

# Mediation Guidelines



SOUTH  
AUSTRALIAN  
**EMPLOYMENT  
TRIBUNAL**

## 1. Introduction

Where a case is before a Presidential member for hearing and determination, the case, or any aspect of it, may be referred to mediation pursuant to s 46 of the *South Australian Employment Tribunal Act 2014* (SAET Act).

## 2. Purpose

Mediation is an informal process in which parties to a dispute with the assistance of an impartial mediator identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement.

The purpose of mediation is to achieve a quick and cost effective settlement or at least refine or narrow the issues in dispute to avoid the stress and expenses of proceeding to trial before a Presidential member.

Mediation is a separate and distinct process that differs from conciliation and settlement conferences.

## 3. Procedure

Unless otherwise determined by the President, the mediator will be a Presidential member. If so, all contact to the mediator should be to that Presidential member's Chambers.

Whilst the procedure will ultimately be determined by the mediator, it is expected that the process will be more facilitative than advisory or evaluative in nature.

The mediator's role is to facilitate direct communication between the parties.

The mediator has no advisory or determinative role regarding the content of disputes and is not tasked with expressing views as to the likely outcome of the dispute if it proceeds to trial before a Presidential member.

## 4. Preparation

Prior to mediation, the parties may be required to attend a Pre-Mediation directions hearing. At that hearing, directions may be made to facilitate the mediation process, and to ensure that the parties are fully prepared for mediation day.

Mediations will generally be listed for one half day, or one full day.

One party may be ordered to prepare an agreed Mediation Book which will contain all necessary documents to be referred to in the mediation. The Mediation Book will remain confidential to the mediation. The parties may be ordered to prepare Position Statements setting out their respective cases including a history of settlement negotiations and settlement offers. In the ordinary course, the Position Statements will form part of the Mediation Book.

Unless otherwise ordered by the mediator, the mediation will be conducted in person at SAET's premises. The mediator may permit parties to attend by videoconference or teleconference.

If parties have any questions, concerns or special needs for the mediation, they should raise them with the mediator as soon as possible prior to mediation.

## **5. Role of the parties**

Parties and their representatives will do all things reasonably necessary for the proper, expeditious, and cost-effective conduct of the mediation.

Parties will comply with any direction made on procedural matters without delay.

Parties will attend the mediation with full authority to make decisions themselves and reach settlement.

The mediator may authorise the attendance of persons other than the parties and their legal representatives at the mediation.

Parties and their representatives are expected to actively participate in the mediation, show respect and courtesy in communicating, and negotiate in good faith with a view to reaching settlement.

The parties are encouraged to communicate openly. Mediation attracts the same privilege to defamation as court and tribunal proceedings. Evidence of anything said or done during mediation is inadmissible in proceedings before the Tribunal, except by consent of all parties to the proceedings.

## **6. Mediation Day**

The parties are required to attend the mediation at least 15 minutes prior to the allotted start time and are to wait to be shown into the mediation room.

The mediator will:

- commence mediation in joint session, unless good reason exists not to;
- commence by welcoming the parties and introducing those in attendance to each other;
- explain the mediator's role;

- explain that mediation is a confidential and *without prejudice* process, and will seek a verbal undertaking in that regard from those present; and
- explain the mediation process.

Parties are expected to make brief opening introductions in turn setting out the relevant background, identifying the issues in dispute from their perspective and outlining what outcome they seek to achieve.

During their opening, each party will have the opportunity to speak without interruption. The mediator may assist the parties by asking them questions to clarify specific points.

After each party has made their opening, the mediator will facilitate direct communication between them and assist them to understand each other. The mediator will encourage an open discussion about the issues raised.

The mediator will ensure that breaks are taken during mediation, if necessary, to enable parties time to consider the issues and their positions.

The mediator may meet with the parties separately from each other in private sessions. These private discussions are an opportunity to confidentially explore the issues in dispute, party interests and positions, discuss strengths and weaknesses, benefits and risks, and to develop options for resolution in preparation for negotiation. The mediator may also meet with the parties without their representatives present.

The mediator will facilitate direct negotiations between the parties and may lead discussions with all parties together in joint session or may relay offers between the parties.

The mediator may adjourn the mediation to a later date, either under the conduct of the same or a different mediator.

## **7. Reaching agreement**

If an agreement is reached, in whole or in part, it will be recorded in writing for the parties to sign on mediation day. Orders may be made at a later time to finalise the proceedings.

If an agreement is not reached, the mediator will discuss with the parties what the next steps in the proceedings will likely be including how to prepare for trial.

The mediator will not hear and determine the proceedings after conducting a mediation unless all parties agree to his or her continued participation.

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These Guidelines have been approved by the President of the South Australian Employment Tribunal in accordance with r 10(2) of the *South Australian Employment Tribunal Rules 2022*

Dated this 13<sup>th</sup> day of July 2022

A handwritten signature in green ink, appearing to read 'S. Dolphin', with a long horizontal stroke extending to the right.

**The Honourable Justice Steven Dolphin**  
**President**