

What to expect at a mediation

Mediation is a structured negotiation process in which an independent person, known as a mediator, assists the parties to identify and assess options and negotiate an agreement to resolve their work injury damages dispute. This fact sheet will help you prepare for your mediation.

What to expect at a mediation?

The Personal Injury Commission mediates work injury damages disputes – a single sum of money that may be awarded to a worker to compensate them for economic loss resulting from a workplace injury.

Before commencing court proceedings for damages, a claimant must first attempt to resolve the dispute through mediation at the Commission.

The claim will be assigned one of the Commission's panel of mediators whose role it is to assist the parties to resolve the claim for damages.

The mediation commences when all the parties and their legal representatives, and any interpreter if required, meet in person or virtually. The mediator will explain the process and ensure the worker understands what is being discussed.

The mediator will have separate private conversations with each of the parties, if necessary, as this can help in resolving deadlocks in the negotiations.

What is the role of a mediator?

The mediator's role is to facilitate the discussion between the parties in an attempt to have them reach an agreement. They may also have separate private conversations with each of the parties if necessary. This can help in resolving any deadlocks in the negotiations.

Where an agreement cannot be reached at mediation the worker can pursue the claim by commencing court proceedings.

Mediators do not express views regarding the evidence and quantum of any offers. Their role is merely to break down barriers and encourage settlement that allows the parties to put the dispute behind them and to avoid the delays and costs associated with contested hearings in the District Court.

Why is mediation necessary?

Claimants must proceed through the mediation process if they wish to claim work injury damages.

Mediators bring the appropriate people together in a supportive environment to facilitate discussion. They may also discontinue a mediation if they feel it is no longer appropriate to mediate.

What happens during a mediation?

The mediator will explain the mediation process to all parties. There is no one set process – the mediator will consider the best process for your dispute, taking into account suggestions from all parties where possible.

The mediator will clarify each party's concerns and translate them into issues for discussion. The information discussed in these conversations will be used by the mediator to help determine how they will conduct the discussion and negotiation.

The mediator then identifies the areas where the parties are in agreement or disagreement and provides a structure for the negotiations.

Each party, either directly or through their lawyer, is asked to outline his or her position to the other party on each issue and together the parties explore options for resolving the points of difference.

Who attends mediation?

You must attend a scheduled mediation and if you have a lawyer, they must also attend. The insurer and employer are also required to attend the mediation.

If a party to a dispute is an organisation rather than an individual, it is essential those attending on behalf of the organisation know enough about the relevant issues in dispute to consider how the matter might settle. They must also have the authority to:

- make decisions about settling the dispute and
- enter into an agreement on behalf of the organisation.

If you are not legally represented, you may ask to bring someone for support.

What is my role in mediation?

It is your role to consider any offers of settlement with the assistance of your mediator and legal representatives so you can make the best-informed decisions about whether to reject or accept those offers.

You will need to advise the mediator whether you wish to accept or reject any offer and, if required, consider what counter-offer you might like to bring to the table.

It is important to remember that the aim of this process is to resolve the dispute. Coming to an agreement often requires both parties to compromise.

What if I feel uncomfortable with mediation?

You can ask to speak to the mediator alone. It is a normal part of the mediation process for the mediator to meet separately with each party on a confidential basis. You can express your concern immediately and the mediator will try to deal with it openly, or you can ask for the mediation session to be adjourned.

What happens when you are unable to reach an agreement?

If the parties are unable to reach an agreement, the mediator will issue a Certificate of Mediation.

The claimant may then commence court proceedings.

The conciliation and mediation model employed in the Personal Injury Commission plays an important role in the timely resolution of disputes and helps to avoid stressful, costly and protracted litigation.

Will anything from my mediation be published?

Mediators are not decision makers. They complete a Certificate of Mediation which records each party's final offers which might become relevant in the court proceedings on the question of costs. There is no publication of any Certificates of Mediation or other documents.

How should I prepare for mediation?

Parties may exchange a concise written statement of issues prior to the mediation. You would have already filed relevant documents before the mediation, including copies of all lay and expert evidence (including medical evidence) which has been served.

It is also helpful for parties and their legal representatives to discuss options to resolve the dispute and the implications for legal costs if the matter proceeds to hearing.

Be sure you understand the issues in the dispute, including the facts and sources of conflict.

Before the mediation, consider also:

- what is important to you in any resolution of your dispute
- how best to communicate this, both to the mediator and the other party
- what you want to say at the start of the mediation to help resolve the dispute
- what the other party might want and how you might accommodate what they want in any offer of settlement
- what you might offer in settlement.