

# Preparing for Mediation: Tips from Women who have Experienced **Domestic Violence**

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As part of a student placement for her Bachelor of Arts (Advocacy and Mediation) at Victoria University, Pia transcribed and analysed tapes of interviews that DVIRC had undertaken with women who had experienced domestic violence. The interviews discussed the women's experiences of using mediation services to attempt to resolve disputes with abusive ex-partners. The following tips for women are based on these interviews. DVIRC is interested to hear your feedback about this information – contact us via phone or email [dvirc@dvirc.org.au](mailto:dvirc@dvirc.org.au). This document will also be available on our website.

## Introduction

The federal government's vision for the future in family law is 'to bring about a cultural change in the way family breakdowns are handled. Separating parents should sit down across the table and agree what is best for their children, rather than fighting in the courtroom'. This 'cultural change' will be achieved by promoting alternative dispute resolution (ADR) services.

DVIRC, in partnership with Relationships Australia (Vic) recently interviewed women who had left abusive relationships and had gone through mediation. These interviews looked at what had helped women when they prepared themselves for mediation and what their needs were in the mediation process and afterwards.

The tips and quotes below are taken from interviews with these women. Their names and all identifying details have been changed or removed.

## Tips for Preparing for Mediation

If you are attending a mediation session it can help to know what has helped other women to prepare for the process. These tips have been provided by women who

have experienced domestic violence and who have participated in mediation. Some of these women had voluntarily decided to participate in a mediation session with their ex-partner. Others had to attend mediation as part of a legal requirement.

## What is Mediation?

The National Alternative Dispute Resolution Advisory Council (NADRAC) defines mediation as 'a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement'. The mediator does not give legal advice or make decisions about the dispute – their role is to help both people to identify and discuss the issues in a respectful environment and reach an acceptable solution. During the session(s), both people describe the dispute, what is happening at present, and then discuss solutions, looking towards the future.

You can go to mediation to resolve disputes about property or arrangements for your children. Mediation is not usually about trying to reconcile your relationship and get back together (unless you both agree that this can be discussed during the session).

You and your ex-partner might not reach agreement on all of the issues discussed in the mediation session, or it may take a few

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1 Australian Government Attorney-General's Department (2005) *Family Relationship Centres – Information Paper Revised 22 December 2005*, Commonwealth Attorney-General's Department, Canberra, p.1.

2 See an article about the initial findings from this research by Allie Bailey and Andrew Bickerdyke in DVIRC's Autumn 2005 Newsletter.

sessions to reach agreement. You don't have to reach an agreement. If you are unhappy with any agreement that is being negotiated, or feel that you or your children might not be safe as a result of the arrangements that are being suggested, then you do not have to agree.

The agreements reached are not usually legally binding until a court has made an order. If you attend mediation to discuss a parenting plan (this might cover where the child will live, time spent with each parent and family, decision-making about the children, and other issues) and you want the agreement made to be legally binding, then you can lodge the agreement with the Family Court for a small fee. In some types of mediation, lawyers are allowed to attend to assist negotiations, but in most cases lawyers cannot attend.

### **How Domestic Violence can Affect your Ability to Mediate**

The aim of mediation is to try to resolve a dispute you have with your ex-partner.

If your ex-partner has been abusive or violent towards you, participating in mediation can potentially be difficult and stressful. The process of mediation presumes that both partners can speak their minds freely and confidently. But if you have been abused, it can be hard to speak up if you feel intimidated, pressured or afraid because of your partner's abuse.

*'Because of the abuse [you can] feel in a position of having to ask for something rather than having an entitlement [to it]... that is a flow on from abuse and it does affect the mediation process' – Kate.*

*'I was completely unprepared because I didn't know how that mediation would go along [or] what protective mechanisms were in place for me' – Sophie.*

It can be difficult to let services know that you have been living with family violence or abuse, but it is important that you do so if you can. Remember too that emotional

abuse (for example someone putting you down, manipulating you, controlling your behaviour or threatening you) can be just as traumatic and difficult to deal with as physical violence, so it is important to tell the mediator about these experiences.



*'I did say that although he never hit me I was emotionally terrified of him... My ex-husband can be very charming, so I guess I was pretty scared that, even if I said anything [about the abuse]...when [the mediator] would meet [my-ex-husband] then my story would be negated. So it's been very difficult ... to trust whether someone's going to believe me anyway.'*

*'Mediators have to have some level of neutrality, but they need to also know what that costs the person. I think for mediators to actually understand some of the effects of abuse on women, how incredibly difficult it is just to even talk about it, to name it; that to be visible is so dangerous. To even understand the triggering process that can take you back into an emotional timeless abused state [which] is not a very easy place to be [in] when you're trying to answer questions' – Kate.*

### **Contacting the Mediation Service**

When you first contact the mediation service, there are a number of things you may want to consider asking about.

