



# Lower-value claim negotiation

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

## OVERVIEW OF NEGOTIATION PROCESS

Negotiation is an informal, flexible way of finding a solution between the parties involved in a claim. We strongly recommend that any agreement negotiated is put into writing to protect all parties. A Department of Building and Housing (the Department) mediator can sign such an agreement, if requested by the parties, after it has been put together. This makes the agreement enforceable in a District Court.

## ROLE OF THE SETTLEMENT ADVISOR

If you choose to proceed with negotiation, your settlement advisor will discuss with you how a negotiation may work for you. However, the settlement advisor will not attend or chair any negotiation session.

Some things the settlement advisor can do are:

- inform you of common pitfalls
- provide a template for the settlement
- arrange a venue for you and all the parties to meet

- help you with how to conduct the discussions
- facilitate the exchange of position statements
- provide a mediator to sign a statutory declaration after a written agreement is reached to make the agreement enforceable in the District Court.

## CHOOSING NEGOTIATION

Negotiation 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 in adjudication or court.
- Parties can discuss matters outside the scope of an adjudication hearing.
- Negotiation is likely to be less expensive than adjudication or court action and the process is quick compared with adjudication or the courts.
- Even if negotiation does not result in agreement, the process of isolating issues and agreeing on facts can be of assistance if the claim continues to mediation or adjudication.

However, you need to consider whether negotiation is right for you before deciding to go ahead with it.

The table overleaf lists some of the benefits and the limitations of negotiation.

BENEFITS	LIMITATIONS
<ul style="list-style-type: none"> <li>• Negotiation is completely in the power of the parties, for example, parties could arrange to negotiate on a weekend, or by phone, which may not be possible with a professional mediator</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>• Can be arranged quickly</li> </ul>	<ul style="list-style-type: none"> <li>• There is nothing to force parties to negotiate</li> </ul>
<ul style="list-style-type: none"> <li>• The process is a lot more informal than an adjudication hearing</li> </ul>	<ul style="list-style-type: none"> <li>• There is no impartial person to help guide the process as in mediation</li> </ul>
<ul style="list-style-type: none"> <li>• There is a chance for parties to decide the outcomes for themselves</li> </ul>	<ul style="list-style-type: none"> <li>• Negotiation does not work where there are power imbalances between parties</li> </ul>
<ul style="list-style-type: none"> <li>• Cheaper than going to a Tribunal hearing or to court</li> </ul>	<ul style="list-style-type: none"> <li>• Is stressful, as is any dispute resolution process</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>
<ul style="list-style-type: none"> <li>• The process can be tailored to suit your needs</li> </ul>	<ul style="list-style-type: none"> <li>• Some issues may not be negotiable for particular parties</li> </ul>

## **ATTENDANCE OF PARTIES**

Negotiation is voluntary so there is no legal requirement for people to negotiate. However, parties should consider the cost and time that could result if it is unsuccessful and the claim is drawn out longer, possibly even going to adjudication.

## **PARTICIPATION OF PARTIES**

An effective negotiation will usually be conducted face to face. Active participation with communication by all parties is essential if you are going to reach an agreement. Negotiation requires good intentions and patience on the part of all parties.

## **PREPARING FOR NEGOTIATION**

While negotiation is an informal process, it is very important to be prepared for discussions with all parties on the day.

Before the negotiation make sure that you:

- understand the process
- have all the information you need to represent your interests
- have clarified the role of any support people with you, and you understand how they can help you in the negotiation.

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

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

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

The assessor's report is likely to be involved as a document in the negotiation. 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. However, if you do wish to have a representative act in your place, make sure that they have full authority to settle and that you have fully discussed the 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, then settlement might not be reached on the day.

You can have any support people you wish, but you should discuss who will be present with all the other parties, so that no one feels surprised or disadvantaged.

## **HOW NEGOTIATIONS WORK**

A private negotiation will run in different ways depending on how many parties are involved, how complicated the issues are, and how the parties choose to structure the negotiation. The following is merely a guide to how a standard negotiation may run when parties meet in person. Although negotiation is informal, one that is run to some kind of schedule and with a clear structure is more likely to achieve a settlement that all parties are willing to commit to.

- Chairperson – The claimant will act as the 'chairperson' for the negotiation. They will have discussed with the settlement advisor a way of structuring the discussion so that all parties are able to put their points across.
- Ground rules – They will usually start with an introduction about what the aim of the negotiation is and how it will progress. They will also set some ground rules that will help the discussion move smoothly. It is important that all parties commit to following these rules. They are not restrictive, but merely common sense designed to help all parties get a chance to participate fully and get their point across.
- Introduction and initial discussion – Then it is time for each party 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.

- Summary of agreed issues – The claimant, in consultation with the parties, will then summarise the issues that are agreed on and will help to identify the issues that need to be discussed. Issues should be fully discussed so everyone understands each other's views.
- Exploring options – Once the issues have been discussed, it is time to move on to exploring options. These should be evaluated so a solution can be found that will satisfy as many people as possible.
- Set break – It may be helpful to have a set break in the discussions so that everyone can have time to themselves to make sure they understand what is happening and to possibly discuss things privately with their support people.
- Settlement – the Department strongly recommends that a settlement is written up. The settlement advisor will have provided a form that can be used to write the settlement up. All parties will be sent a copy of the signed settlement agreement after the negotiation. 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 can also be signed by a Department mediator, which enables the agreement to be enforced through the District Court. The settlement advisor can arrange for this to happen.

## **TYPES OF SETTLEMENT**

In general, monetary agreements are more successful than agreement for work, as work agreements are difficult to enforce for the claimant and can cause issues when work is delayed for any reason. If work is delayed, this can also cause issues if agreements with other parties were dependent on the work agreement.

Despite this, negotiation agreements should be flexible. If a work agreement is the best solution, you should clearly spell out the expectations around payment and timeframes and agree a back-up monetary amount should the work agreement fall through for any reason.

## **GETTING THE MOST OUT OF THE NEGOTIATION**

- If it is clear that there is a power imbalance in the room or that the discussions are too emotional, the parties should agree to stop and continue at a later date with a mediator. It is better to delay the discussions than to lose the goodwill and willingness to participate of those involved. If a party feels they signed an agreement under duress, then the agreement is less likely to succeed.
- 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 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 other parties.
- Stay to the end unless you wish to formally leave the negotiation.

Negotiation is flexible. If the parties need to break up to take advice or calm down, this can be done. There are no time limits for negotiation under the Weathertight Homes Resolution Services Act 2006 (the Act) and the parties can control how the negotiation takes place. The settlement advisor is available during work hours for any assistance or support required.

## **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 at negotiation, mediation is the next step. If private negotiation has already been attempted, it often provides a good background to settle your problems at mediation with the assistance of a professional and impartial mediator.