

# TRADIE LAW FACT SHEET

## DEALING WITH DISPUTES



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## Mediation

### OVERVIEW

Mediation is a relatively quick and informal process often used to resolve disputes before they take on a life of their own. Mediation is often considered viable where the parties want to avoid cost escalation involved in other means of dispute resolution such as arbitration or Court proceedings.

### What is the Mediation Process?

Mediation is voluntary. All parties need to agree to the process. The mediation process is led by the appointed mediator who helps the parties focus on the issues that need resolution. A mediator will endeavour to help the parties decide what to do themselves. A mediator will not give advice on the dispute and takes a neutral approach. At the start of every mediation, the mediator will set out the process to be followed, discuss and clarify confidentiality and will take the parties through an agreement to mediate that sets out the ground rules. Any resolution reached is usually documented on the same day, allowing the parties to move forward with the dispute behind them on terms "they can live with".

### What types of disputes can be mediated?

All disputes can be mediated; however, mediation is an effective tool for resolving contractual, employment, commercial, building, construction and debt disputes amongst others.

### How do I get the mediation process underway and how can Tradie Law assist?

Once a dispute has arisen it is common for the parties to set out their positions by way of a phone call, email or letter. It is best practice to obtain a party's position in writing to get an understanding of what the issues are and where the differences lie.

Once each party has set out their position and a resolution has not been reached, mediation becomes a viable option.

Before approaching a mediator it is advisable to obtain advice on your legal position, including its strengths and weaknesses.

Once you have completed this step, contact can be made with the other party to ascertain if they would be agreeable to mediation to resolve the dispute.

### At Tradie Law we can assist you in two key ways:

1. We can review your legal position and provide sound legal advice on where you stand regarding the dispute, and provide representation at mediation (if necessary we can provide the names of mediators available for appointment); or

2. We can facilitate the appointment of Jaesen Sumner of Ford Sumner Lawyers to mediate the dispute. For more information on Jaesen's experience see here: <https://www.fsl.nz/expertise/mediation.html>

### **Who pays for mediation?**

The cost of mediation varies depending on the quantity of background material to review, complexity, the time set down to mediate and the number of parties involved.

Notwithstanding this, most mediators can accurately assess the likely costs in mediating your dispute.

The general rule of thumb is for the parties to split the cost of the mediator equally unless there is prior agreement otherwise.

### **What if both parties do not settle?**

The costs of mediation (mediator expenses including fees and disbursements) are payable whether or not settlement is reached. This often provides a strong incentive to settle.

### **What about employment mediations?**

Employment Mediation Services within MBIE provides a free mediation service to employers and employees who have an employment relationship problem, such as a personal grievance. A request for mediation can be made via the MBIE website. Representatives, such as lawyers, are commonplace at these mediations, as are support people. Our lawyers at Tradie Law have many years of experience in dealing with employment relationship problem mediations via MBIE.

**If you require advice about mediation or other dispute resolution options, get in touch so we can help.**

#### **Contact:**

**E**      [helpdesk@tradielaw.co.nz](mailto:helpdesk@tradielaw.co.nz)

**W**      [www.tradielaw.co.nz/contact/](http://www.tradielaw.co.nz/contact/)

**One of our team will be in touch to assist you within 24 hours.**