

## VSBC Policy for Appointment of Mediators

The **Victorian Small Business Commission (VSBC)** has statutory dispute resolution functions under the *Small Business Commission Act 2017*, the *Retail Leases Act 2003*, the *Owner Drivers and Forestry Contractors Act 2005*, the *Farm Debt Mediation Act 2011* and the *Transport (Compliance and Miscellaneous) Act 1983*.

The VSBC is required by the Victorian Government to achieve successful mediation outcomes in at least 75% of mediations undertaken. Since commencement in 2003, the average mediation success rate has been around 80%.

The VSBC is also required by the Victorian Government to achieve client satisfaction rate with mediations undertaken of at least 80%. The VSBC currently achieves client satisfaction rates of over 90%.

### VSBC Mediation Panel

The Victorian Small Business Commissioner has established a formal VSBC Mediation Panel that consists of a diverse group of experienced, commercial dispute mediation professionals to continue offering Victorian small businesses a low cost and highly effective alternative dispute resolution service.

Inclusion of a mediator on the Panel is necessary for a mediator to be allocated VSBC mediations.

Mediators on the VSBC Mediation Panel 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;
- Indicated relevant jurisdictional capability and knowledge;
- Agreed to comply / demonstrated compliance with the administrative requirements of the VSBC; and
- Confirmed their ability to undertake mediation appointments if offered.

Further, to be able to conduct mediations under specific Acts, mediators on the Panel 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.'

During the two-year period of the mediator appointment on the Panel, the Commissioner may from time to time confirm whether he/she continues to satisfy these criteria and may remove a mediator from the Panel if any criteria are no longer satisfied.

Appointment to, and removal from the Panel remains at the discretion of the Commissioner. In addition to the above criteria, the Commissioner will consider any matters raised in the Personal Declaration made by the mediator/applicant and may also take into account any matter she 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 mediators on the Panel but is strongly recommended.

Inclusion on the Panel entitles a mediator to a minimum of three mediations per year being offered by the VSBC.

### **Appointment to Mediations**

The Commissioner determines the most appropriate mediator to be invited to be appointed to undertake a mediation having regard to a range of considerations.

The appointment of a mediator to a mediation is entirely at the discretion of the Commissioner.

The Commissioner may delegate the function of appointing a mediator to undertake a mediation. This function is currently delegated to the Senior Manager, Mediation & Executive Services.

The Primary considerations in inviting mediators to undertake a mediation 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. Note: 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. Where there are relatively few mediators with 80%+ success rates, this inevitably means that these high success rate mediators are more likely to 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. Note: to continue to achieve high customer satisfaction ratings, the VSBC will have regard to feedback provided by clients on mediators – both positive and negative; and
- 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 VSBC (e.g. prompt return of emails/ phone calls re availability);

- The willingness of the mediator to travel if necessary;
- Adherence to the VSBC's administrative requirements (e.g. providing adequate reports, documentation within required timeframes);
- Proven record of finalising adjourned mediations by telephone or email.

In addition, as the mediators represent the VSBC when undertaking mediations, the mediators are required to behave courteously, appropriately, professionally and with tolerance in their dealings with the parties and the 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 base on the nature of the 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 Mediation Fee Policy).

### **Monitoring**

The VSBC reviews, at least quarterly, 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**

The VSBC will make available to individual mediators, on request:

- 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 on the mediator's performance provided by clients.