#### **1. Find out about the mediation process**

Find out what mediation is, what will happen in the session, and what happens with any agreements made. You could also ask if and how your children can be involved in the process, if that is what you wish. The mediation service should have information that they can send you, including examples of parenting plans,

## Tips for Women Preparing for Mediation

information about family law, Centrelink etc. You could also ask about complaint mechanisms and what you can do if you feel that the mediator treats you unfairly or seems biased.

### 2. Tell the mediation service about the abuse you have experienced

As discussed above, it is important to tell the service about your experiences of abuse, and to find out how they can assist you with this.

### 3. Ask for a separate intake session

Most services provide an 'intake' session before the actual mediation and negotiation occurs.

At many mediation services, the intake session is done jointly with you and your ex-partner present. In this session you both discuss the background to the dispute, the issues you wish to cover in mediation, and anything that you feel may affect the mediation process. During a joint session, the mediators will speak to you together and also talk to you privately to check how you are feeling about the session and to discuss anything that you don't want to say in the joint session.

You can, however, also request your own separate intake appointment with the mediator. This can give you more time to privately discuss your experiences of abuse or violence, and how you believe they might affect your ability to participate in mediation. You can also discuss the kinds of outcomes you want to consider (for example, what safety measures are required in a parenting plan).

*The [individual] session was limited to an hour and... I kind of blurted out part of my story. The time constraint [was difficult] - I had to ... be able to use that time in order to take this first step of the process. I couldn't explain all of what I had experienced. But it*

*was important because I knew that my ex-partner could portray himself as anything that he wanted [to]' - Annie.*

If you feel like you haven't had enough time to understand the process or to discuss your fears about the mediation session or the abuse, let the mediator know this.

### 4. Ask about practical arrangements to protect your safety

*I only got there a couple of minutes beforehand because I was really frightened that he might have been in the waiting room' - Sophie.*

Many women say that they were nervous about seeing their ex-partners before or after the actual mediation sessions. You could ask if the service can provide separate waiting areas so you don't have to wait in the same room as your ex-partner. Can they arrange separate arrival times and departures? Where can you park your car? The service may be able to offer you 'shuttle' mediation (where you and your ex-partner are in separate rooms) rather than joint mediation, or 'co-mediation' (where both a male and a female mediator run the session).

Co-mediation can be helpful for victims of violence. Having a male and female mediator can make it easier for them to pay attention to communication patterns and issues of power in the sessions. For example, 'Annie' commented that having a male and a female mediator there was helpful for her:

*'I think he [ex-partner] had to check in on himself more...He couldn't turn around [and] say one thing to me and a different thing to someone else. I think it affected him that there was another woman in the room, a woman in the position of real power... so I think that was really good' - Annie.*

## What to look for in a Mediation Service

Some mediation services have more awareness than others about dealing with clients experiencing domestic violence. You should be able to expect that a service can provide the following, but this may not always be the case.

A mediation service may be able to:

- offer a separate intake session for you, where you can talk to the mediator alone before attending the mediation (see above);
- discuss other options that may assist you to feel safe, such as shuttle mediation (where you and your partner are in separate rooms) or co-mediation (both a male and female mediator facilitate the session); and
- assist you with practical safety arrangements, such as providing separate waiting areas or separate entry/exit points to the building.

A mediator should:

- take domestic violence seriously and ask about experiences of violence, including non-physical forms of abuse or harassment;
- help you consider the possible impact of abuse on the mediation process;
- offer you a separate time to discuss any concerns before, during and after the mediation sessions;
- set ground rules at the start of the session for what forms of communication and behaviour are acceptable and what are not (for example, no put-downs, no intimidating behaviour etc);
- work out a signal that you can use to indicate to them if you are feeling threatened or need a break;
- check with you privately during the mediation session to find out how you are going;
- control any abusive behaviour in the mediation session and /or assist you to deal with it; and
- help you to deal with any harassment or intimidation that occurs outside of the mediation session itself.

## Prepare Yourself for the Mediation

- **Get legal advice before and after the mediation**

*'Get some legal advice and think about ... what your rights are both in terms of property and children matters' – Lesley.*

Getting legal advice is important. It can help you to be clear about family and property law and how it relates to you, as these matters may be discussed during the mediation session.

In some cases, lawyers may attend mediation sessions. But in most forms of mediation, lawyers cannot attend mediation sessions. So it is important to get advice about your legal rights before the session.

When you talk to a lawyer make sure she or he understands what you want.

Any agreement you reach in mediation is not legally binding until a court has made an order. In cases where there is violence or abuse and you are developing parenting plans in mediation, you may want to lodge these with the Family Court to provide you with some formal support if the agreement is breached.

- **Identify your wishes and know your bottom line**

Think about what you want to achieve in mediation. Be clear about what you want to discuss and what you don't want to discuss.

*'I'd worked out before what was worth fighting' – Kate.*

*'I had done some preparing of what I wanted from the mediation process - in fact I was really clear about what I wanted from the mediation process' – Annie.*



## Tips for Women Preparing for Mediation

Some women found it helpful to write points down:

*'[if] you have written it down then you can actually remember the structure of the sentence and the ideas and it's not like you having to drag it out of some emotional mess ... you can remember the dot points you made for yourself' – Lesley .*

You could discuss what you want with your lawyer, counsellor or other support person.

