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| Guide to mediation |
| *We’re here for small business* |

## **what is mEDIATION?**

Mediation is a process of negotiation where parties in a dispute meet to confidentially discuss their matter with an independent mediator.

The mediator will not make a decision. They will assist in identifying and exploring options for a resolution, helping the parties to reach their own agreement. The mediator will be appointed by the Victorian Small Business Commission (VSBC).

**benefits of mediation**

Mediation is an **effective** way to resolve an issue and has a high success rate. It helps parties to avoid costly litigation and associated business disruptions.

The process **empowers** parties by allowing them to directly engage in the negotiation of their settlement and be in control of the outcome.

It **can be arranged** **within a few weeks** after the application is submitted, with most mediations taking less than a full day.

Mediation sessions are **informal** yet structured. Most are conducted via videoconference or teleconference. Some are conducted in person, where parties come together in a meeting room.

The mediator doesn’t apply strict rules, rather they adapt the process to best suit the dispute and the people involved. This **approach allows for creative and business-driven solutions** rather than legal judgements.

At mediation, parties can address and resolve their issues in a **less stressful environment** and in a non-confrontational way, increasing the likelihood of continuing their business relationship.

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| How to prepare |
| **To give mediation the best chance of success, we ask that you attend your session yourself, even if you intend to have legal or other representation with you.**  **Prepare a short statement that tells your side of the story, focusing on the key issues.**  **Think about different ways of resolving your dispute, the outcome you would like, what you’re willing to compromise on and the limit of what you can really afford to accept.**  **Be prepared to listen to what the other party has to say and what they would like to achieve with an open mind.**  **Be prepared to make a genuine attempt to mediate in good faith. This means communicating and having discussions honestly and fairly with the genuine aim of reaching an agreement that you and the other party can accept. It also involves behaving in an open and transparent manner and providing accurate and sufficient information to support negotiations.**  **Consider having a support person and legal or professional representation attend on the day or be available to talk with you by phone during the session. It’s not necessary to have representation, however, some parties feel more comfortable doing so.**  **If you think you might experience language difficulties, ask the VSBC to arrange for an interpreter to attend free of charge.**  **While the average length of mediation is around 3.5 hours, it can sometimes take a full day. Please take this into consideration when making your plans.** |

## **FEES**

### The VSBC’s mediation service is subsidised by the Victorian Government, which makes it a very low-cost alternative to litigation.

### Before the mediation is arranged, you and the other party will be emailed a payment notice for the mediation fee.

## Payment is required within seven days of the date on the payment notice. If payment isn’t made within seven days by you and the other party, the mediation session will be cancelled and a certificate may be issued noting that a party has withdrawn from mediation or refused to mediate. For more information, see [question 1 of our mediation FAQs](https://www.vsbc.vic.gov.au/fact-sheets-and-resources/faqs/#mediation-faqs).

## **cancelling or rescheduling**

## If the mediation session is cancelled or rescheduled at the request of the parties within five or less working days of the mediation, the party making the request will have to pay the mediator the late cancellation fee, which is $900 for a half-day session or $1,350 for a whole-day session.

## If the request comes from both parties, they will share the fee. The VSBC does not encourage rescheduling and no more than one rescheduling per party is allowed.

## **what to expect on the day**

**Introductions –** For mediations held at the VSBC’s mediation rooms (121 Exhibition Street, Melbourne), when you arrive at the venue, you will be welcomed by a staff member who will guide you to your room. If the mediation is held at another venue, or via videoconference or teleconference, your point of contact will be the mediator.

The mediator will formally introduce themself and invite the parties into a joint session where they will explain the mediation process. The mediator will need to establish and be satisfied that each party is attending the mediation in person or is represented by a person with comprehensive knowledge of the dispute who is authorised to make decisions and has authority to enter into Terms of Settlement on the day.

**Parties’ presentations –** the mediator will ask each party to present their short statement and describe the issues in their own words.

**Discussion –** once each party has had the chance to speak, the mediator will help the parties to identify the key issues in dispute. Once these issues have been agreed to, there will be an open discussion of all issues.

**Private sessions –** after the open discussion, the mediator might have private sessions with each party to consider options and possible ways of reaching some agreement.

**It’s important to remember that the mediator helps the parties to think about their options but does not provide legal advice or make any decisions. All the decisions are made by the parties themselves.** Anything said to the mediator in the private sessions is confidential.

