order which governs the parties obligation for payment will be provided to the mediator at the time the mediation is booked.

METHOD OF PAYMENT OF MEDIATION FEES

31. When the mediation is booked the mediator will forward an invoice to each of the parties unless we have had confirmation in writing from both parties that one party is responsible for the full fees in the first instance. The full fees are to be paid to Jenny Rimmer Mediations by the date shown on the invoice. If the full payment cannot be made by either party by the due date, it is that party's obligation to seek agreement from accounts@jennyrimmermediation.com.au (or phone 0418 731465) for a revised payment date. If payment is not received by the agreed date the party will be bound by the terms of this agreement and the date may be given to other parties who are seeking a mediation date in order to avoid a cancellation fee.

CANCELLATION/DEFERRAL FEE

32. The parties each agree that the mediator shall be entitled to be paid a fee if the mediation is postponed or cancelled and a replacement mediation for the agreed date cannot be arranged. If the mediation is postponed or cancelled **within 11 to 20 business days** prior of the mediation date, **50% of the fee is payable** by each party unless a replacement mediation can be arranged. If the mediation is postponed or cancelled within a clear **10 business days** prior to the mediation date, **70% of the fee is payable** by each party unless a replacement mediation can be arranged for that date.
33. We have selected the 20 business days cut off period as it provides a reasonable chance of securing a replacement mediation. Please be aware that while it may be possible to secure a replacement mediation three to four weeks out, it is extremely unlikely that we will secure a replacement mediation in less than 11 working days. Therefore, we strongly recommend that you do not book a date unless you are certain that all of the valuations, reports or disclosures will be completed in time for the mediation. If that becomes doubtful then give us as much time as possible to try and find a replacement mediation.
34. In the event that a fee is not paid and collection action is initiated, in accordance with Section 347 of the National Credit Code the collection costs, legal costs or any other costs that a court may order will be payable by the defaulting party.

EXECUTING THE AGREEMENT

35. Each party is to sign a copy of the attached Consent Form and return it to the mediator before the mediation commences for parties with legal representation and within 7 days for parties without legal representation. The Mediation and Fee Agreement should be read as soon as it received. If either party has any concern with any part of the agreement, the concern must be brought to the mediator's attention in writing within 7 days of receipt, or immediately for short notice mediations. In the event that a party fails to notify the mediator that he/she does not consent to the terms of the Agreement, that party and the mediator will be bound by its terms even if the signed Consent Form is not signed and returned.

Please retain this section of the Mediation and Fee Agreement – Terms and Conditions for your records and **return the attached Consent Form.**

PLEASE RETURN THIS PAGE ONLY

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MEDIATION AND FEE AGREEMENT - TERMS AND CONDITIONS
CONSENT FORM

I hereby certify that I have received a copy of the Mediation and Fee Agreement – Terms and Conditions and that I have read and understood it and I accept the terms of the agreement.

Please state any instructions concerning the mediation or the payment of fees:

Name of Party

Signature

Date

Phone number: _____ Mediation date: _____

Address: _____

Email address: _____

My fees will be paid: (please tick one)

By me direct

From my solicitor's trust account

Other (please specify)

Please sign and return the Consent Form by email to admin@jennyrimmermediations.com.au as soon as possible but prior to the mediation