



VICTORIAN BAR/FAMILY PROPERTY LIST MEDIATOR REFERRAL SCHEME

The County Court Protocol on Court Referral for Nomination of Nationally Accredited Victorian Bar Mediators¹

Between

THE COUNTY COURT (COMMON LAW DIVISION)

And

THE VICTORIAN BAR

Contents

A. Purposes and overview of Scheme	2
Value of Mediation.....	2
Fair administration and integrity of the Scheme	2
Role of barrister mediators.....	3
Creation of Victorian Bar panels.....	3
B. Procedure for Referral Requests	3
Types of referral requests	3
Referral request by Court.....	4
Referral request by parties	5
Response to referral requests.....	6
C. Mediator's Fees.....	8
D. Feedback and review	8
E. Training/CPD.....	9
F. Contacts	9

¹ This document is intended for use by members of the Victorian Bar, judicial officers and staff members of the Court only, to explain how the Scheme will operate, commencing from # 2020.

A. Purposes and overview of Scheme

1. This Mediator Referral Scheme (**Scheme**) is a cooperative initiative of The Victorian Bar (**Bar**) and the County Court.
2. The Scheme's main purpose is to enable the Court to refer matters to mediation by Nationally Accredited mediator members of the Bar.

Value of Mediation

3. The Court and the Victorian Bar recognise the critical importance of mediation in facilitating the fair, proportionate and timely resolution of disputes. Mediation serves the public interest in the due administration of justice, improves access to justice and promotes legal equality and the principle of the rule of law.
4. Mediation is a structured negotiation process managed by an impartial person, the mediator. The mediator assists the parties to identify and assess options and to negotiate an agreement to resolve a dispute. Mediation is an alternative to a Court imposing a decision on the parties.
5. The Court has the power to refer proceedings to mediation under s66 of the *Civil Procedure Act 2010 (Vic)* (**CPA**). Parties and their practitioners are also required by the CPA to use reasonable endeavours to resolve their dispute, including through appropriate dispute resolution such as mediation.

Fair administration and integrity of the Scheme

6. This protocol gives better visibility and clarity to members of the Bar, Judges, Judicial Registrars, Court staff, practitioners and parties about how mediation services can be requested from the Bar by the Court. The protocol recognises that the success and sustainability of the Scheme requires that practitioners must be confident in its fair administration and integrity.
7. It is in the interests of the administration of justice and the efficient operation of the Scheme that referrals should be directed to barristers with appropriate experience. Referrals should also be fairly shared amongst available barristers.

8. The eligibility criteria and referral mechanisms contained in this protocol are established to facilitate the process for referring requests for nomination of appropriately qualified mediators by the President of the Bar (**President**), and to enable the President to nominate appropriately experienced available barristers.

Role of barrister mediators

9. All barristers participating in the Scheme are Nationally Accredited Mediators, independent lawyers and practising members of the Victorian Bar with experience in testator family maintenance or de facto property disputes.

Creation of Victorian Bar panels

10. The Victorian Bar Office will identify barristers' areas of practice specialty and mediation experience and establish panels aligned to practice specialty and experience, so that requests for assistance from the Court can be matched to those panels.
11. Nationally Accredited Barrister Mediators have been invited to and have expressed interest in joining those panels.

B. Procedure for Referral Requests

Types of referral requests

12. There are three ways a referral request may be made:
 - a. Referral requests may be made directly by the Court.
 - b. Referral requests may be made by a party pursuant to a Court order.
 - c. The parties may agree to make a referral request, without an order of the Court.
13. In proceedings involving referrals which are urgent, or otherwise have unusual features, a person wishing to make a referral may telephone the Bar Office (Mr Fernando Gallieto) on 9225 7111, or the Chair of the Bar's ADR Committee (in 2021, Mr Tony Elder – 0417 542 166), to ascertain if the President is able to make a nomination in the circumstances required.

