

## Info Sheet 10

# Mediation

### What is mediation?

Mediation is a process in which a neutral third party (in SAT, a Member of the Tribunal) assists the parties to negotiate a resolution to their dispute or to identify and narrow the issues in dispute. The mediator helps to identify what has brought the parties into dispute, what their interests are, and what the options for resolution are.

### Why use mediation?

Mediation is a flexible and informal approach to settling disputes. It gives parties an opportunity to have their say and agree on an acceptable solution to the dispute.

Mediation can be faster and less expensive than a formal hearing and provides more flexibility for parties to reach their own solutions. Even if mediation does not result in the resolution of the whole dispute, issues are often narrowed or resolved, so that the final hearing is faster and cheaper.

### Which cases are mediated?

Each case is examined to see whether it is suitable for mediation.

The timing of mediation will vary from case to case, but there are clear advantages in commencing mediation as soon as possible. Mediation, and whether it is appropriate, will generally be discussed at the first directions hearing.

### Who will be the mediator?

A SAT member trained in mediation will act as mediator.

### Should I be represented at mediation?

There is no requirement that you be represented at mediation. It is an informal process and self-represented parties are generally well able to deal with the issues.

### Who may attend mediation?

All parties involved in the matter and their representatives, if representatives are allowed, and any relevant expert witnesses may attend the mediation.

Generally, other people may not attend the mediation unless all parties agree. In particular circumstances, other people, such as officers of relevant government authorities, may be invited or permitted to attend the mediation.

In review matters in the development and resources area, SAT may invite the Mayor or President of a local government to attend or nominate one or more councillors or the Chief Executive Officer of the local government to attend the mediation.

### Where will the mediation be held?

Most mediations are held at the SAT premises at 565 Hay St, Perth. However, on occasion, if it is in the best interests of the parties, the mediation may be held on the site of the issue in dispute or some other appropriate place.

### What will happen at mediation?

At the start of the mediation the mediator will explain what will happen. It usually begins with each party explaining how they see the dispute. Once each party understands the other party's

position, options for settlement can be developed and explored, and agreement reached.

Mediation is an opportunity for you to deal with your dispute. Even if you are represented, the mediator may talk directly to you and expect you to contribute.

## How do I prepare for mediation?

- Set aside the whole time the mediation is listed for, normally three hours.
- Be prepared to listen - you know what your case is about, but although you may think you know what the other side's point of view is, there is almost certainly more to it than you think.
- Be prepared to speak - the mediator will speak to you and in most cases expect you to talk to the other side.
- Be open minded - there may be options or solutions that you have not considered.
- Be prepared to make a decision - mediation empowers the parties to reach their own agreement. That requires that you accept responsibility for the solution.

## Is mediation confidential?

Yes, mediation is confidential. With very few exceptions, evidence cannot later be given of anything said in mediation. No record is kept on the SAT file of what is said, unless the parties agree, or unless details of the agreement are embodied in SAT's orders made following mediation.

In vocational matters, when a settlement is reached, the details of the settlement will usually be published on the SAT website.

## Does the mediation cost anything?

There is no additional charge for mediation as it is included in the application fee. However, if you choose to be represented by a legal practitioner, or if a professional witness attends to support your case, you may need to pay that person.

## Can my matter be referred directly to mediation?

Parties are encouraged to contact one another well before the first directions hearing to discuss whether their matter is amenable to mediation.

If the parties jointly write to SAT at least two days before the directions hearing and request that their matter be referred directly to mediation without having to attend the directions hearing, then SAT will consider the request.

If SAT agrees that the matter should go directly to mediation, it will advise the parties of the mediation date and any programming orders, and the parties will not have to come to the directions hearing.

However, if the parties do not receive a response from SAT to their request, then they should attend the directions hearing at the appointed time.

The parties should advise SAT in their letter of mutually available dates for mediation, the location where they suggest that the mediation should take place (usually at SAT or on site) and any programming orders that should be made to maximise the prospect of success.

For example, unless the issues in dispute are clear, SAT usually requires the respondent to file and give to the applicant a statement of issues for mediation or, in complex cases, a statement of issues, facts and contentions, before the mediation. Where appropriate, SAT may also invite councillors, officers of relevant authorities or other people to participate in the mediation. The parties should bring anyone who can assist in the discussion of issues to the mediation, but should advise SAT and each other of the people who will attend in advance of the mediation.

## How long will mediation take?

Mediations are generally listed for three hours, but more time may be available if required. Mediations can also be adjourned to continue at a later date.

## What happens if my mediation is successful?

The settlement may be reduced to writing and the mediator may make orders in the terms of the settlement.

If the dispute is resolved through mediation, that generally finishes the matter and you will not be required to make any further appearances before SAT.

Development and resources applications, SAT often invites the original decision-maker to reconsider its decision under section 31 of the State Administrative Tribunal Act 2004 (WA) having regard to further information provided or amendments proposed through mediation - see the Info Sheet 'Invitation for an original decision-maker to reconsider a decision'.

## What happens when mediation is unsuccessful?

If your mediation is unsuccessful, the matter will proceed to either another directions hearing or directly to final hearing, which will take place as soon as practicable after the mediation. Your matter will not be unduly delayed because you attempted to resolve it by mediation.

If your matter goes to a final hearing, the mediator will not be the person who hears the case (unless all the parties consent). A different member of SAT will hear the case who will know nothing about what was discussed at the mediation.