



## Lower-value WHRS claim mediation

This information sheet provides you with details of the mediation process for lower-value WHRS claims (WHRs claims whose estimated or actual cost of repair is \$20,000 and below).

### OVERVIEW OF MEDIATION PROCESS

Mediation is a voluntary and informal process where an impartial person (the mediator) helps people with a dispute work together to find their own solution. Mediators are independent, professional people and their focus is on helping parties solve problems. You, together with the other people in the mediation, decide your own outcome.

The mediator will help the parties to work out what the issues are, the positions of each party and possible options for resolution. The mediator will not make a decision for you or anyone else at the mediation, or give legal advice of any kind. Any agreed settlement is binding on those agreeing to it and can be enforceable in the District Court.

The settlement advisor will identify any further information required or further steps that need to be taken before the mediation, although most of this work will have been completed in the initial contact stage of the dispute resolution process. The mediation itself should only take half a day. Mediations will be held in locations as close as practicable to the property involved.

### CHOOSING MEDIATION

Mediation has several advantages.

- It requires a constructive, co-operative approach.
- Parties can develop and agree on workable and mutually acceptable solutions – often outcomes that could not be achieved at adjudication or court.
- Parties can discuss matters outside the scope of the adjudication hearing.
- Confidentiality applies to anything disclosed or agreed to in mediation.
- Mediation is likely to be less expensive than adjudication or court action and the process is relatively quick compared with adjudication or the courts.
- Even if mediation does not result in agreement, the process of isolating issues and agreeing on facts can be of assistance if the claim continues to a hearing.
- The presence of the mediator can ensure power imbalances between parties are minimised.

However, you need to consider whether mediation is right for you before deciding to go ahead with it. The table below lists some of the benefits and the limitations of mediation.

MEDIATION BENEFITS	MEDIATION LIMITATIONS
<ul style="list-style-type: none"> <li>• The process is confidential</li> </ul>	<ul style="list-style-type: none"> <li>• Can be as stressful as a judicial process</li> </ul>
<ul style="list-style-type: none"> <li>• The process is a lot more informal than a Tribunal hearing and allows discussion on a wider range of topics</li> </ul>	<ul style="list-style-type: none"> <li>• It is not helpful where the parties do not participate with respect and in a rational way</li> </ul>
<ul style="list-style-type: none"> <li>• Often cheaper than going to a Tribunal hearing or to court</li> </ul>	<ul style="list-style-type: none"> <li>• There are no guarantees of a settlement and avoiding the Tribunal hearing or court action</li> </ul>
<ul style="list-style-type: none"> <li>• Gives you control over resolving your dispute</li> </ul>	<ul style="list-style-type: none"> <li>• Participation can be futile if you have not clearly identified your position and are not fully committed to the process</li> </ul>

## **TIME LIMITS FOR MEDIATION**

There are statutory time limits to mediation that ensure the WHRS claim is not delayed without good reason. A stand-alone house claim is allowed 20 working days for mediation under the WHRS Act. A multi-unit complex or stand-alone complex is allowed 40 working days under the WHRS Act. The timeframe is taken from the date the claimant signs the referral to mediation form.

The time allowed by the WHRS Act can only be extended by application to the Chief Executive of the Department of Building and Housing with support of the mediator. It may only be allowed where it is evident that every effort was made by the claimant and parties to settle in the time provided and that a settlement will occur if further time is allowed. It is important that WHRS claims are resolved as quickly as possible to ensure houses are repaired as quickly as possible. The time limits on mediation make sure the WHRS claim can be resolved in a reasonable timeframe.

## **ATTENDANCE OF PARTIES**

Mediation is voluntary so there is no legal requirement for people to attend. However, parties should consider the cost and time involved if mediation is unsuccessful and the WHRS claim proceeds to adjudication when making their decision. Many parties choose to participate in mediation so that they have some choice in the outcome. Mediation is about finding a solution that everyone can live with.

## **PARTICIPATION OF PARTIES**

Effective mediation is conducted face to face. Active participation with communication by all parties is essential if you are going to reach an agreement. Mediation requires good intentions and patience on the part of all parties.

Mediation assumes that all the parties are informed and able to reach agreements that suit their needs. Control of the dispute and the terms of the settlement remain in the parties' hands.

## **ROLE OF THE MEDIATOR**

The mediator acts as a facilitator, communicator, motivator and scene-setter, creating the appropriate

environment for the process to be effective. The mediator is independent of the parties and Weathertight Services and will not make any decisions, offer legal advice or coerce parties into an agreement. The mediator will make sure the parties understand what they are agreeing to.

## **PREPARING FOR MEDIATION**

It is very important to be prepared for the mediation. It is difficult to get the best out of mediation if you just turn up on the day without any thought as to how you will present your position.

Before the mediation, make sure that:

- you understand the process
- you have all the information you need to represent your interests
- you have clarified the role of any support people with you, and you understand how they can help you in the mediation (see 'Should I have a representative?' below).