Referral request by Court

14. Where the Court (constituted by a Judge or Judicial Registrar) considers it to be in the interests of justice, it may refer a request to the President for nomination of mediators in relation to a proceeding.
15. The referral of a request for the President to nominate mediators will be sent by email to mediation@vicbar.com.au by a Judge or Judicial Registrar's associate or a registry lawyer and copied to the parties' solicitors or for unrepresented parties, to the parties.
16. The email will:
 - a. have attached to it, copies of:
 - i. the current pleadings;
 - ii. any evidentiary affidavits filed in the proceeding; and
 - iii. any order referring the matter to mediation;in the proceeding in respect of which the request is being made; and
 - b. include:
 - i. a brief (no more than 3 line), summary of the nature of the dispute in the proceeding²;
 - ii. whether there are any requirements that the mediation be held in a particular location, at a particular time, for a half or full day and whether in-person or online;
 - iii. the time within, or by which the mediation is to be held, whichever is the shorter;

² It is important to define a referral request with clarity. Refining the referral request in turn increases the ability and likelihood of the President of the Bar being able to refer appropriate mediators to the Court.

- iv. any unavailable dates of the parties in the specified time within which the mediation is to be held, or in the two weeks prior to the last date for mediation; and
 - v. any other details, information or material which a Judge or Judicial Registrar may direct.
17. Within 1 day of receiving a copy of an email sent pursuant to paragraph 15, a party or its solicitors must provide copies of exhibits to any affidavits provided pursuant to paragraph 16(a)(ii), those exhibits to be sent by email to mediation@vicbar.com.au reciting the names of the parties and the proceeding number in the subject line of the email.

Referral request by parties

18. The Court may make an order permitting or directing a party to make a referral request to the President for nomination of mediators in relation to a proceeding. An order permitting a referral request will be included in the standard timetabling orders for the list, which are annexed to the Family Property List practice note.
19. A party may apply for an order permitting or requiring a party to make a referral request under this protocol by email to the Family Property List (familyproperty.list@courts.vic.gov.au), copied to all parties.
20. The parties may also agree to make a referral request to the President of the Victorian Bar, without a Court order.
21. A referral request by a party is made by email to mediation@vicbar.com.au copied to all parties. The email must:
- a. have attached to it, copies of:
 - i. the current pleadings;
 - ii. any evidentiary affidavits filed in the proceeding with their exhibits; and
 - iii. any order referring the matter to mediation,in the proceeding in respect of which the request is being made; and
 - b. include:

- i. a brief (no more than 3 line), summary of the nature of the dispute in the proceeding³;
- ii. whether there are any requirements that the mediation be held in a particular location, at a particular time, for a half or full day and whether in-person or online;
- iii. the time within, or by which the mediation is to be held, whichever is the shorter;
- iv. any unavailable dates of the parties in the specified time within which the mediation is to be held, or in the two weeks prior to the last date for mediation; and
- v. any other details, information or material which a Judge or Judicial Registrar may direct.

Response to referral requests

22. When a referral request complying with this protocol is received by the Bar, the Bar will arrange for details of the referral to be circulated to appropriately experienced barristers on the relevant panel, to check if they have any conflicts of interest and to ascertain their availability to undertake the mediation.
23. The President will nominate (**nomination**), by email to the person making the request (**the requestor**), at least 3 (if possible), and not more than 5 nationally accredited mediators who are available to conduct the mediation in the time specified and whom the President believes have relevant practice specialty and appropriate experience to conduct the mediation:
 - a. in the case of a proceeding in which mediation is to be held within 2 weeks of the request, the nomination will be made within 2 business days (or such other time as may be agreed), of the request being received by the Bar; and

³ It is important to define a referral request with clarity. Refining the referral request in turn increases the ability and likelihood of the President of the Bar being able to refer appropriate mediators to the Court.

