



VICTORIAN BAR EXPEDITED MEDIATION SCHEME

Protocol for mediation of Court referred Industrial (Fair Work Division) proceedings in the Federal Circuit Court

1. This Protocol applies to all Industrial (Fair Work Division) proceedings in the Federal Circuit Court (**FCC**) which are referred to the Victorian Bar Expedited Mediation Scheme (**Scheme**) under section 34 of the *Federal Circuit Court of Australia Act 1999* and Order 45.13B(2)(c) of the Federal Circuit Court Rules.
2. It is intended that Industrial (Fair Work Division) proceedings in the FCC referred to the Scheme will be the subject of an Online Mediation (**OLM**), within 40 days of referral in accordance with this Protocol.
3. The referral to OLM shall take the form of an Order for directions.
4. Upon the making of an Order referring a proceeding to the Scheme for OLM, the Judge's Associate will email a copy of the Order to the Victorian Bar by email to mediation@vicbar.com.au.
5. An email sent to the Victorian Bar will include the name and contact details of each party's practitioner, or if no practitioner, of the party and will include a copy of the originating process in the proceeding.
6. Upon receipt of an Order referring a proceeding to the Scheme for OLM pursuant to this Protocol, the parties or their practitioners may agree to the appointment of a mediator of their choice or opt for the nomination of a mediator by the President of the Victorian Bar pursuant to the Scheme.
7. If within seven days of the Order referring a proceeding to the Scheme for OLM, the parties have not notified the Court and the Victorian Bar (in writing by email to mediation@vicbar.com.au), of the appointment of a mediator, or within that time one or more of the parties have made a written request by email to mediation@vicbar.com.au that the President of the Victorian Bar nominate a mediator to conduct a mediation of the proceeding, the President of the Victorian Bar will nominate a member of the Victorian Bar who is a nationally accredited mediator to conduct a mediation of the proceeding, that nomination to be made and reported to the Judge's Associate within three business days.
8. An order referring a proceeding for mediation pursuant to this Protocol should:
 - 8.1 Refer the proceeding for OLM pursuant to the Scheme within 40 days;
 - 8.2 Appoint the mediator agreed to by the parties or nominated by the President of the Victorian Bar by name pursuant to order 45.13B(2)(c) of the Federal Circuit Court Rules;
 - 8.3 Give directions including:
 - (a) Any further pleadings or affidavits be filed on an expedited timeline to ensure that those pleadings or affidavits are filed and served within 30 days of the order.
 - (b) That the parties must co-operate with the mediator in all respects in connection with the mediation;
 - (c) That the parties must make a genuine effort to reach agreement on relevant matters in issue as required by Order 45.13B(5) of the Federal Court Rules;

- (d) That the parties' participation in the mediation is to be by persons with full and unfettered authority to resolve the proceeding on such terms as they see fit, without reference to any party not in attendance at the mediation, together with the legal practitioners with principal responsibility for advising those persons;
- (e) That the mediator's fees are to be borne by the parties equally unless otherwise agreed or ordered;
- (f) That within seven days of the mediation the mediator is to inform the Judge's Associate:
 - (i) if the proceeding is resolved, if Court orders are to be sought; or
 - (ii) if the proceeding is not resolved, if the mediation is finished or has been adjourned for further mediation (including the date fixed for the further mediation); and

8.4 Reserve liberty to apply.

ONLINE MEDIATION

9. 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, for a full-day), excluding preparation, to be held within 40 days from the date of the referral.

MEDIATOR'S FEES

10. In proceedings where the mediator nominated by the President of the Victorian Bar is appointed, the mediator's fee:
- 10.1 for a half-day (up to three hours) shall be at the fixed rate of \$1,650, inclusive of GST; or
 - 10.2 if the parties agree that the mediation should be for a full-day (up to six hours), the fixed fee shall be \$2,650 inclusive of GST; and
 - 10.3 for any necessary preliminary conference shall be \$305/hour, inclusive of GST.
11. In proceedings where the mediator is agreed between the parties and appointed by the Court, the mediator's fees are to be agreed by the parties and the mediator.
12. Within seven days of the completion of the mediation, the mediator is to report back to the Court in accordance with the directions made by the Court and send an email to mediation@vicbar.com.au reporting whether the proceeding has been resolved or not resolved.
-