

Mediation of minor civil disputes – fencing matters

The Queensland Civil and Administrative Tribunal (QCAT) is an independent tribunal that resolves disputes and makes decisions on a range of matters such as minor civil, residential tenancy, occupational regulation and guardianship issues. Fencing matters are one of the most common types of disputes we hear.

What is mediation?

Mediation is a timely dispute resolution service in which a mediator will help those directly involved in a QCAT application to discuss their differences and find a solution that suits everyone.

Before mediation

In neighbourhood disputes, there is a defined process that you must follow in accordance with the *Neighbourhood Disputes Resolution Act 2011*.

1. Talk to your neighbour. You may be able to resolve the issue together. If you can reach an agreement, you should put it in writing and both sign it.
2. If you cannot reach an agreement with your neighbour, you must provide a [Notice to contribute for fencing work](#) to your neighbour.
3. Your neighbour has one month to respond to the Notice to contribute for fencing work. Even if you do not want a financial contribution to the fence, you must have an agreement with them or an order from QCAT before any fencing work is done. Otherwise your neighbour may make an application to QCAT for an order to remove, modify or rectify the fence.
4. If you cannot reach an agreement with your neighbour, you can apply to QCAT using [Form 53 - Application for minor civil dispute - dividing fences](#).
5. You may then be directed to mediation or the matter may go to a hearing.

What does a mediator do?

The mediator acts as an independent third party and guides the participants through a structured mediation process. The mediator is not there to make a decision about who is right or wrong, but helps both parties reach an agreement.

Who provides the mediator?

The mediator may be from QCAT or from the Queensland Government's Dispute Resolution Centre.

What are the benefits of mediation?

Mediation:

- can save time and money by avoiding a QCAT hearing
- is a lot less formal than a hearing (no witnesses or experts involved)
- allows you to come up with your own solutions and agreements
- allows you to have your say and put forward your point of view, listen to the other parties' points of view and weigh up options
- allows more options for resolving the dispute than the limited orders an adjudicator can make
- is confidential, so your discussions won't be referred to at a hearing unless you agree
- can provide useful information to those involved in the dispute
- can result in a win/win outcome for you and your neighbour which is in the best interest for keeping the peace in your neighbourhood.

How can I prepare for mediation?

You should read all documentation associated with the QCAT application. You need to be clear on the issues that are in dispute and think about options for resolving those issues.

If you require legal or other advice to help you negotiate during mediation, you will need to seek it prior to mediation. Mediators cannot give advice as their role is to be neutral and impartial.

What documents are needed?

Participants are encouraged to send to QCAT and to the other party prior to mediation, anything which may help communicate their concerns or perspective to the other person. This may be in the form of receipts, photos, invoices or statements.

How long does mediation take?

Ideally, mediation takes one to two hours, depending on parties' preparedness, the issues involved, and people's willingness to reach an amenable solution.

Mediation will usually begin on time or within 15 minutes of the scheduled starting time. It is recommended that you allow sufficient time to participate.

When does mediation take place?

Following your MCD application being processed, your matter will be scheduled for mediation on the next available date and time and this will be set out in the Notice of Mediation.

Where does mediation take place?

Mediation takes place in person unless prior arrangements are made to conduct the session on the phone or using Skype. If your mediation is to be held in person, you will receive a letter specifying the location.

Does mediation cost anything?

No fee is charged for mediation.

Is mediation compulsory?

Yes. The tribunal may direct a party to attend mediation in person or to be represented by a person who has authority to settle the dispute on their behalf.

If you have reasons for not wishing to participate in mediation, you can write to the QCAT Alternative Dispute Resolution Manager using the contact details at the end of this fact sheet.

What happens if I don't attend?

The mediator is required to make a record if one party does not participate. The matter will then proceed to a hearing and final orders will be made by an adjudicator. If you are unable to participate in mediation, it is important to notify the registry as soon as possible.

Who else can attend?

Normally only those people directly involved with the application will attend the mediation.

Circumstances may arise where other people attend either to support or help in information sharing. A real estate agent may attend with the owner provided QCAT has given permission. The inclusion of additional people at mediation is subject to negotiation and must be discussed with the mediator prior to the session commencing.



Legal representation is not permitted at mediation unless QCAT has approved an application for legal representation prior to the mediation. If you wish to apply for legal representation, you should do this as early as possible by completing and lodging an *Application for leave to be represented* available from qcat.qld.gov.au/forms.

What happens with agreements?

The mediation is confidential, however it is a requirement that the mediator provide QCAT with a Certificate of Mediation confirming the outcome of the mediation, including whether parties attended. If a mutual agreement is reached by the participants, the mediator will draw up the terms of their agreement and supply this to both parties. If parties agree about part of the dispute, the parties can agree that a list of issues in dispute and a list of issues no longer in dispute may be provided to the tribunal for use in future proceedings.

What if the agreement is broken?

In the rare circumstance that the agreement made at mediation is not honoured, either party can contact QCAT to discuss options.

What happens if an agreement is not reached?

If you are not able to reach a mutual agreement, the mediator will advise QCAT of this outcome.

If there are multiple issues in dispute, the parties can agree that a list of issues in dispute and a list of issues no longer in dispute may be provided to the tribunal for use in future proceedings.

QCAT will then list the dispute for hearing on a future date and advise all parties.

Contact information

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