

Heads of agreement topics

An agreement entered into as a result of mediation might be described in various ways, for instance, heads of agreement (HOA), terms of agreement, terms of settlement or memorandum of understanding (MOU).

Often times, the agreement reached at mediation will require more formal consent orders to be filed in a court or a deed of release to be drafted and signed.

It is usually best to allow the lawyers appearing for the parties to prepare the agreement, although some agreements to mediate may require the mediator to prepare the heads of agreement. Sometimes the parties will not be represented by lawyers or some are and others are not.

A few things need to be covered in heads of agreement:-

- Have all the terms of the bargain been agreed to? Is the intention to be bound immediately or at least no departure from what has been agreed to subject to signing of formal documents or orders of the court? Often the bargain is not concluded and is subject to the agreement and signing of detailed documents.
- What is to happen and when?
- Who is to do what? For instance, draft the deed of release?
- Are there any associated parties or companies that should be covered by the deed of release?
- What if there is a dispute about what is to happen? Back to mediation?
- What if there is a default? For instance, the claim is not withdrawn or judgment is entered for the full amount claimed.
- Dollar amounts and when paid? Payment by instalments? Interest?
- GST inclusive or exclusive? Does a tax invoice have to be provided?
- If a lump sum is being paid, should it be apportioned?
- Does PAYG or withholding tax need to be deducted from a payment?
- Are there claims to be withdrawn or proceedings to be discontinued?
- Is each party to meet their own costs (including costs of mediation)?
- Is any publicity or disclosure of the settlement allowed?
- Would the parties like to agree not to disparage each other's reputation?
- If the matter has not been resolved, have the parties agreed to some facts, a pleading timetable, sharing the cost of valuations?