

# Personalised Transport Dispute Resolution Guide

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# Contents

<b>1. How this kit will help you</b>	<b>1</b>
<b>2. Complaints and disputes</b>	<b>1</b>
<b>3. How disputes can be resolved early on</b>	<b>1</b>
3.1 Confirm your position	2
3.2 Put your concerns in writing	2
3.3 Respond constructively to complaints	2
<b>4. The benefits of alternative dispute resolution</b>	<b>2</b>
<b>5. Principles of successful dispute resolution</b>	<b>3</b>
<b>6. What is mediation?</b>	<b>4</b>
6.1 When should you consider mediation?	4
6.2 Example A - Part 1	4
6.3 Example B - Part 1	4
<b>7. What is the mediator's role?</b>	<b>5</b>
<b>8. Your role in the mediation session</b>	<b>5</b>
<b>9. Personalised Transport mediation</b>	<b>6</b>
9.1 Application checklist	6
<b>10. Conclusion</b>	<b>6</b>
10.1 Example A - Part 2	7
10.2 Example B - Part 2	7
<b>11. Where to find further information or seek legal advice</b>	<b>7</b>
<b>12. Other resources</b>	<b>8</b>
<b>13. Looking after yourself</b>	<b>8</b>

# 1. How this kit will help you

This kit contains information regarding resolution of personalised transport disputes and about mediation processes, including:

- The benefits of dispute resolution
- Principles to follow in resolving a dispute
- How complaints and disputes can be resolved early
- Examples of personalised transport disputes
- An explanation of what mediation processes involve, and whether they may be suitable for you
- How you can access mediation for personalised transport issues
- A final checklist to complete before you apply for mediation
- A workbook to complete before your mediation session to help you be as prepared as possible.
- Where to find further resources to help you during the dispute.

## 2. Complaints and disputes

If you are unhappy about something that has happened, you may want to take action to register your dissatisfaction and/or to be compensated, or have things restored to the way they were. Sometimes that can be achieved by making a complaint to the party involved. Then if that complaint doesn't lead to satisfaction, the issue can be taken to a body responsible for regulating those issues. That body may be able to investigate and make a decision on your behalf.

There is information about how to make a personalised transport complaint at [Personalised transport complaints | Transport and motoring | Queensland Government \(www.qld.gov.au\)](#). Personalised transport complaints | Transport and motoring | Queensland Government (www.qld.gov.au). The page has information about things to consider and the three steps that are recommended when seeking to resolve a complaint:

- **Step 1: Seek to resolve your complaint directly**
- **Step 2: Take the issue to the appropriate regulatory agency**
- **Step 3: Pursue further dispute resolution processes**

There is also information about the agencies that regulate certain issues and can help you if your complaint isn't addressed to your satisfaction.

Sometimes the other party may not consider your complaint to your satisfaction, and there is no agency that regulates the issue. The only options that remain open are to initiate a dispute resolution process, or take the other party to court.

It is important to make sure that you have tried to use all the mechanisms available to you to have your complaint addressed before taking these options.

## 3. How disputes can be resolved early on

Most of the time work and business relationships go smoothly but sometimes things go wrong. Many problems can be solved simply and quickly by considering the other party's point of view and giving them time to consider your point of view. But sometimes things get more complicated and a problem can turn into a dispute. Here are some things to do before the dispute gets out of hand and positions become entrenched.

### **3.1 Confirm your position**

#### **1. Check your facts first**

For example, if you have a written contract or agreement, the first thing for each of you to do is to read it carefully. This may help you understand the problem more clearly and get your facts right before you take any action. There may also be a dispute resolution clause in the contract or agreement that needs to be followed. If you think that something is unfair or not right with your contracting arrangement, it is important to understand what the problem is and how it affects your relationship with the other party.

#### **2. Could there be a misunderstanding?**

There may be some facts, background or current circumstances that you don't know about, so it often pays to give the other party the benefit of the doubt before you take any action. In the same way, it often pays for the other party to give you the benefit of the doubt before taking action.

#### **3. Know your status**

Taxis, limousines and booked hire vehicles use a variety of different business models. This means drivers are likely to have different everyday work experiences depending on the service they provide. Drivers may also have additional duties if they hold other roles in the personalised transport industry chain of responsibility. In the personalised transport industry, a driver will generally either be self-employed (this may be as an independent contractor) or an employee.

