



## Magistrates' Court Victoria

### Practice Direction

No. 5 of 2011

# MEDIATION PILOT PROGRAMME

## Background

Practice Direction No. 6 of 2007 created a mediation pilot programme for certain defended civil proceedings at the Magistrates' Court of Victoria (the Court) at Broadmeadows. Since then, the programme has been extended to other venues of the Court. The purpose of this Practice Direction is to extend the programme to the Court at Ballarat.

## Directions

1. From 15 August 2011, the Court will commence a mediation pilot programme at Ballarat (the pilot programme) for all defended civil proceedings where the amount sought in the complaint is less than \$40,000 or where the dispute is under the Associations Incorporation Act 1981 (irrespective of the amount or matter in dispute). These proceedings will be referred to mediation pursuant to section 108 of the Magistrates' Court Act 1989.
2. The pilot programme will only involve those proceedings where a notice of defence is filed at the Court at Ballarat on or after 15 August 2011.
3. In addition to serving upon a defendant the complaint and two notices of defence, a plaintiff in a proceeding will serve upon the defendant a document entitled "Information About Court-Annexed Mediation", which is set out in the appendix to this Practice Direction.
4. Where a defendant seeks to defend a complaint and files and serves a notice of defence in order to do so, that person must return to the Court at Ballarat at the same time as the notice of defence is filed a completed Section A, which is contained in the "Information About Court-Annexed Mediation".

This Practice Direction commences from 15 August 2011.



Ian L Gray  
Chief Magistrate  
12 August 2011

## **Appendix to Practice Direction 5 of 2011**

### **Information About Court-Annexed Mediation**

*This document is for people served with a claim for money or compensation or other relief in the Magistrates' Court. It is to be attached to the claim and to the Notices of Defence and served with them.*

#### **What is this Notice About?**

Changes are being made at the Magistrates' Court of Victoria at Ballarat, to better meet the needs of people involved in civil disputes. From 15 August 2011, all defended civil proceedings:

- where the amount sought in the complaint is less than \$40,000 or
- a dispute under the Associations Incorporation Act

will be referred to mediation pursuant to section 108 of the Magistrates' Court Act 1989.

If you choose to defend your case, this will apply to you.

#### **What is Mediation and How Does It Work?**

Mediation is an informal problem-solving process. You and the others involved in the dispute (called "the parties") meet together and with the guidance of skilled impartial mediators discuss the issues in dispute. The parties are helped to identify options, consider solutions and work toward a mutually acceptable agreement. The dispute is only settled if all of the parties agree to the settlement.

#### **Why Use Mediation?**

Mediation offers a speedier and less expensive method of resolving disputes. Experience has shown that mediation is a very successful way of resolving disputes. Even in those cases where the parties believed that their positions were so far apart that mediation was pointless, experience has shown that resolutions are achieved and people are satisfied afterwards.

#### **Who Will Conduct the Mediation?**

The mediator for your proceeding will be provided by the Dispute Settlement Centre of Victoria (DSCV). The DSCV is part of the Department of Justice, Victoria. It provides a confidential dispute resolution service throughout Victoria and has been operating since 1987 resolving thousands of disputes using mediators and its Disputes Advisory Service.

At Ballarat, it is expected that DSCV mediators will be legally qualified as well as being trained and gazetted by the Victorian Government as a mediator. Unlike a court hearing, the mediator has no decision-making power.

#### **Will the Mediation be Private?**

The mediation will take place at the Court in private and what is said is confidential. Evidence of anything said or done during a mediation cannot be given in a later hearing unless all the parties agree in writing.

#### **Do I Pay for the Mediator and the Venue?**

No. The Mediator and the venue are provided at no cost to the parties.

### **Why You Should Make a Good Faith Effort to Mediate?**

The Court requires that all parties make a genuine effort to resolve the issues in dispute, before going to a hearing before a magistrate or judicial registrars.

Each party is expected to be present at the mediation, co-operate with the mediator and be ready to settle. That means coming to the mediation prepared to make a good faith effort to mediate all disputes issues. It is important that all the people who are involved in making decisions about the dispute attend.

### **What Happens if one of the Parties does not attend in the Mediation?**

The Court has the power to order that the claim of that party is dismissed or the notice of defence of that party is struck out.

### **What Happens if the Dispute is not settled at Mediation?**

If the dispute is not settled at the mediation, then you will be given a date for hearing at a time arranged by the Court and convenient to the parties.

### **Where and When will the Mediation Occur?**

The mediation will take place at the Magistrates' Court at Ballarat, 100 Grenville St South, Ballarat on a weekday and between the hours of 9.00 am and 5.00 pm.

Generally, mediation will be held within 4 weeks of you filing and serving a notice of defence. It should take no more than three hours.

### **What do I need to do?**

If you intend to defend the complaint:

**Step 1** – Complete the Notice of Defence, and Section A of this Form. Make sure the Court Number is filled in.

**Step 2** – File the one copy of the Notice of Defence, together with Section A with the Court.

**Step 3** – Serve the other copy of the Notice of Defence on the other party (or their legal practitioner).

(If you do not intend to defend the complaint, refer to the Claim Form).

### **What Will Happen Next?**

You will be contacted by the Dispute Settlement Centre of Victoria to set a date for mediation. The Centre will ensure that all parties are prepared for mediation. In some instances, it may be possible to resolve the matter prior to mediation.

**SECTION A**

**Court Number Ref:** .....

**Your details:**

**Title, Given Name & Family Name.** .....

**Address:** .....

.....

.....

**Male / Female** .....

**Contact Telephone Number** ..... *Home*

..... *Work*

..... *Mobile*

..... *e-mail*

..... *Fax Number*

**Do you need an Interpreter?** Interpreters are arranged by the DSCV at no cost

**Yes / No**

**If Yes, what language and / or dialect ?** .....

**Are you Represented by a Legal Practitioner?**

**Yes / No**

**Name of Person** .....

**Name of Organisation** .....

**Telephone Number** .....

**Magistrates' Court of Victoria, Ballarat Tel: 5336 6200**  
**Dispute Settlement Centre Victoria Tel: 1800 658 528**