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SCHEDULE OF MEDIATION STEPS AND EXPECTATIONS OF THE PARTIES AND THEIR LEGAL REPRESENTATIVES

THE OVERARCHING GOAL OF THIS SCHEDULE AND EXPECTATIONS

1. The overarching purpose of a mediation is to ensure the just, safe, efficient and timely resolution of the dispute at a cost to the parties that is reasonable and proportionate in all the circumstances of the case, having regard to the significant impact of family law disputes on children and families.¹
2. Understanding the purpose of mediation and properly preparing for a mediation increases the likelihood of a mediated agreement. The following steps and expectations of each party and from me as mediator are therefore designed to achieve these goals.

A SAFE NEGOTIATION ENVIRONMENT

3. I am to be informed immediately as to the existence of any protection order concerning a party to the mediation or of any allegation in the dispute of domestic or family violence.
4. I am to be informed immediately of any specific requirement for separate arrival of parties to the mediation. A direction by me as to the time and manner of arrival of a party to the mediation must be strictly adhered to. In the event a party cannot arrive at a directed time they will contact me by mobile telephone and await further instruction from me.

THE MEDIATION PROCESS

Pre-mediation (intake) conference

5. Approximately one to two weeks before the mediation date I will arrange to conduct separate Pre-mediation (Intake) Conferences with the parties directly ordinarily by telephone.

¹ See Core Principal 2 - Joint Practice Direction 1 of 2020 - Core Principles in the Case Management of Family Law Matters

6. The purpose of the Pre-mediation (Intake) Conference is to allow me to explain to the client the process of mediation and to answer questions they might have about that process. It is not to discuss the dispute.
7. The Pre-mediation (Intake) Conference is conducted with each party alone and is private and confidential.
8. The party may have their legal representative present for the Pre-mediation (Intake) Conference but this is not required.
9. I expect the legal representatives to assist with the facilitation of the Pre-mediation (Intake) Conference.

Steps to be Undertaken Before the Mediation

Disclosure, Joint Experts and Narrowing of Issues

10. Family law disputes are often complex involving consideration of many facts, matters or circumstances some of which may be very important whilst others may be of less importance.
11. Parties and their lawyers are expected to take a sensible and pragmatic approach to this mediation process, and to incur costs only as are fair, reasonable and proportionate to the issues that are genuinely in dispute. Parties and their lawyers are expected to engage in cost budgeting, and regularly inform their clients and the mediator of the actual costs they have incurred and are likely to incur² (see also Part 19.2 of the Family Law Rules 2004).
12. Where this mediation is as a result of a Court order, the parties are to provide me with a copy of same, particularly any order that directs parties to provide disclosure or to reach agreement about issues or retain experts to provide opinions upon issues (Court Directions)
13. It is expected that the parties and their legal practitioners will have complied with such Court Directions and within such time frame to have permitted all parties to have satisfactory time to have considered any document produced or opinion provided.
14. In the absence of specific Court Directions, the parties should comply with their obligations of full and frank disclosure as required by the Federal Circuit Court Rules 24.03-5 and shall agree upon matters to be disclosed and documents to be produced.
15. In seeking agreement about disclosure and experts the parties will ensure that any request they make about such a matter is;
 - a. only made to ensure the just, safe, efficient and timely resolution of matters at a cost to the parties that is reasonable and proportionate in all the circumstances of the case; and

² See Core Principal 7 - Joint Practice Direction 1 of 2020 - Core Principles in the Case Management of Family Law Matters

- b. where regard is had to the significant impact of family law disputes on children and families; and
 - c. is narrowed to those issues genuinely in dispute and only to genuinely and justifiably assist that party in the negotiation and resolution of the dispute.
16. It is expected that parties will negotiate prior to the mediation date in order to narrow the issues in dispute.
17. It is an expectation of all parties that any single/joint expert or an assessor should be engaged sufficiently in advance of the mediation date to assist the parties and the mediator to resolve disputes and that the parties will comply with all reasonable requests of such expert or assessor.
18. Save where a Court Direction specifically provides to the contrary, all disclosure, production and joint expert documents should be completed and exchanged no less than 14 days prior to the mediation date.

