

Preparing for Mediation

Tips to get the most out of your session

By engaging a mediator, you and the other party are making a genuine effort to reduce the anxiety, stress and expense involved in resolving a dispute – and achieve a better outcome.

There are five advantages of using a mediator:

1. **Speed:** Using a mediator is usually much faster than going to court or a tribunal.
2. **Cost:** Mediation helps avoid the expense of courts, and parties represent themselves so there is no requirement for a lawyer to prepare or attend.
3. **Flexibility:** Mediation gives you more control over how the dispute is handled and resolved. You don't have to prove who is right or wrong but can focus on agreeing about how to move on.
4. **Confidentiality:** Mediation remains private and is not open to the public, which is not always the case in court hearings.
5. **Satisfaction:** Mediation is less formal, and you can ask questions about the process. You can't be 'in contempt' and if you follow the mediators' instructions and the mediation terms it is almost impossible to do the wrong thing procedurally and face unintended consequences like fines. Mediation is a less aggressive and adversarial way to resolve disputes.

As you prepare to get the most out of mediation the first question to ask yourself is – "Am I able to make decisions and sign the agreement if one is reached at mediation?"

If the answer is no, there is every chance the outcome could be derailed by someone who is asked to sign the agreement but hasn't been in the mediation, won't understand how that agreement was reached and how it considers what matters the most to both parties.

Not having the decision maker in the mediation can waste all the time and effort both parties have put into their negotiations. If the answer is no, contact the QSBC immediately and arrange for the right person to attend.

With that sorted, it is time to prepare in a way that lends itself to finding a solution:

- Consider what matters to you in resolving this and what doesn't:
 - Are you trying to minimise costs?
 - Obtain an apology?
 - Be given more time?
 - Are you trying to avoid spending any more time on this?
 - Sort out an issue so you can go your separate ways?
 - Have a continuing business relationship?
- Now consider those questions from the other party's perspective—what do you think is important to them?

Consider what you hope to achieve from the mediation. Are you being realistic? What will you do if you don't achieve these things, and is there a 'next best' alternative that could help you achieve at least some of what you hoped for? If you can't reach agreement at mediation, do you know the next steps to get the dispute resolved and how much time or energy those steps may involve?

We've found that going through this process before the mediation will help you communicate effectively during the session. The next steps have also proven to help communication:

- Prepare a written summary that you can have on hand and refer to, which briefly outlines:
 - what you hope to achieve from the mediation
 - the key facts of your dispute
 - documents, incidents, or calculations that support your position
 - collate supporting documentation that you may need to refer to in the mediation conference, including:
 - a copy of the lease
 - emails between the parties
 - financial documents for the business
- Be prepared to listen respectfully to the other parties' perspective and allow for a meaningful negotiation. Trust that you'll get your turn to speak and if you don't feel you have, tell the mediator during the conference—it is often too late after the mediation ends.
- Understand that the mediator has held mediations hundreds or thousands of times before, but this might be your and the other parties' first mediation, so it is ok to ask questions. You can ask to speak to the mediator privately if you want to understand something about the process, have concerns that you're not getting enough of a chance to speak, or are not sure what comes next.
- Allow enough time (remembering mediation may take between 1 to 4 hours).

If you require the assistance of an interpreter or reasonable adjustment at a mediation, you can inform the mediator before mediation.

Attending mediation

A mediation conference must be attended by the parties themselves (unless the party is a corporation). You may wish to have a support person attend mediation with you; however, you must ask the mediators' approval for that. By law, each party must conduct their own negotiations.

Mediation conferences arranged by the QSBC are conducted remotely via teleconference or videoconference. It is recommended the parties log onto the teleconference or videoconference 5 minutes prior to the scheduled start, to test the connection and be ready to start on time.

The mediator will ordinarily open proceedings by introducing themselves and providing a detailed outline of the process and what to expect. If you are not sure of something – ask questions.

The mediator will explain the role of each party, and will establish the ground rules for how to behave, when to request breaks, etc. The Commissioner expects both parties to negotiate in good faith and make a genuine attempt to resolve the matter.

It is not unusual for a mediation to be adjourned to give parties time to gather documents or information, seek legal or other advice, or go away and think about the options and how they align to what they hoped to achieve from mediation. Mediation is private and requires your full attention so you can't see clients or do chores like shopping or answer emails while in mediation.

After mediation

If you successfully reach an agreement, the key terms of the agreement must be recorded in writing. The mediator will require you to sign the agreement, and both parties will be provided with a copy.

Following the mediation, the mediator will give the parties a Notice of Mediation Outcome. The mediator will also provide a copy to the QSBC.

If you are unable to reach an agreement, or one party does not attend mediation, the mediator must [refer the matter to QCAT](#) (for a dispute under the *Retail Shop Leases Act 1994*), or a party may apply to QCAT or a court (for disputes not under the *Retail Shop Leases Act 1994*). Parties should seek their own independent legal advice on their further options.