- b. in the case of a proceeding in which mediation is to be held by a date which is more than 2 weeks after the request, the nomination will be made within 5 business days (or such other time as may be agreed) of the request being received by the Bar.
24. A nomination will include the names, email addresses and telephone numbers of the nominated barristers, with a link to their profile pages.
25. On receipt of a nomination:
 - a. if the requestor was the Court, the Court will appoint one of the nominated mediators to conduct the mediation and the Court will make an order generally in the form of Schedule 2; and
 - b. if the requestor was a party, the parties must agree and appoint one of the nominated mediators as mediator. If agreement is unable to be reached, the parties may request a determination from the Court by email to the Family Property List (familyproperty.list@courts.vic.gov.au) copied to all parties.
26. Within 2 business days of a barrister being appointed to a mediation, the requestor must notify the Bar of the appointment, by email to mediation@vicbar.com.au
27. If within a reasonable period, the appointed barrister and the parties are unable to agree on:
 - a. a date, location, period of, if the mediation is to be in person, online, a hybrid, the persons to attend the mediation, or any other matters relevant to the mediation; or
 - b. in the case of mediations other than those in which the asset pool (nett of secured debts), is less than \$500,000, the fees payable to the mediator;

the appointed barrister or any party may give notice to the Court of the failure to reach agreement, any such notice to be sent by email to the Family Property List (familyproperty.list@courts.vic.gov.au), copied to all parties and where relevant, the appointed barrister, on receipt of which, the Court may make such orders as it sees fit, including the appointment of a different barrister mediator.

C. Mediator's Fees

28. Mediator's fees for mediations conducted pursuant to this protocol will be for a capped fee, inclusive of up to 1.5 hours of preparation:

- a. in the case of a proceeding in which the asset pool (nett of secured debts), is less than \$500,000:
 - i. \$1,650 incl GST for a half day (3 Hour) mediation, with an hourly rate of \$330 incl GST, for any time over 3 hours; or
 - ii. \$2,200 incl GST for a full day (7 hour) mediation, with an hourly rate of \$330 incl GST, for any time over 7 hours.
- b. in other cases, such higher fee as may be agreed between the parties and the mediator.

29. A mediator is not compelled to extend a mediation beyond the allocated hours on any one day, or to extend into a second or further day.

30. It is the responsibility of a barrister who accepts a nomination to ensure that they or their clerk receive payment of the mediation fees and any other costs associated with the mediation. The Court will not be liable for payment of mediation fees or other costs associated with the mediation.

D. Feedback and review

31. The Court will keep a record of the referral requests made or ordered by the Court each quarter, the number of appointments made and the barristers appointed.

32. For the purpose of monitoring the Scheme's success, the Court will also keep a statistical record of the number of mediations resulting in resolution of a proceeding and of those which don't result in a resolution. The Court also welcomes any feedback from barristers and parties as to their experience of participating in the Scheme and suggestions for how the Scheme may be improved in the future. Any such feedback should be provided to the Family Property List (familyproperty.list@courts.vic.gov.au) and the Victorian Bar Office.

33. The Court will provide such feedback to the Victorian Bar Office about the operation of the Scheme as may reasonably be requested.
34. Barristers conducting mediations under the Scheme may be requested to answer a short survey for the Victorian Bar to assist in its assessment of the operation of the Scheme.
35. The Court and the Victorian Bar will review the operation of the Scheme at least annually. The review will assess the success of the Scheme, its future viability, mediator's fees and areas for improvement and any need for revision to this protocol.

E. Training/CPD

36. The Victorian Bar will publicise the launch of the Scheme and provide interested barristers with an overview of its operation.
37. CPD session/s will include representatives of the Court and nationally accredited barrister mediators.

F. Contacts

37. For the purposes of the day to day operation of the Scheme, any queries should be directed to:

Victorian Bar
ADR Co-ordinator
The Victorian Bar
205 William Street, Melbourne, VIC 3000
T 03 9225 7111 | E mediation@vicbar.com.au

County Court of Victoria
Family Property List
familyproperty.list@countycourt.vic.gov.au

DATED: 17 September 2021



Judge Tsalamandris

ON BEHALF OF THE COMMON LAW DIVISION OF THE COUNTY COURT OF VICTORIA

A handwritten signature in blue ink, appearing to read "Chris Blanden". The signature is fluid and cursive, with the first name "Chris" and the last name "Blanden" clearly distinguishable.

Christopher Blanden QC

Victorian Bar President

ON BEHALF OF THE VICTORIAN BAR COUNCIL