

## QCAT Practice Direction No. 8 of 2025 QCAT PANEL MEDIATIONS

### INTRODUCTION

1. This Practice Direction, issued pursuant to s 226 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act'), defines the process for mediations conducted by a QCAT Panel Mediator.<sup>1</sup> It supplements Chapter 2, Part 6, Divisions 3 and 4 of the QCAT Act.
2. A mediation conducted under this Practice Direction is a *QCAT Panel Mediation* and the person who conducts it is the *Mediator*.
3. A "mediation" is a process in which the parties use a mediator to help them resolve their dispute by negotiated agreement without adjudication.

### PRELIMINARY

4. The Tribunal is committed to resolving disputes in a way that is accessible, fair, just, economical and efficient. To further that objective, the parties to a dispute may agree to refer their matter to mediation or the Tribunal may direct parties to engage in mediation.
5. This Practice Direction applies only to a QCAT Panel Mediation and does not apply to a mediation or compulsory conference<sup>2</sup> conducted by a Member or Adjudicator of the Tribunal.

### PARTIES AGREE TO GO TO MEDIATION

6. The parties to a dispute may agree to refer their dispute to a mediation.
7. If the parties agree to the referral and to the Mediator to be appointed, they must file a *Request for Referral to Mediation by Agreement* (Form 71).
8. The Tribunal or Principal Registrar will then consider whether to make an order referring the matter to mediation.
9. The Tribunal or Principal Registrar may make such orders and directions considered appropriate about the mediation, including to direct the parties to attend mediation by a certain date to be conducted by the Mediator agreed to by the parties at a venue to be determined between the Mediator and the parties. The parties must give a copy of any such orders and directions to the Mediator within two (2) business days of their receipt.

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<sup>1</sup> The list of QCAT Panel Mediators is available on the QCAT website.

<sup>2</sup> QCAT Act, s 67.

## PARTIES DIRECTED TO GO TO MEDIATION

10. The Tribunal or Principal Registrar may refer<sup>3</sup> a matter to mediation at any stage of a proceeding on the application of a party to the proceeding or on its own initiative.
11. A party may apply for referral to mediation by filing and giving each other party an *Application for Referral to Mediation* (Form 72).
12. The *Application for Referral to Mediation* (Form 72) must also be used where the parties agree to mediation, but cannot agree on the Mediator.
13. If a party applies for referral to mediation, it must give a copy of its application to each other party, and each other party must then file and give to each other party a *Response to Application for Referral to Mediation* (Form 72A).
14. In deciding whether to refer a matter to mediation, the Tribunal or Principal Registrar will consider relevant factors including:
  - (a) the nature and scope of the issues in dispute;
  - (b) the stage the matter has reached;
  - (c) the resources of the parties; and
  - (d) the views of the parties.
15. The Tribunal or Principal Registrar may appoint the Mediator for the matter and in making the appointment will take into account such matters as it thinks fit, including the matters specified by the parties in Forms 72 and 72A, such as:
  - (a) the nature of the dispute;
  - (b) location of the parties, the mediation, and any subject property;
  - (c) availability of the Mediator and the parties;
  - (d) financial circumstances of the parties;
  - (e) actual or perceived conflicts of interest;
  - (f) preferences for Mediator; and
  - (g) any other relevant considerations.
16. The Tribunal or Principal Registrar may request further information from the parties before the Tribunal or Principal Registrar makes a referral.
17. The Principal Registrar will give each party to the proceeding, as well as the appointed Mediator, written notice of the referral to mediation. The Principal Registrar may also give written notice of the referral to any other person the Principal Registrar reasonably considers should be given notice of the mediation.

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<sup>3</sup> The Tribunal makes its order pursuant to s 75 of the QCAT Act.

## **PARTICIPATION IN THE MEDIATION**

18. Participation in a mediation is under the direction and control of the Mediator.<sup>4</sup>
19. The parties must agree to participate in good faith in the mediation and help the Mediator to start and finish the mediation within the time estimated by the Mediator or stated in the directions referring the matter to mediation.<sup>5</sup>
20. Unless the Mediator otherwise allows, a party must attend the mediation in person, with or without their legal or other representative.<sup>6</sup>
21. A party will not be relieved of the requirement to attend in person unless:
  - (a) it will be represented by a person with full authority to settle the matter; or
  - (b) if the party is a government agency, it will be represented by a person with authority to recommend the settlement for approval by an authorised delegate; or
  - (c) for any other party, the party informs the Mediator of the process for endorsing a settlement and, after consulting with the other parties, the Mediator considers it appropriate.
22. Where appropriate, and after consulting all parties to the mediation, the Mediator may allow:
  - (a) other persons to also attend, such as expert witnesses, interpreters or support persons;<sup>7</sup> and
  - (b) participation by telephone, video or other remote access.