It is important to know what your working status is because self-employed people and employees have different entitlements and responsibilities, which may affect the issues you are in dispute about and what the possible outcomes of the dispute are. More information on this and the rights of drivers can be found [here](#).

### **3.2 Put your concerns in writing**

In some circumstances, writing a polite, businesslike letter to the other party can be a better way of communicating your point of view. This will depend on your communication skills, your relationship with the other party and the time you have to resolve the issues. You may prefer to have someone write it for you.

It is important to attach copies of any relevant paperwork to your letter. This may include your contract or written agreement, an email, a list of specifications, a quote, an invoice, a record of a telephone conversation or any other document that supports your statement of concerns.

### **3.3 Respond constructively to complaints**

When someone complains about your service it's not the end of the world. A complaint can be an opportunity to review and, in some cases, improve your business practices.

Ignoring a complaint or being too defensive about your work could have serious consequences for your business and your reputation. If you want to maintain the business relationship with the other party and preserve your reputation, it's a good idea to listen carefully, ask for clarification and check you've understood, and take ownership where appropriate.

## **4. The benefits of alternative dispute resolution**

Where you have been unable to resolve your complaint directly and the issue is not regulated by a government agency, it may be beneficial to consider alternative dispute resolution to seek to resolve the complaint rather than – or before choosing to – pursue your issue through the legal system.

Going to court will mean that the issue will probably be finalised one way or another, and there is a chance that you will get everything you are looking for. However, it can be expensive, time consuming, and there is a chance you will end up with nothing.

Alternative dispute resolution is a process, such as mediation, which facilitates a structured meeting of the involved parties to identify, understand and negotiate their issue. Although not inherently legally binding, if the parties reach an agreement they are both happy with then this can be developed into a binding contract.

Alternative dispute resolution can have advantages over going to court. These include:

- It can save you time and money
- It gives you and the other party more control over the outcome
- It can be flexible and informal and provide a chance for the two parties to come up with broader and more creative solutions
- Can narrow the scope of a dispute to the issues that matter to you and the other party
- It's confidential
- It helps you and the other party preserve any ongoing relationship, such as your business relationship.

Even if you do not reach agreement with the other party, taking part in an alternative dispute resolution process does not mean you cannot pursue the matter in court later.

## 5. Principles of successful dispute resolution

Below are some principles to follow in a successful dispute resolution process:

- Taking responsibility is the first step. To resolve your dispute, each party needs take responsibility for:
  - Being clear about what is in dispute
  - Genuinely trying to resolve the dispute
  - Seeking support when needed.
- Early resolution is good resolution. Resolve your dispute in the most cost-effective way as early as you can.
- Listen and participate. Show your commitment to the dispute resolution process by listening to other view and by putting forward and considering options to resolve your dispute.
- Look for options that give mutual benefit to both parties. Attack the problem and solution, rather than focusing on scoring a victory against the other party.
- Focus on the future relationship that you want rather than focusing on past behaviour or perceptions.
- Good information leads to good decisions. Seek out and use information that helps you to understand what is expected from different processes and service providers and choose an appropriate dispute resolution process.
- Good preparation before communicating with the other party will mean that you will have a greater chance of resolving some or all of the issues.

Ignoring a complaint or being too defensive about your work could have serious consequences for your business and your reputation. If you want to maintain the business relationship with the other party and preserve your reputation, it's a good idea to listen carefully, ask for clarification and check you've understood, and take ownership where appropriate.

## 6. What is mediation?

Mediation is a structured negotiation process. It involves you attending a meeting with the other party and a mediator to guide you through discussions. The outcome of the mediation depends on what you and the other party are prepared to negotiate on and agree to.

### 6.1 When should you consider mediation?

When considering whether mediation is a good option for you, try to envisage how a negotiation might play out between yourself and the other party. It is unlikely to be successful if either party:

- is unlikely to attend the session
- has all the bargaining power in the relationship
- has nothing to gain by negotiating.

On the other hand, mediation is likely to offer its full range of advantages when both parties:

- have something to gain, or to avoid losing
- desire to maintain their business relationship
- have a middle ground that they will accept.

