

Administrative Appeals Tribunal

Mediation Process Model

Definition

Mediation is defined by the Tribunal as:

A process in which the parties to a dispute, with the assistance of a Tribunal Member, officer of the Tribunal or another person appointed by the Tribunal (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

The Mediation Process

The process has seven stages.

Stages 1–4 and 6–7 are usually conducted in joint session. Stages 1–4 focus on the past and present and stages 6–7 focus on the future. At all stages, the mediator will assist the parties to define their own interests and needs and understand those of the other parties.

Referral to mediation will usually take place following a conference.

1. Preparation and Mediator's Opening Statement

The opening statement includes a brief description of the role of the mediator and participants, the mediation process and any ground rules.

2. Parties' Statements and Mediator's Summaries

Each party presents a statement of the dispute from his or her perspective. Parties' statements are noted and summarised back by the mediator, checking with the parties for accuracy. The advantages of this procedure include:

- assuring the parties that their concerns have been heard by the mediator and each other;
- providing opportunities to create a positive social atmosphere conducive to effective negotiation; and
- providing two opportunities for an appreciation of each party's perspective.

Emerging needs and options for resolution are acknowledged for use later in the mediation.

3. Identification and Listing of Issues (Agenda Setting)

The use of a whiteboard or equivalent may allow parties to refer to the topics or issues during the mediation. The listed issues form the basis for more effective negotiation and co-operative problem-solving. The topics are expressed in neutral and, whenever possible, mutual terms.

4. Joint Exploratory Discussion

Parties are encouraged to focus on a topic for discussion or negotiation from the list of issues. The mediator encourages parties to communicate directly with each other. The parties' interests and needs are further clarified.

5. Private Meeting

Parties are provided with the opportunity to express opinions and give information privately to the mediator if they feel more comfortable doing so than in joint sessions. The private meeting can also assist parties to prepare to negotiate, generate options and ensure that particular proposals are realistic.

6. Joint Negotiation

This provides the basis for joint problem solving, exploring the agreement and may be followed by further private meetings and joint sessions where necessary.

7. Final Session

In the final session, the parties meet together in the presence of the mediator to discuss issues and possible options for resolution. The mediator facilitates final negotiations and fine-tuning of the agreement. Alternatively, the mediation may need to be adjourned or terminated.

Stages 1–4 usually take place in order. Other stages, with the exception of the concluding joint session are seen as optional depending on the circumstances.

If the matter has not resolved, the mediator will discuss with the parties the next steps to be taken, including the need to obtain any further material. If appropriate, directions may be issued by the Tribunal.

In all ADR processes the parties must act in good faith (section 34A).