



## Administrative and Equal Opportunity Division Guideline December 2025

# Resolution Processes

## What does this Guideline explain?

1. This Guideline applies to proceedings in the Administrative and Equal Opportunity Division (AEOD) of the Tribunal.
2. It explains what types of resolution processes are used in cases in the AEOD.
3. The Guideline answers the following questions:
  - a) What is a resolution process?
  - b) What is the aim of a resolution process?
  - c) What kinds of resolution processes are used?
  - d) What types of cases are referred to mediation?
  - e) Where does the mediation take place?
  - f) What do the parties have to do before a mediation?
  - g) How much time is allocated for mediation?
  - h) Who is the mediator?
  - i) Who pays the mediator?
  - j) Who comes to the mediation?
  - k) What happens at the mediation?
  - l) What is the mediator's role?
  - m) Is the mediation confidential?
  - n) What are the possible outcomes of mediation?
  - o) What do some of the words in this Guideline mean?

## What is a resolution process?

4. A resolution process is 'any process in which parties to proceedings are assisted to resolve or narrow the issues between them'.

## What is the aim of a resolution process?

5. The aim of a resolution process is to resolve all or some of the issues in dispute, consistent with the Tribunal's guiding principle which is to 'facilitate the just, quick and cheap resolution of the real issues in the proceedings'.

## What kinds of resolution processes are used?

6. The Division uses both **informal** and **formal** resolution processes.
7. **Informal resolution processes** are used in directions hearings, case conferences and final hearings to help parties identify, narrow or resolve the issues:
  - **Case conferences** are held in access to information, privacy and anti-discrimination cases. At a case conference, the Tribunal Member will ask the parties to identify the issues and then explore ways to resolve the dispute.
  - **Directions hearings** are held in most cases in the AEOD. The purpose of a directions hearing is to identify what steps need to be taken by the parties to prepare the case for hearing. Directions hearings also provide an opportunity for the parties to narrow the issues and find ways to settle the case.
  - If a case does not settle at an early stage, it will be listed for a **final hearing**. At a final hearing the Member may explore resolution options with parties.
8. In certain cases, a Member may refer the parties to a more **formal alternative dispute resolution process** called **mediation**. Mediation is a structured negotiation process in which the mediator, as a neutral and independent person, assists the parties to come to an agreement about how to resolve their dispute.

## What types of cases are referred to mediation?

9. A Member can refer any case in the Administrative and Equal Opportunity Division to mediation if it is suitable to do so. Mediations most commonly occur in anti-discrimination cases, and review applications about access to information, privacy and state revenue. In exceptional circumstances the Tribunal may offer mediation in care and protection cases.
10. If a child or a vulnerable person is involved in the case, the Tribunal may appoint a person to represent that person at a mediation. For more information, refer to [NCAT Guideline 2: Representatives for people who cannot represent themselves \(GALs\)](#) (PDF) and the [NCAT Fact Sheet: What is a separate representative](#) (PDF).

## Where does the mediation take place?

11. Most mediations are conducted by audio visual link. A mediation may be conducted in person where it is appropriate to do so.

## What do the parties have to do before a mediation?

12. Each party and the mediator must sign an Agreement to Mediate. The agreement covers issues such as co-operation and confidentiality.

13. Before the mediation, each party should make a list of their concerns, what they think the other party's concerns may be and the options for resolving the case which address those concerns. Parties are also encouraged to think about what will happen if the case does not settle.
14. Parties should bring any relevant documents such as medical reports or investigator's reports to the mediation. In some cases, parties may be directed to prepare a statement of issues, provide some evidence or exchange other information before the mediation.

### **How much time is allocated for mediation?**

15. The Tribunal allocates either half a day or a whole day for the mediation.

### **Who is the mediator?**

16. The mediator will be a Member of the Tribunal or a person on the Tribunal's list of mediators who has relevant training and experience.
17. Parties can also choose to use an external mediator instead.

### **Who pays the mediator?**

18. If the mediator is a Member or one of NCAT's mediators, generally the Tribunal pays the mediator.
19. If the parties organise an external mediator, they will need to agree between themselves on how the mediator will be paid.

### **Who comes to the mediation?**

20. The mediator and each party attends the mediation.
21. If a party is a corporation or a government agency, a person who has authority to settle the matter should sign the mediation agreement and attend if possible. If a person with authority to settle the matter is not able to attend, such person should be available to give instructions by phone during the mediation.

### **What happens at the mediation?**

22. The mediator will normally start by explaining their role and what will happen on the day. Each party will be given the chance to talk about what has happened and how that has affected them. The other party will be asked to listen carefully so that they understand the other person's point of view. The mediator will then help the parties think of options for resolving the case that are likely to be acceptable to everyone.
23. The mediator may speak to the parties separately to help them think about realistic options for resolving the case.
24. The mediator will then bring the parties together to see if they can come to a final agreement.

## **What is the mediator's role?**

25. The mediator's role is to help the parties identify their concerns, think about the options for resolving the dispute and reach an agreement that is acceptable to all parties.
26. The mediator is neutral and independent. Generally, the mediator will not give their opinion about the case. But if a party wants some guidance about the strengths and weaknesses of their case, they can ask the mediator for that guidance. Only mediators who are lawyers with expertise in the subject matter of the dispute will provide that type of information. The information will generally be given in a private session without the other party or parties present.

## **Is the mediation confidential?**

27. In general, anything that happens in a mediation and documents prepared for a mediation are confidential. This means:
  - A party cannot talk about what happened at the mediation or give a document prepared for mediation to anyone who was not there.
  - With a few exceptions, the parties cannot talk about what happened at the mediation at the hearing before the Tribunal. This allows the parties to make disclosures and openly discuss settlement proposals at the mediation, on what is known as a 'without prejudice' basis.
28. Some exceptions to the general rule about confidentiality will be set out in the parties' Agreement to Mediate. Exceptions can also be found in Schedule 1 to the Civil and Administrative Tribunal Regulation 2022.

## **What are the possible outcomes of mediation?**

29. If the case does not settle, or if all of the issues are not resolved:
  - The case will be listed for directions to set a date for the final hearing.
  - The mediator will not proceed to hear the case.
30. If the case settles:
  - The parties should write down what they have agreed to and sign it, preferably on the day of the mediation.
  - In most cases, the respondent will also ask the applicant to sign a Deed of Release which records the agreement and requires the applicant to withdraw the application.
  - Alternatively, parties may ask the Tribunal to make orders that everyone agrees should be made. Those orders are called 'consent orders'. The Tribunal can only make orders that it would have been able to make if the case was decided after a hearing.

## Effective Date

11 December 2025

## Notes

You must use the latest version of this Guideline. The latest version of this Guideline is on the [NCAT website](#).

The law that applies to the information in this Guideline can be found in:

- Section 37 of the *Civil and Administrative Tribunal Act 2013*
- Schedule 1 to the Civil and Administrative Tribunal Regulation 2022
- Clause 37 of the Civil and Administrative Tribunal Rules 2014
- Section 59 of the *Civil and Administrative Tribunal Act 2013*.

The Act, Regulation and Rules can be accessed on the [NSW Legislation website](#).

**Armstrong J**  
**President**

11 December 2025