*'We worked out what was my bottom line and how to stay on course' – Kate.*

- **Talk to mediator beforehand to be ready for the session**

It's important that both you and the mediator are clear about what steps to take if at any point you become distressed, or feel unsafe.

- **Find and prepare any documents**

These may include bank statements, outstanding loans, superannuation, school holiday calendars. Bring these to the session.

### Find Support

*'...I didn't realise that the mediation session would tap into the ongoing feelings about having no rights, no identity, no status, being undeserving, needing to be punished for leaving the marriage...' – Kate.*

*'I had a friend to drive me in because I was too shaken to drive' – Sophie.*

Mediation can be stressful and difficult. It can help to have a friend come with you or meet you after the mediation session. It is possible to have a friend to provide

emotional support for you during the mediation, but this will be allowed only if your ex-partner agrees to it.

Talking with a counsellor can help you to prepare for what might be distressing about the process. One woman had a counselling session before the mediation and also saw a domestic violence service for support:

*'I actually had a very good session with my therapist in the morning preparing me for all the possible things. I also, in between the first mediation session – the single one and the joint one – I did see a domestic violence outreach worker for one appointment and that was really useful too' – Kate.*

You need to do what is right for you - if you feel you do not need any support then that's fine.

*'I didn't want any of my friends there – I have been through hell, I didn't want them to see me upset' – Sue.*

It has helped some women to think or talk to a counsellor/friend about what made them fearful and in what ways ex-partners used to put them down.

*'She enlightened me to the fact that it wasn't my fault and that my husband was a controlling person' – Clare.*

### Things to remember about mediation

- You have a right to speak, to be respected, to be heard, and to ask for what you would like.
- You have the right to have a break.
- If you feel pressured or pushed to reach agreement, you have a right to end the session. When your partner has been abusive in the past it's particularly important that you have time to reflect on any agreements and consider their suitability and safety before you agree. This is a good time to get more legal advice.



## **For further information:**

### **Department of Justice – Dispute Resolution**

The Department of Justice website gives you a typical framework of mediation, however this may vary from organisation to organisation.

[www.justice.vic.gov.au/  
CA2569020010922A/page/  
Dispute+Resolution-Mediation-  
Steps+of+Mediation?OpenDocument&1=0-  
Dispute+Resolution~&2=0-  
Mediation~&3=0-  
Steps+of+Mediation~#private](http://www.justice.vic.gov.au/CA2569020010922A/page/Dispute+Resolution-Mediation-Steps+of+Mediation?OpenDocument&1=0-Dispute+Resolution~&2=0-Mediation~&3=0-Steps+of+Mediation~#private)

### **Women’s Safety After Separation website:**

Counselling and Mediation Services – provides information about different kinds of mediation, and has a checklist to help you work out if mediation may be a good way to resolve your dispute

[www.ncsmc.org.au/wsas/legal\\_system/  
counselling\\_and\\_mediation.htm](http://www.ncsmc.org.au/wsas/legal_system/counselling_and_mediation.htm)

### **Family Court of Australia**

Explains the steps involved in mediation through the Family Court

[www.familycourt.gov.au/presence/  
connect/www/home/guide/resolution/  
mediation/](http://www.familycourt.gov.au/presence/connect/www/home/guide/resolution/mediation/)

### **Women’s Legal Service Victoria**

For women in Victoria who are in need of legal advice, information or referral.  
[www.womenslegal.org.au](http://www.womenslegal.org.au)

Legal Advice Line: Ph. (03) 9642 0877 or 1800 133302 (Free call number for country callers).

### **Victoria Legal Aid**

VLA provides legal information, advice and assistance in relation to criminal issues, family breakdown, family violence, immigration, social security, mental health, debt and traffic offences.  
[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

For information call 9269 0234 or 1800 677 402 (country callers).

## **Advice from People Who’ve Been There...**

*‘It’s easy to say “GET OUT”, but I know what it feels like wanting to give it a fifth, sixth, and seventh chance...’*

*‘Abuse doesn’t get better if you don’t do anything; it just keeps getting worse. You have to be your own friend. You have to have compassion for yourself.’*

*‘Don’t punish yourself - I never thought I’d be in an abusive relationship but I WAS’.*

*‘Once the “sorrys” don’t mean anything more than just as a way of keeping you right where he/she wants you, then it’s time to leave.’*

These quotes are from women who have experienced abusive relationships. Their stories and advice are contained on DVIRC’s website [Stories Page](#).

The page provides others an opportunity to learn from their experiences by reading about these women’s experiences, how they coped, what helped, and their advice for others.

## **Go to DVIRC Website Stories Page:**

**[www.dvirc.org.au/HelpHub/  
Stories/Stories.htm](http://www.dvirc.org.au/HelpHub/Stories/Stories.htm)**