Mediator Intervention Where Parties Fail to Comply or Agree

19. The Mediation Agreement enables me to reasonably direct the parties in the conduct of the Mediation including at;
- a. Paragraph 17 to convene a conference with the parties or their legal representatives for the specific purpose of assisting narrowing issues in dispute and the disclosure, production or expert opinion necessarily required to facilitate the mediation; and
 - b. Paragraph 18, specifically direct the parties in the absence of their agreement; and
 - c. Item 4(g) to cancel or postpone the mediation due to one or both of the parties failing to provide the documents to be exchanged.

Joint Brief and Exchange of Outline, Proposed Order and Position

20. The Mediation Agreement provides that;
- a. Unilateral communications with the Mediator are to be avoided (paras 13 to 15) and may be deleted and ignored by the mediator;
 - b. A joint brief is to be prepared for the Mediator and sent **10 business days** prior to the mediation date;
 - c. Parties are to exchange a brief outline of the agreed and disputed facts, matters and circumstances (all disputes), contended for assets, liabilities and position table (property matters), income, expense and contention table (maintenance matters) **5 business days** prior to the mediation date; and
 - d. Parties are to exchange in PDF and Word format) a position statement, the proposed outcome and a short outline of the contentions that support such outcome, a complete draft proposed final order or binding financial agreement

(including binding or limited child support agreement where applicable), **48 hours** prior to the mediation date.

EXPECTATIONS AT ALL TIMES

21. Expectations of Parties and Their Lawyer

- a. To allow the mediator to conduct the mediation process and to provide support to the mediator where appropriate
- b. To participate fully, genuinely and directly in the mediation process
- c. To make a genuine attempt to resolve their dispute
- d. To perform agreed mediation steps punctually
- e. To ensure that sufficient time is allotted for a mediation process to take more than 7 hours
- f. To focus upon personal and commercial interests as opposed to legal rights (entitlements)
- g. To reflect at all relevant times that the purpose of mediation is not to win but to resolve the dispute
- h. To at all times during the mediation process behave in a respectful, courteous and professional manner and to that end avoid combative, derogatory, demeaning, generalised and/or unsubstantiated accusatory communications

Expectations of Lawyers³

22. In advising and attending upon the mediation process;

- a. Have explained the terms of the Letter of Engagement, Mediation Agreement, Costs Disclosure Notice and this Schedule;
- b. Have had the client signed the Mediation Agreement;
- c. Ensured that the client's share of any expected fee is retained irrevocably in a solicitor's trust account;
- d. Have explained that the purpose of mediation is not to win but to resolve disputes, provides a party with control over outcomes and is to save significant time, cost, risk and stress to the party;
- e. During the mediation;

³ These expectations are drawn from the checklists provided by Lexon Insurance as at May 2018 and are otherwise considered to be best practice when representing the parties in the mediation process

- i. Assist the parties communicate punctually, accurately and comprehensively;
 - ii. Negotiate constructively, productively, proportionately and pragmatically;
- f. Attend upon those matters or things in the Mediation Agreement punctually.
- g. Obtain complete instructions from a party concerning the subject matter of the dispute
- h. Provide a party with a preliminary written assessment of their position upon the dispute
- i. Provide realistic alternative predictions about likely outcomes in court or other non-mediation processes and their relative advantage or disadvantages including a BATNA / WATNA, costs to achieve an outcome through court, possibility of costs orders, time delay to trial, lost opportunity pending trial risk of appeal
- j. Obtain instructions from a party concerning
 - i. Best outcome offer
 - ii. Target offer
 - iii. Bottom line offer
- k. Advise the client that despite your preliminary advices, and the clients instructed Bottom line offer, that their personal and commercial interests may require them to consider a lesser offer
- l. Prepare a detailed final agreement or proposed order **well in advance** of any Final Mediation and **have had the client read and understand such draft**
- m. Attend to all of those matters or things specified in the Lexon Insurance “Consent Orders – Family Law” and “Financial Agreements – Family Law” checklists
- n. Assist in the drafting of complete and final agreements and the formalisation of the mediation in an appropriate manner.

As at 7 February 2020

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Family Dispute Resolution Practitioner
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