Some other things you may want to consider during your preparation are:

- what you want out of the mediation
- what are your needs and concerns
- what are the other parties concerns
- any potential solutions (however, it may not be helpful to be locked into particular solutions at the beginning of the mediation).

Parties must be fully authorised to participate and settle on the day. For example, if you represent a company or trust, you must make sure you have authority to sign an agreement on their behalf.

Make sure you bring along any documents that you want to refer to at the mediation. All of these should be shared with the other parties before the mediation happens, so that there are no surprises on the day.

The assessor's report is likely to be involved as a document in the mediation. It is a neutral document that claimants and parties are able to refer to. Any party can agree or disagree with the report in whole or in part.

## **ROLE OF REPRESENTATIVES**

Only you can discuss your needs and priorities and reach agreements. If you do wish to have a representative attend in your place, make sure that they have full authority to settle and that you have fully discussed the WHRS claim with them beforehand. Settlement proposals can be of an unexpected and unpredictable nature. If representatives are restricted to settling within strict guidelines determined in advance, settlement might not be reached on the day.

## **ROLE OF EXPERTS AND LEGAL ADVISORS**

You are able to take a building expert or other support person if you wish, but please make sure the settlement advisor is aware of how many people you will have within your party. You will also need to introduce them to the mediator on the day. Please note that people cannot just wander in and out of the mediation. The settlement advisor will be able to tell you which other parties have indicated that they have support people.

While it is not necessary to have legal representation at the mediation, you are able to. You may also wish to consult a legal representative to prepare you for mediation or have a legal representative available by fax or phone to provide advice on any proposed settlement.

## **HOW WILL THE MEDIATION RUN?**

The following is how a typical mediation may run but, as mediation is a flexible process, it may be run slightly differently according to the style and preferences of parties and the mediator.

- The mediation usually starts with an introduction by the mediator about what the aim of the day is and how the mediation will progress. They will also set some ground rules that will help the mediation move smoothly.
- The mediator will then invite all the parties to introduce themselves and give a brief statement on what they feel the main issues are for discussion. This will give an opportunity for each party to hear the others' perspectives.
- The mediator will confirm the issues that are agreed on and help parties to identify the issues that need to be discussed. They will ensure all the issues are

fully discussed so everyone understands each other's views.

- Once the issues have been discussed, the mediation will move on to exploring options. These will be evaluated by the parties so a solution can be found that will satisfy as many parties as possible. From these discussions a settlement can be written up.
- You will have the opportunity to discuss matters privately during break-out sessions. The sessions can be with yourself and your representative, with the mediator or with other parties. The mediator will respect anything discussed in confidence. While these private meetings are taking place, the mediation will be suspended. Everyone will have the same access to the mediator if they require it.
- All parties will receive a copy of the signed settlement agreement. This way everyone knows what has been agreed to and what each party needs to do to meet any obligations in the agreement. A statutory declaration will also be signed by the mediator, which enables the agreement to be enforced through the District Court.

## **GETTING THE MOST OUT OF THE MEDIATION**

- Turn off your mobile phone and pager.
- Try to understand the other parties and make sure they understand you.
- Try to work from agreed sets of information and facts.
- Actively participate rather than just reacting to other parties' actions.
- Remember that the other parties are likely to be feeling the same pressure and frustrations as you.
- Allow everyone to speak without interruption and be aware of how long you speak so everyone can participate in the discussion.
- Make sure that you are speaking for yourself rather than dictating what other parties should be saying.
- Try to stand in the shoes of other parties and see things from their points of view.
- Clarify any point you are unsure about with the parties or the mediator.
- Stay to the end unless you wish to formally leave the mediation.

## **CONFIDENTIALITY**

All verbal or written offers, any discussions that take place during the course of mediation and anything produced solely for the purpose of the mediation remain confidential. They do not affect your rights should issues remain unresolved and disputes proceed to the Tribunal or another court.

The mediator may meet separately with any party or parties and may be offered information that is to be kept confidential from other parties.

The mediator is required to retain a copy of the settlement agreement for forwarding to Weathertight Services for confidential storage after the mediation. Please note that under section 86(2)(a) of the Weathertight Homes Resolution Services Act 2006, information may be gathered from settlement agreements for research or educational purposes so long as the parties and specific matters in issue are not identifiable.

## **ADVANCE NOTICE OF NON-ATTENDANCE REQUIRED**

If, for any reason, you will not be attending the mediation, you should contact the settlement advisor at least 72 hours in advance of the mediation. This allows all the parties to know who will be attending in advance and allows for any necessary re-scheduling.

## **OUTCOMES**

It is important to enter any dispute resolution process with an open mind and realistic expectations. A settlement can only be reached if you find a mutually agreeable solution with some or all of the parties.

## **UNABLE TO REACH SETTLEMENT**

If you cannot reach a settlement in the allowed time and a time extension is not granted, the claimant may choose to apply to the Weathertight Homes Tribunal for adjudication, which is usually done on paper rather than by a hearing.