**Outcomes –** after any private sessions, all parties will meet again to consider possible outcomes and finalise the mediation, either by reaching a settlement agreement or by confirming that agreement can’t be reached.

## **reaching agreement**

**What happens if agreement is reached?**

If agreement is reached, a Terms of Settlement document is drafted, considered and signed by the parties. This is the end of the mediation process.

It’s important to know that the **signed Terms of Settlement agreement is a binding document and can be enforced by judicial or tribunal proceedings if necessary**. The parties are not obliged to reach an agreement at mediation. They should only enter into a settlement agreement if they feel that the outcome reached is their best option in their particular circumstances.

**What happens if agreement isn’t reached?**

If your mediation session was conducted under the ***Retail Leases Act 2003*** or under the ***Owner Drivers and Forestry Contractors Act 2005***, the parties can choose to start proceedings at the [Victorian Civil and Administrative Tribunal (VCAT)](https://www.vcat.vic.gov.au/). To do that, either party will need to obtain a certificate signed by the Commissioner (which, in most cases, will be issued if mediation fails or does not proceed).

If your mediation was conducted under the ***Small Business Commission Act 2017***, the Commissioner can issue a certificate confirming that alternative dispute resolution has been attempted by the parties but the dispute hasn’t been settled. This certificate can be used as evidence in proceedings before a court or VCAT.

## **Farm debt mediation**

## Under the ***Farm Debt Mediation Act 2011***, a creditor can request an [exemption certificate](https://www.vsbc.vic.gov.au/who-we-help/farmers/information-for-creditors/#section2) on the basis that satisfactory mediation has taken place. This certificate enables the creditor to start enforcement action under a farm mortgage. Satisfactory mediation means that mediation has resolved the matter or that mediation has proceeded as far as it reasonably could though hasn’t resolved the matter.

## In situations where mediation Terms of Settlement are in force, the creditor should not proceed with enforcement action where the Terms of Settlement are being met.

## A farmer can request a [prohibition certificate](https://www.vsbc.vic.gov.au/who-we-help/farmers/support-and-information-for-farmers/#section2) if they consider that the creditor has failed to take part in mediation in good faith. A prohibition certificate stops a creditor from taking enforcement action for up to six months or until mediation is entered into.

## The VSBC determines whether or not exemption and prohibition certificates are issued based on the requirements of the ***Farm Debt Mediation Act 2011***.

## **Can mediation be adjourned?**

There are situations where the mediation can’t be finalised on the day. If the mediator believes there is a need for the mediation session to be adjourned, they may ask the parties to agree to an adjournment.

Some mediations just require a phone call or email between the mediator and the parties to resolve the matter. In very limited circumstances, the VSBC may provide the parties with a second mediation. The decision to do so rests solely with the VSBC and the parties will be required to cover the full costs of the mediation (i.e. there will be no subsidisation).

## **Client satisfaction survey**

After your mediation session, the parties will be asked to complete a client satisfaction survey via email. Your feedback is always appreciated as it helps us to continually improve our services.

## **more information**

See our:

* [tips to help you resolve a dispute before mediation](https://www.vsbc.vic.gov.au/dispute-resolution/tips-to-help-you-resolve-a-dispute-before-mediation/), our [mediation checklist](https://www.vsbc.vic.gov.au/dispute-resolution/how-mediation-works/mediation-checklist/) and our [portal for applying for our help](https://www.vsbc.vic.gov.au/application-forms/)
* information on the [dispute resolution process](https://www.vsbc.vic.gov.au/dispute-resolution/mediation-process/), [how mediation works](https://www.vsbc.vic.gov.au/dispute-resolution/how-mediation-works/) and the [real benefits of online mediation](https://www.vsbc.vic.gov.au/news-publication/resolving-disputes-online-and-in-person-our-hybrid-approach/).

If you have any questions, [contact us](https://www.vsbc.vic.gov.au/contact-us/).

## **WHat do our clients say?**

*“[The mediator] went above and beyond. He was fair, efficient, and also seemed not only competent but caring and able to be impartial but still sincere and understanding.”*

*“[The mediator] was clear and concise on the process and demonstrated great balance in facilitating discussion and negotiation.” ­*

*“The mediator ensured that the video-conferencing process which was very new to us, worked very efficiently and without additional stress caused by the process.” ­*