



# Guide to application for mediation

## Under the Fair Trading (Retirement Villages Interim Code) Regulations 2019

Please read this information before completing the application form.

### What is mediation?

Mediation is an informal process where an independent mediator assists parties in dispute to achieve their own resolution.

### Is mediation compulsory?

Mediation is not compulsory. A party to a retirement village dispute cannot be compelled to attend mediation.

The Department of Mines, Industry Regulation and Safety, Consumer Protection Division ("Consumer Protection") may also decline to accept an application for mediation for a number of reasons, including where no attempt has been made to resolve the dispute using the village dispute process established under the Code. On assessing the circumstances of the case, Consumer Protection may also consider that mediation will not resolve the dispute. An application may also be refused if there is evidence of a breach of the legislation.

### Who mediates?

If an application for mediation is accepted, Consumer Protection will appoint a mediator and give written notice to the parties of the name of the mediator and the time, date and place for the holding of the mediation.

If the appointed mediator is not preferred by the parties, then the Commissioner may appoint another.

### How long does it take?

Within 10 working days of receiving an application for mediation, Consumer Protection must:

- issue the notice referred to above at least 5 working days before the mediation is to take place; or
- give written reasons for any decision to refuse to accept the application.

### What is the cost?

Unless the Commissioner decides otherwise, the costs of the mediation of a dispute must be shared equally between each of the parties to the dispute.

### Who attends the mediation?

It is important that all relevant people involved in the dispute attend the mediation.

The mediator may permit a party to be represented or assisted at the mediation by another person (other than a legal representative) if the party is unable to appear personally or adequately present their side of the issues of the dispute.

### What is the role of the mediator?

The mediator's role is to:

- help identify the issues in dispute;
- assist the parties to understand relevant legislation such as the Fair Trading (Retirement Villages Code) Regulations 2015, *Retirement Villages Act 1992*, the residence contract or residence rules;
- suggest options or strategies by which the issues may be resolved.

The mediator does not judge who is right or tell the parties what to do.

### Is the mediation confidential?

The Code ensures privacy and confidentiality by providing that anything said, done or produced at the mediation cannot be:

- disclosed to another person; or
- given in evidence in any later proceedings without the agreement of the parties in dispute.

The only exception is where the parties reach a mediated agreement, in which case the mediator is required to give a copy of the signed agreement to Consumer Protection.

## How is the mediation concluded?

The mediation ends if:

- any party, by written notice to the Consumer Protection, withdraws from the mediation;
- the parties resolve the issues in dispute by agreement; or
- the mediator is satisfied that it is unlikely that the parties will be able to resolve the issues.

As an indication of good faith and to clarify the outcome, any agreement reached by mediation is to be put in writing and signed by all the parties. However, the agreement is not legally binding on those involved.

If no settlement is reached or an agreement breaks down, any party can apply to the State Administrative Tribunal (SAT) for a formal hearing, if the dispute is one in which the SAT has jurisdiction.

**Consumer Protection** | Department of Mines, Industry Regulation and Safety

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