



VICTORIAN BAR EXPEDITED MEDIATION SCHEME

Protocol for Family Law Property

1. This Protocol for Family Law Property applies to all property applications under sections 79 and 90SM of the *Family Law Act 1975* in the Federal Circuit Court (**FCC**) and the Family Court (**FC**) referred to the Victorian Bar Expedited Mediation Scheme (**Scheme**).
2. It is intended that "property only" applications and other property applications as deemed appropriate by the Court, in the FCC and FC may be referred to the Scheme for an Online Mediation (**OLM**), within 40 days of referral in accordance with this Protocol.
3. Matters presently in progress may also be referred to OLM in such other circumstances as the Court may determine.
4. The referral to OLM shall take the form of an Order by Consent or Notation of the Court.
5. Upon referral to OLM, the Judge's Associate will notify the Victorian Bar by email to mediation@vicbar.com.au with a copy to each party's practitioner or if none, to the party.
6. Upon receipt of the email notification, each party's practitioner, or if none, the party will provide a copy of the relevant documents filed in the proceeding by return email to mediation@vicbar.com.au. Relevant documents shall include the Initiating Application, Response (if any), and Financial Statement.
7. Upon receipt of the referral email, the parties or their practitioners may appoint a mediator of their choice or opt for the appointment of a mediator by the President of the Victorian Bar pursuant to the Scheme.
8. If within seven days of the referral, the parties have not notified the Victorian Bar (in writing by email to mediation@vicbar.com.au), of the appointment of a mediator, or within that time the parties make a written request by email to mediation@vicbar.com.au to do so, the President of the Victorian Bar will appoint a Victorian Bar nationally accredited mediator to conduct a mediation of the proceeding, such appointment being made within three business days.
9. Where a referral to OLM is made, Directions may be given in accordance with the attached SCHEDULE requiring the parties to comply.
10. OLM pursuant to the Scheme shall comprise a half-day online mediation of up to three hours (or at the discretion of the parties or their practitioners, a full-day), excluding preparation, to be held within 40 days from the date of the referral.
11. In matters in which neither party alleges that the total value of the Asset Pool, including superannuation, is more than \$500,000, the mediator's fee:
 - 11.1 for a half-day (three hours) mediation shall be at the fixed rate of \$1,650 inclusive of GST (or such greater amount as agreed by the parties); or

- 11.2 for a full-day, (six hours) mediation shall be at the fixed rate of \$2,200 inclusive of GST (or such greater amount as agreed by the parties), and
 - 11.3 for any necessary preliminary conference shall be at a fixed rate of \$305/hour, inclusive of GST (or such greater amount as agreed by the parties).
- 12. Where the Asset Pool, including superannuation, is more than \$500,000, the mediator's fee shall be agreed by the parties and the mediator before the mediation. In the absence of agreement within 21 days of the referral, the parties may request in writing that the President of the Victorian Bar, appoint an alternative mediator.
 - 13. Within seven days of the mediation, the mediator must report via email to the Judge's Associate, and to the Victorian Bar at mediation@vicbar.com.au that:
 - 13.1 the matter was resolved; or
 - 13.2 the matter was not resolved; or
 - 13.3 the mediation has been adjourned.

SCHEDULE

Directions may include any or all of the following:

- 1. The parties shall within a specific time (usually 14 days or such other time the Court directs) of the referral provide to the mediator and to the other party:
 - (a) a table of Assets and Liabilities; and
 - (b) a Financial Statement; and
 - (c) a statement specifying with clarity, what relief is sought; and
 - (d) any other document in accordance with the relevant Rules; and
- 2. The parties and/or their practitioners will do all things and make all necessary arrangements so as to facilitate agreement regarding the Asset Pool, including valuation of real estate or other items of property;
- 3. Where a party seeks a Superannuation Interest split, that party shall provide procedural fairness to the relevant fund within a specified time and take all steps reasonably necessary to ensure a reply is received not less than seven days prior to the OLM, and upon receipt of a reply, the receiving party shall file and serve a copy on the other party and the mediator, by email;
- 4. Where the value of the Asset Pool:
 - (a) is AGREED, the parties provide an agreed table of assets and liabilities to the mediator by email not less than seven days before the OLM;
 - (b) is NOT AGREED:
 - (i) the parties may agree on a valuation method for any asset including Real Estate within seven days of the referral to OLM;
 - (ii) In the absence of agreement on a valuation method within seven days, the parties shall each obtain and serve on the other party and the mediator a written opinion of value of any real estate from a Licensed Estate Agent (not an agent's representative or necessarily a sworn valuer) practising in the area where the property/s is/are located; or of any other asset

from an expert in the relevant field (e.g. an accountant, business valuer, car dealer, Redbook, etc), within 14 days; and

5. Not less than seven days before the OLM each serves on the other party their asserted table of assets and liabilities, noting whether or not the value of each item is agreed by the parties or not, together with supporting evidence as to value, (e.g. copy bank statements);
 6. The parties, with authority to resolve the dispute without reference to any person not participating (and the practitioners with ultimate responsibility for advising their clients, if requested by the parties), participate in the OLM;
 7. The parties have the liberty to apply to the Court upon not less than two days' notice to the mediator and the other party regarding any matter affecting the OLM; and
 8. Such other directions as the Court deems fit.
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