In general, the more transactional your issue is, the less likely it is that mediation will be a good option. For example, individual instances of dissatisfaction with a transaction or service, such as complaints from a passenger about poor customer service from a driver in a single journey, are unlikely to find mediation suitable.

### 6.2 Example A – Part 1

Janine is a taxi driver who has entered a standard bailment agreement with a licence holder, Fiona. Janine and Fiona split the driving of Fiona's vehicle for available shifts.

Due to a change in the habits of customers, Janine noticed that the shift schedule she had agreed to has quickly become less profitable, meaning that she is making less money and struggling to pay the bills. She writes to Fiona to explain that she is not happy with the terms of the agreement. Fiona writes back that she won't consider a change to the arrangements. She points out that the contracted shifts were agreed to, and that it will be inconvenient to her to change the shifts now.

Janine considers her options and comes to the conclusion that she cannot accept the current situation. She writes back to say that she needs the money and may have to withdraw from the arrangement and look for other employment. Fiona replies that she will be retaining Janine's earnings for the previous two weeks because she is in breach of their agreement and she will need to find a new driver. She writes that she is sad that this is happening because Janine has been a reliable partner.

*Janine has taken the correct approach to resolve her dispute. She started by contacting the other party (Fiona) directly. Janine also wants to preserve her business relationship with Fiona, if possible, and would prefer not to engage in a legal process. In this case, applying for mediation may help Janine and Fiona come to a resolution.*

### 6.3 Example B – Part 1

Steve is a driver for a ride-booking platform. On a recent trip a customer accused Steve of taking a longer route to get a bigger fee for the trip, despite Steve pointing out that he was following GPS instructions. The customer became angry, which resulted in Steve cancelling the trip and asking the customer to leave the vehicle. The customer complained to the Booking Entity who owns the booking platform, claiming they had been discriminated against.

The Booking Entity who owns the booking platform disaffiliated Steve as a driver for them. They outlined that because they have no way verifying either version of events, they must avoid the risk associated with continuing to hire a driver after such a complaint.

This comes as a surprise to Steve because he thought that he was in the right, and it is the first complaint made against him over hundreds of trips. The job as a driver is Steve's only source of income. As he is classified as an independent contractor his dismissal is not regulated. The Booking Entity refuses to investigate the incident further and refuses to reinstate Steve as a driver.

*Steve has done his best to try to resolve the issue himself. His first step was to contact the Booking Entity, and as an independent contractor his dismissal is not regulated. Steve can apply to a mediation service to try to come to an agreement.*

## 7. What is the mediator's role?

The mediator will:

- guide parties through discussions about your concerns and issues to see if there are any solutions that may be acceptable to both of you
- be impartial (remain neutral) and not take sides
- create an environment in which both parties have a chance to be heard equally, ensuring that discussions do not get out of control
- break down the problem into manageable issues
- make sure that all relevant issues are covered
- help both parties to think of options that may help to resolve the dispute
- help you write down the details of any agreement reached.

Mediation is not a legal process, and the mediators will not:

- give legal advice
- take sides
- decide who is right or wrong
- make a decision for you
- make suggestions about what should happen after the mediation
- force you to reach an agreement.

## 8. Your role in the mediation session

It is important that you approach your mediation session with an open mind, even if you and the other party have been in conflict for some time.

If possible, you should come to mediation having thought about a range of options that could be considered. We have provided a workbook which should be completed prior to your mediation session, and contains a range of exercises to help you prepare for mediation.

At the mediation you should:

- participate as fully and cooperatively as possible in discussions
- be open and honest with the other party



- be willing to negotiate and consider options.
- follow the ground rules set down for the mediation.

At any time during the mediation, you can tell the mediators that you would like to take a break.

## 9. Personalised Transport mediation

There are two principal mediation services available to the personalised transport industry in Queensland.

- The Department of Justice and Attorney-General offers a mediation service for complaints arising in the personalised transport industry.
- The Taxi Council of Queensland offers dispute resolution support, including mediation, for the taxi industry.

For more details about these mediation services, go to [www.tmr.qld.gov.au/personalisedtransport](http://www.tmr.qld.gov.au/personalisedtransport).

If you apply for mediation services through the Department of Justice and Attorney-General, your application will be considered by the Department of Transport and Main Roads and the Department of Justice and Attorney-General to confirm that it meets the requirements for the service (including that you have taken steps to resolve the dispute yourself) and that mediation is an appropriate step to resolve your dispute.

