



# Supreme Court of Victoria

## Practice Note SC Gen 6

### Judicial Mediation Guidelines

#### 1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to set out the guidelines for the referral of civil proceedings to judicial mediation and the procedures for the conduct of judicial mediations.<sup>1</sup>

#### 2. COMMENCEMENT

- 2.1 This Practice Note was issued and commences on 1 December 2025 and will apply to all referrals to judicial mediation made on or after that date.

#### 3. DEFINITIONS

- 3.1 In this Practice Note:  
Judicial officer includes a Judge of the Court, Associate Judge, or Judicial Registrar.

#### 4. REFERRAL TO JUDICIAL MEDIATION

- 4.1 The Supreme Court of Victoria is committed to resolving disputes in the most efficient manner possible, including the use of non-adjudicative processes. The use of private mediation practitioners has been and remains critical to the administration of justice in Victoria. The Court will continue to encourage, and where appropriate direct, parties to engage in private mediation in the majority of civil proceedings coming before the Supreme Court.
- 4.2 Under s 66 of the *Civil Procedure Act 2010* the Court is authorised to refer a proceeding to appropriate dispute resolution which includes a judicial resolution conference, often referred to as a judicial mediation.

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<sup>1</sup> This Practice Note also applies to mediations conducted by a Prothonotary or a Deputy Prothonotary.

- 4.3 Judicial mediation is not a substitute for mediation by appropriately qualified private mediators, rather it is another option that may be employed in appropriate cases.
- 4.4 Under s 68(1) of the *Civil Procedure Act 2010*, a judicial officer acting as a judicial mediator has the same immunity as a judge acting judicially.
- 4.5 A matter referred to judicial mediation will usually have one or more of the following features:
- one or more parties with limited resources;
  - a substantial risk that the costs and time of a trial would be disproportionately high compared to the amount in dispute or the subject matter of the dispute;
  - an estimated trial length that would occupy substantial judicial and other court resources; or
  - aspects that otherwise make it in the interests of justice that the matter be referred to judicial mediation.
- 4.6 There are proceedings which, as a matter of policy, may not be appropriate for judicial mediation. The following disputes will not ordinarily be referred for judicial mediation:
- cases involving the resolution of a matter of public importance which, in the public interest, ought to be heard in open court; and
  - cases in which the commission of a crime or serious misconduct is alleged in the context of a civil proceeding.

## 5. DETERMINING THE MODE OF MEDIATION

- 5.1 The following process will be adopted to determine the mode of judicial mediations and mediations conducted by Deputy Prothonotaries.
- 5.2 Parties should consider how the mediation is to be conducted (in-person, online or hybrid), and if they agree about the mode of mediation, notify the chambers of the judicial officer who will be making the mediation order.
- 5.3 If the mediation order does not provide for the mode of mediation, the Court's ADR Centre (ADR Centre) will list the mediation as an in-person mediation.
- 5.4 If, after the mediation order is made, the parties agree that the mediation is to be conducted in a way that differs from in-person mediation (that is, online or hybrid), they should inform the ADR Centre by sending an email to [adrcentre@supcourt.vic.gov.au](mailto:adrcentre@supcourt.vic.gov.au) as soon as agreement is reached. The parties should give reasons for the proposed change to the mode of mediation. Where there is no agreement, any party wishing to have the mediation conducted other than in-person should notify the ADR Centre by sending an email to [adrcentre@supcourt.vic.gov.au](mailto:adrcentre@supcourt.vic.gov.au). The party should give reasons for the proposed change to the mode of mediation. Whether there is agreement or not, the Court will then make a determination as to the mode of the mediation.
- 5.5 The matters that may be taken into account when determining the appropriate mode of mediation include: agreement by the parties as to the mode of mediation; the view of the mediator; the complexity of the matter; whether there has been a previous mediation (and whether the mediation was