## **THE MEDIATION PROCESS, INCLUDING CONFIDENTIALTY**

23. The parties will each provide the Mediator with copies of all relevant material.
24. The Mediator must start the mediation as soon as possible after the Mediator's appointment and try to finish the mediation within 28 days after the appointment.
25. As soon as reasonably practicable after being appointed, and as necessary following consultation with the parties, the Mediator will advise the parties in writing of the arrangements for the mediation including:
  - (a) the date, time, venue and period allocated for the mediation;
  - (b) who will participate and how many people may attend with a party and their roles;
  - (c) whether a party is required to provide a confidential summary about the issues raised in the matter and how they would like the matter to be resolved and, if so, by what date;
  - (d) confirmation of the process by which a party who does not attend the mediation in person will endorse an agreement negotiated at the mediation; and
  - (e) arrangements for payment of the Mediator's fee.

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<sup>4</sup> QCAT Act s 78(2).

<sup>5</sup> QCAT Rules, r 71.

<sup>6</sup> QCAT Act, s 43.

<sup>7</sup> QCAT Act, s 44.

26. Unless the Tribunal or Principal Registrar directs otherwise, the mediation must be held in private.
27. The mediation is conducted on a without prejudice basis.
28. The Mediator, the parties, and all other participants must respect the confidentiality of the mediation.<sup>8</sup>
29. If the matter does not resolve at mediation, no person may give evidence at the hearing of anything done or said or any admission made at the mediation, unless all parties agree<sup>9</sup> or the evidence is relevant to a proceeding for an offence relating to the giving of false or misleading information or for contempt.<sup>10</sup>
30. Following completion of the mediation, the Mediator must destroy all materials provided to or prepared by or for the Mediator for the sole purpose of the mediation, whether or not the matter is resolved.
31. The Mediator may adjourn a mediation to another date, but must advise the Tribunal in writing of the date to which the mediation is adjourned.
32. The Mediator or any party may make a written request for further directions from the Tribunal about arrangements for the mediation.

## **ENDING A MEDIATION**

33. The Mediator may end a mediation if:
  - (a) the Mediator considers there is no utility in continuing; or
  - (b) the Mediator believes (on information that provides a reasonable basis for the belief) that a party is or was engaging in illegal, improper or unethical conduct in the mediation, or in the matter generally.
34. The Mediator must advise the parties before ending the mediation but is not required to give reasons for doing so.
35. The parties may, by agreement, end the mediation.
36. As soon as practicable after a mediation has ended, the Mediator must file a Mediator's Certificate (Form 73).

## **COMPLETED MEDIATION**

37. The Mediator must file a Mediator's Certificate (Form 73) no later than five (5) business days after the mediation, whether or not the matter was resolved.

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<sup>8</sup> QCAT Act s 83.

<sup>9</sup> QCAT Act s 83(2)(a).

<sup>10</sup> QCAT Act, s 83(2)(b).

38. If agreement is reached about some or all issues, the Mediator will discuss with the parties whether all or part of the agreement will:
- (a) include consent orders to be proposed to the Tribunal, whether with or without a non-publication order in respect thereof; or
  - (b) be recorded in a private agreement prepared and finalised by the parties; or
  - (c) documented in some other way.
39. If the parties propose consent orders, the Mediator must include or attach the proposed orders to the Mediator's Certificate. The Member managing the matter will consider the proposed consent orders and either:
- (a) make the orders by consent on the papers; or
  - (b) if the Member considers it necessary to change or refine the orders, hear from the parties first before making the orders on the papers.
40. It is preferable that an agreement reached between the parties include agreement on orders to be made, by consent so that the matter can be finalised by the Tribunal. Generally, apart from the consent orders, the terms of any agreement will otherwise remain confidential and be enclosed in an envelope attached to the Mediator's Certificate marked:
- "Mediation agreement. Not to be opened without an order of the Queensland Civil and Administrative Tribunal – Matter no: XXX"

## **COSTS OF MEDIATION**

41. The fee payable to the Mediator will be a matter between the Mediator and the parties to the mediation.
42. The fees of the Mediator shall be paid by the parties within seven (7) days of the receipt of a tax invoice from the Mediator.
43. Unless the parties agree otherwise, the Mediator's fee will be shared equally between the parties.



*Hon Justice Kerri Mellifont*  
*President*  
*25 August 2025*