

VSBC policy for appointing mediators

The Victorian Small Business Commission (VSBC) is an independent government agency that advocates on issues affecting small business, educates people in small business about their rights and responsibilities, and helps them to avoid or resolve disputes. We have statutory alternative dispute resolution functions under the ***Small Business Commission Act 2017***, ***Retail Leases Act 2003***, ***Owner Drivers and Forestry Contractors Act 2005*** (including a new arbitration function from 2020), ***Farm Debt Mediation Act 2011*** and ***Commercial Passenger Vehicle Industry Act 2017***. We also have a role to provide alternative dispute resolution in relation to mineral exploration land access disputes under the *Model Commercial Consent Agreement for Access to Private Land in Victoria*.

We are required by the Victorian Government to achieve successful mediation outcomes in at least 75% of mediations. We currently maintain an average mediation success rate of approximately 80%. We are also required by the Victorian Government to achieve a client satisfaction rate of at least 80% for mediations. We currently achieve client satisfaction rates of over 90%.

VSBC mediation panels

The VSBC maintains two mediator panels - metropolitan (metro) and regional. Appointment to and removal from the panels remains at the discretion of the VSBC and will be based on mediators satisfying the criteria and agreeing to the requirements set out in this policy. Interested mediators may apply to one or both panels.

Our mediation panels are made up of a diverse group of experienced, commercial mediators who work with us to give Victorian small businesses a low cost and highly effective alternative dispute resolution service. To be allocated VSBC mediations, mediators need to be appointed to one of the panels.

Panel mediators are appointed for a period of two years and have:

- national mediator accreditation under the National Mediator Accreditation System (NMAS) by a Recognised Mediator Accreditation Body (RMAB)
- relevant experience
- demonstrated relevant jurisdictional capability and knowledge
- agreed to comply or demonstrated compliance with the administrative requirements of the VSBC (e.g. providing adequate reports, documentation within required timeframes etc.)
- confirmed their ability to undertake mediation appointments if offered.

To be able to conduct mediations under specific Acts, panel mediators must satisfy the requirements of those Acts:

- *Retail Leases Act 2003* s.84(2):
'persons who are experienced in the field of retail premises leases'
- *Owner Drivers and Forestry Contractors Act 2005* s.54(2):
'persons who are experienced in the field of regulated contracts'
- *Farm Debt Mediation Act 2011* s.20(3)(b):
'persons (who) have the skills and experience to conduct a mediation in a particular case'

At any time, the VSBC may confirm whether mediators continue to satisfy these criteria and may remove a mediator from the panel(s) if any criteria are no longer satisfied.

In addition to the above criteria, the VSBC will consider any matters raised in the personal declaration made by the mediator/applicant and may also take into account any matter the VSBC reasonably considers relevant, including performance and conduct.

The *Small Business Commission Act 2017* provides statutory indemnity for mediators ‘for anything necessarily or reasonably done or omitted to be done in good faith...’. As a consequence, professional indemnity insurance is not a mandatory requirement for panel mediators but is recommended. Metro panel mediators are offered a minimum of three mediations per year, subject to availability.

Appointment to mediations

The VSBC determines appropriate mediators to be invited for appointment to undertake mediations, having regard to a range of considerations. The appointment of a mediator to a mediation is entirely at the discretion of the VSBC. The Commissioner may delegate the function of appointing a mediator to undertake a mediation. This function is currently delegated to the Senior Mediation Officer.

In inviting mediators to undertake a mediation, the primary considerations are:

- the capability, knowledge and experience of the mediator relevant to the particular Act under which the mediation is to occur
- the success rate of the mediator in achieving settlements at mediations conducted for the VSBC

N.B: to achieve an aggregate mediation success rate of 80%, the VSBC must appoint mediators with high expected success rates (based on past proven performance), particularly those with 80%+ success rates. Mediators with high success rates will be offered more mediations than those with lower success rates (though other factors are also considered for the allocation of mediations).

- the past client satisfaction ratings of mediators
N.B: to continue to achieve high customer satisfaction ratings, the VSBC will have regard to feedback provided by clients on mediators – both positive and negative.
- avoiding any conflicts of interest.

The additional considerations in inviting mediators to undertake a mediation are:

- the nature of the dispute and the demeanour of the parties (and their representatives where present)
- the availability of the mediator for the mediation, including urgent mediations
- demonstrated flexibility in accepting any necessary changes to mediation arrangements
- a high level of responsiveness to requests from the VSBC (e.g. prompt return of emails or phone calls regarding availability)
- the willingness of the mediator to travel if necessary
- adherence to the VSBC’s administrative requirements
- a proven record of finalising adjourned mediations by telephone or email
- the ability to complete mediations in the time allocated.

Preference will be given to appointing regional panel mediators for regional mediations.

Mediators represent the VSBC. When undertaking mediations, mediators are required to behave courteously, appropriately, professionally and with tolerance in their dealings with the parties concerned and VSBC staff.

Mediation fees

The fee for VSBC mediations is \$900 for a half-day session and \$1,350 for a full day session. The length of the mediation session (half or full day) is predetermined by the VSBC depending on the type of dispute. The fee will not change if the actual duration of the mediation is different to the scheduled duration of the mediation session (VSBC mediation fee details are explained in the

VSBC policy for mediation fees). If a mediator considers the time allocated for mediation is insufficient they may discuss this with the SMO prior to the mediation.

Monitoring

At least quarterly, we review mediator success rates, client satisfaction comments, the aggregate mediation success rate and other feedback relevant to the above considerations to inform decisions on allocation of mediations in the following quarter.

Reporting

On request and annually, we make available to individual mediators:

- their settlement rates for mediations conducted for the VSBC compared with the (de-identified) profile of settlement rates for mediations conducted for the VSBC
- feedback provided by clients on the mediator's performance.

The VSBC is moving to a paperless office environment. Mediators are required to adhere to the VSBC's processes, which may include receiving and providing terms of settlement, mediation reports and mediation documents via email. Mediators may need to print these documents if they require hard copies.

Adjourned mediations

Mediators are required to follow up on adjourned mediations within one month of an adjourned mediation. They are also required to advise the Senior Mediation Officer if the file is to remain open for a further month, failing which a mediation outcome will be recorded as failed. If a mediation remains unresolved after the second month, it will generally be closed as failed at the discretion of the Senior Mediation Officer. Mediators are required to follow up on adjourned mediations via telephone and email and avoid the need for a further mediation session except where the parties agree to attend a further session.

Mediator information sessions

The VSBC will hold information sessions twice a year that will assist mediators in satisfying CPD requirements.