- conducted online, in-person or a hybrid of the two); relevant considerations specific to the mediation participants including as to health special needs, mobility and geographical location; and if mediation is urgent.
- 5.6 Usually the mode of mediation will be determined on the papers. Any dispute concerning the mode of mediation will be determined by the judicial officer who made the mediation order or, if not available, another judicial officer (other than the judicial officer before whom the mediation is listed).
- 5.7 The following process will be adopted to determine the mode of Costs Court mediations.
- 5.8 Where a summons for taxation of costs involves a party/party claim for costs over \$100,000, the summons shall be endorsed with a return date for a mediation which is to be held online, unless the parties are otherwise advised.
- 5.9 If, after the summons for taxation has been served on the respondent, the parties agree that the mediation is to be conducted in a way that differs from an online meditation (that is, an in-person mediation or a hybrid model), they should inform the taxing officer before whom the mediation is listed by sending an email to the Costs Court on [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au) as soon as agreement is reached. The parties should give reasons for the proposed change to the mode of mediation.
- 5.10 Where there is no agreement, any party wishing to have the mediation conducted other than online should notify the taxing officer before whom the mediation is listed by sending an email to the Costs Court on [costs.court@supcourt.vic.gov.au](mailto:costs.court@supcourt.vic.gov.au). The party should give reasons for the proposed change to the mode of mediation.
- 5.11 The matters that may be taken into account when determining the appropriate mode of mediation include: agreement by the parties as to the mode of mediation; the complexity of the matter; whether there has been a previous mediation (and whether the mediation was conducted on-line, in-person or a hybrid of the two); relevant considerations specific to the mediation participants including as to health special needs, mobility and geographical location; and if mediation is urgent.
- 5.12 Usually the mode of mediation will be determined on the papers. Any dispute concerning the mode of mediation will be determined by a judicial officer or Costs Registrar other than the judicial officer or Costs Registrar before whom the mediation is listed.
- 5.13 Online participants are required to participate in the mediation with an appropriate device such as a desktop computer or laptop computer with a camera and a reliable internet connection. One device per person is encouraged. Participants must be in a confidential environment with no distractions.
- 6. PREPARATION**
- 6.1 Directions regarding preparation for a judicial mediation may be made at a directions hearing or conveyed to the parties by a court officer.
- 6.2 Parties will be informed prior to the commencement of a mediation of any pre-conditions, expectations or particular requirements. These may include a

requirement to provide specified documents and other information, position papers or confidential offers.

## **7. CONFIDENTIALITY**

7.1 Parties and other participants are to protect the confidentiality of all that is said and done by any person in the course of the conduct of a mediation. Parties and practitioners are also referred to s 131 of the *Evidence Act 2008* and s 67 of the *Civil Procedure Act 2010*.

7.2 It will be the usual practice of the mediator to destroy all materials provided to or prepared by the mediator and any other court officer participating in the mediation, following completion of the mediation, whether successful or not.

## **8. ATTENDANCE AT MEDIATIONS**

8.1 A mediator may authorise the attendance at a mediation of persons other than the parties and their legal representatives. Participation of all persons in the mediation will be under the direction and control of the mediator.

8.2 The mediation must be attended by parties or representatives of the parties who have full authority to settle the proceeding.

8.3 The mediator will inform the parties of the identity of all attendees prior to the commencement of the mediation.

## **9. LEGAL ADVICE OR ASSISTANCE**

9.1 A mediator will not evaluate issues in dispute or provide legal advice to parties, and will not generally assist with the preparation of any terms of settlement.

## **10. MEETING SEPARATELY WITH THE PARTIES- CAUCUSING**

10.1 Mediation styles and practices will differ between judicial mediators. Some mediators may be prepared to caucus, depending on the nature and circumstances of the case. Other mediators may not be prepared to do so.

10.2 Information provided by a party to a mediator in a separate session will not be disclosed to any other party unless the mediator has been expressly authorised to do so. This will not restrict the mediator from terminating the mediation upon receiving information which by its nature is open to an interpretation of illegal, improper or unethical conduct.

## **11. ADJOURNMENT**

11.1 A mediator may adjourn the mediation to continue at a later date, either under the conduct of the same or a different mediator.

11.2 If the proceeding fails to settle at mediation, the mediator may give directions for the further conduct of the proceeding in her/his capacity as a Judge, Associate Judge or Judicial Registrar, by consent or at the request of the parties.

## **12. FINALISATION**

- 12.1 If the matter resolves at mediation, and the parties consent, the mediator can make orders finalising the matter.

## **13. FURTHER COURSE OF PROCEEDINGS POST MEDIATION**

- 13.1 Subject to paragraphs 10.2 and 11.1, no member of the Court will hear and determine an issue in a proceeding in which that person acted as a mediator, or where he or she has become acquainted with any confidential information relating to the mediation of the dispute (e.g. where confidential information was provided in preparation for a mediation that was subsequently conducted by another judicial officer).

## **AMENDMENT HISTORY**

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 2 of 2012.

1 December 2019: Amendments to paragraphs 2, 4, 8, 9, 10, 11 and 12.

21 September 2023: Amendments to paragraphs 1 and 7.

1 December 2025 : This Practice Note was reissued on 1 December 2025 and incorporates information previously set out in the Notice to the Profession dated 21 April 2023.

Vivienne Mahy  
Executive Associate to the Chief Justice  
1 December 2025