Resolving a complaint by mediation

Suggestions to help you prepare for a mediation
A mediation is essential under the *Information Act*

Section 111 of the *Information Act* provides that the Information Commissioner must not hold a hearing in relation to a complaint unless there has been an attempt to resolve the matter by mediation and that attempt has been unsuccessful.

Anything said, recorded or done in the course of a mediation is not admissible in any proceedings whatsoever.

If the matter is not resolved at the mediation, the Commissioner must hold a hearing in relation to the complaint.

**Who participates in a mediation?**

In most cases, the complainant will be expected to participate in person. If a complainant is a child, has a disability, or is deceased, another appropriate person may appear on the complainant’s behalf.

The respondent organisation must be represented by a person with the authority to represent the organisation. This might be the Chief Executive Officer or an appropriate delegate. In the case of a face-to-face mediation, a delegate must bring a written authority from the Chief Executive Officer stating that he or she has the power to make offers on behalf of the organisation.

With the Commissioner’s approval, a friend or legal practitioner may accompany either party but there should be no more than two people on either side.

You should set aside at least two hours for the mediation and ensure that this time is uninterrupted so you can give it your full attention. If you drive your car to the mediation, make sure that it is parked in place where you will not get a parking ticket.

**Preparing for a mediation**

Before participating in the mediation, it is important to be clear in your own mind about the facts of the complaint and to think about some possible solutions that may help to resolve it. This booklet aims to help you organise your thoughts for the mediation session. It should help you plan what to say and how to say it and ensure that you remember to raise all the points that you believe are important.
You should bring this booklet to your mediation to ensure that you cover all the important issues. The booklet is confidential and will not be given to the mediator or the other party.

**What is the complaint about?**

Briefly outline what you think the complaint is about.

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**How would you like to resolve the complaint?**

Briefly write what you would like to happen.

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**What do you want to happen and why?**

You should separate what you want to happen from why you want it to happen. Also think about any underlying concerns or interests that you may have.
What I want | Why I want it | Underlying concerns
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The other party’s point of view

Try to also think about the complaint from the other party’s point of view. Do you have an idea what their concerns and interests may be? How might you feel if you were in their position?

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<th>What the other party may want</th>
<th>Why the other party may want it</th>
<th>Underlying concerns they might have</th>
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Generating options

Now that you have identified interests and concerns, try to think about possible ways to resolve the conflict in light of why you want issues resolved rather than what you want.

Remember that the main aim of mediation is to seek an outcome that is beneficial to everyone. If you are not prepared to consider the other parties’ interests, then you will not be able to reach a resolution.

**Be realistic. Think about alternatives.**

It may help to think about long-term goals to put your current dispute into some perspective.

| Different options that may be proposed at mediation |
|---|---|---|
Is your future relationship with the other party a concern?

Write down your thoughts about a future relationship with the other party. Is it important to you that you and the other party can get along and talk to each other in the future?


What is the worst possible outcome for you if you can’t reach agreement?


What happens at a mediation?

The mediator will create a structured discussion whereby both parties will be able to air their concerns and generate options for resolving the matter by agreement. Both parties will have the opportunity to put forward their view. Usually the complainant will be given the opportunity to speak first.

The mediation process is confidential.

Preparing your opening statement

List your key concerns and issues to give yourself some notes to refer to when you are making your opening statement. Keep the points short and to the point.

Try to write objectively, without using negative words.
It may also be helpful to think about how you will talk to the other party during the mediation.

**Tips on how to communicate effectively**

- Listen carefully to what everyone is saying.
- Try to speak clearly and calmly.
- Take turns when speaking, don’t interrupt the other party or speak over them.
- If there is something you need to respond to, write it down.
- Make sure that you understand exactly what is being said.
- Ask questions if you don’t understand something.
- Maintain appropriate eye contact with the person you are addressing.
- Stay positive.

**After mediation**

At the end of the mediation, you may or may not have reached agreement. If you have, the mediator will assist everyone to draft the agreement.

If you don’t reach an agreement, the mediator will end the session, make a time for another mediation session, or refer the matter to hearing.

**Conclusion**

By reading and completing this booklet, you should have a greater chance of resolving some or all of the issues in dispute.

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This booklet is based on a workbook for mediation that was prepared by the Community Justice Centre. Anyone seeking to resolve a dispute should contact the CJC on Freecall 1800 000 473, via email on cjc.doj@nt.gov.au, or website www.cjc.nt.gov.au.