Once your application has been accepted, you will be contacted by the mediation service who will arrange for the mediation to take place. Please note that it could take up to two weeks for you to be contacted. The session will take approximately two hours. Precise timing will depend on the issues involved.

If your dispute is in the taxi industry, and you would like to seek mediation through the Taxi Council of Queensland, you can apply to the service by contacting the Taxi Council of Queensland. Visit [www.tcq.org.au](http://www.tcq.org.au) for contact details.

### 9.1 Application checklist

When you apply for mediation, make sure that you:

- Have attempted to self-resolve your dispute, including by contacting the other party directly and contacting the regulatory body where appropriate.
- Show evidence of these previous steps taken to try and resolve your dispute.
- Provide information relevant to your case. This may include your name, contact details, and a general overview of your dispute.
- Complete our mediation workbook, available online, in tandem with this guide.
- Make sure that you will be contactable by the mediation service.

These steps ensure that the service can focus their work on cases which are most likely to be helped by mediation.

## 10. Conclusion

By reading this guide and completing the accompanying workbook, you have ensured that you are fully prepared for your mediation. This will help your discussions and provide a greater chance of resolving some or all of the issues in dispute.

Congratulations and all the best!

Now let's see what happened in the two examples we described earlier.

If your dispute is in the taxi industry, and you would like to seek mediation through the Taxi Council of Queensland, you can apply to the service by contacting the Taxi Council of Queensland. Visit [www.tcq.org.au](http://www.tcq.org.au) for contact details.

## 10. 1 Example A – Part 2

Janine organises a mediation session with Fiona. In preparation for the meeting, she:

- identifies what she wants from the mediation, and what she would be prepared to accept
- thinks about how Fiona would be seeing the situation, and what her interests are
- tries to think of solutions or compromises that preserve the business relationship

During the mediation, Janine and Fiona explain the difficulties the situation is causing both of them. They find a mediated solution that sees Janine get more of the more profitable hours in her shifts. After the resolution, the two of them sign a variation to the original agreement and keep a copy each.

## 10. 2 Example A – Part 2

Steve is highly motivated – he needs to be reinstated as a driver and feels that he has unjustly lost his job. He writes to the booking entity to say that he is left with no option other than to seek a court hearing about unfair terms in his contract. He says that he will also seek media interest in his story as he has been denied natural justice.

The booking entity suggests that rather than go to court, they seek a mediated solution.

In preparation for the mediation meeting, Steve:

- identifies what he wants from the mediation, and what he would be prepared to accept
- thinks about how the booking entity would be seeing the situation, and what their interests are
- tries to think of solutions or compromises that allow him to keep driving

During the mediation, Steve points out his previously complaint-free record and that he has been a model driver and credit to the booking entity and would continue to be so if reaffiliated. The booking entity suggests that Steve could be reaffiliated if he is prepared to undertake some customer relations training. While Steve doesn't think he needs to do the training, he agrees to do the training and accept the loss of a week's income while he does the training.

# 11. Where to find further information or seek legal advice

You can receive legal information by contacting:

1. Legal Aid Queensland. Call 1300651188 or visit [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au). You can also ask them for the contact details of your local community legal centre. Community legal centres are non-profit organisations that work in partnership with Legal Aid Queensland to provide a range of general and specialist legal services to the people of Queensland.
2. A private solicitor. Call the Queensland Law Society on 07 3842 5842 or visit their website [www.qls.com.au](http://www.qls.com.au) for names of solicitors who can help.

## 12. Other Resources

[TMR Personalised Transport Complaints](#)

[Fair Work Australia](#)

[WorkSafe Australia](#)

[The Australian Taxation Office](#)

[Your Rights | Discrimination and Equality](#)

[Queensland Civil and Administrative Tribunal](#)

[The Queensland Law Society](#)

## 13. Looking after yourself

### **Get help with anxiety or depression**

Having a dispute can make you anxious or depressed. If you think you are suffering from anxiety or depression, it may help to talk with a professional:

- Visit your doctor (GP), who can refer you to a counsellor.
- Call Lifeline Crisis Support on 13 11 14 to speak with someone by telephone.