

Court referral to private mediation: *Victorian Bar Mediation Referral Schemes in Action*

NATIONAL MEDIATION CONFERENCE 2023

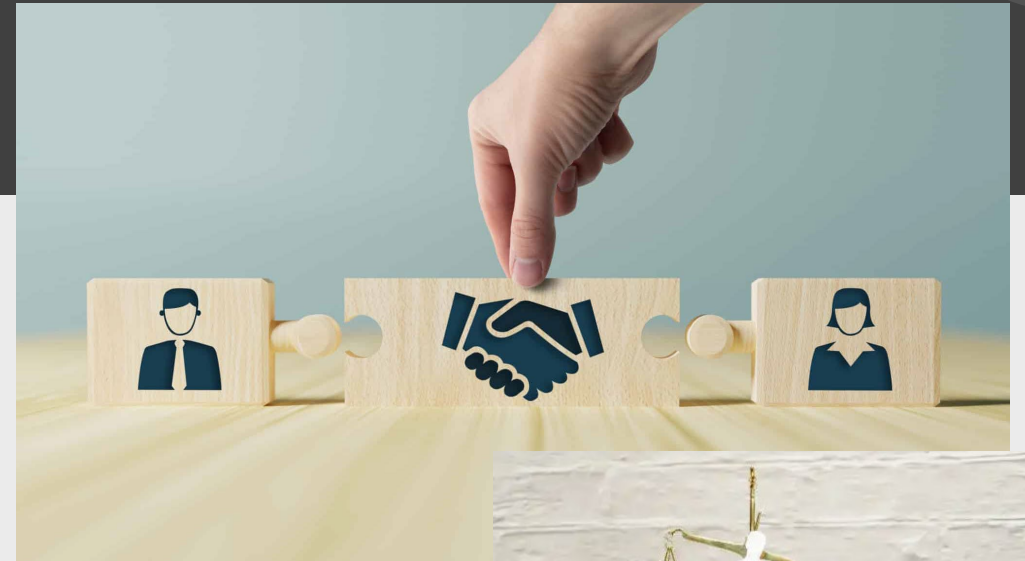
Te Whanganui-a-Tara, Aotearoa
(Wellington, New Zealand)

8.2 DISPUTE RESOLUTION SYSTEM DESIGN

GLEN PAULINE

Chair ADR Committee, Victorian Bar & Advanced Mediator

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Creation of the Referral Schemes

- 2020 Covid-19 lockdowns: Courts physically closed; online mediation suddenly arrives
- ADR Committee Chair Mr Tony Elder & others:
 - drafts “Expedited Mediation Scheme”
 - liaises with Federal Court officials and Vicbar mediators to create lists of barristers available to mediate “online”
 - liaises with Judge Woodward of County Court suggesting court referral to mediators
- September 2020: Commercial List Scheme signed, launched 20 October 2020
- September 2021: Family Property List signed, launched 2 December 2021



Purposes of the Schemes



- To enable the Court to refer matters to mediation by Nationally Accredited Mediators
- To provide visibility to the profession and Court staff and parties as to how mediation services can be requested from the Bar by the Court
- To ensure referrals be directed to barristers with “appropriate experience”
- To ensure referrals are “fairly shared amongst available barristers”

How the Referral Schemes Work



The Court



Victorian Bar Office



Nationally Accredited Mediators



Nomination Process



President nomination



Parties or Court appoint



Mediator

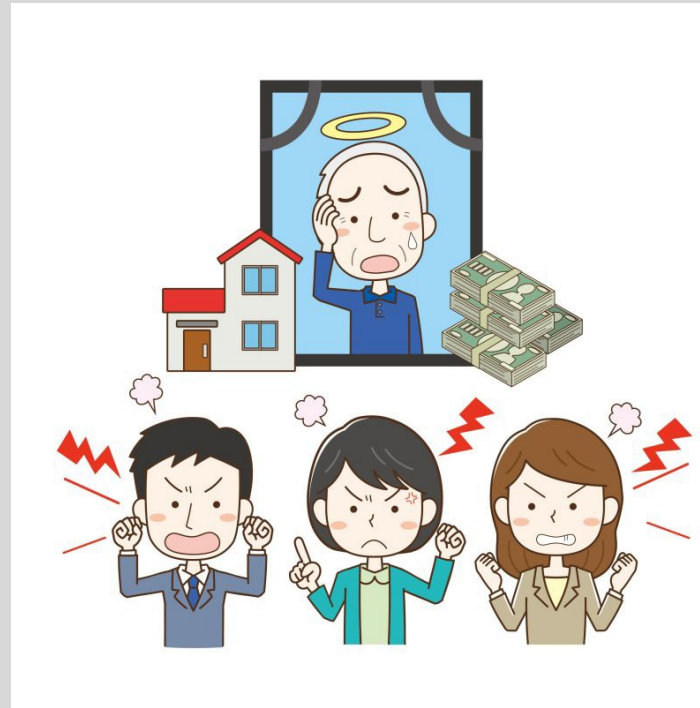
Commercial List Scheme



- Two tiers of cases for referral
- Fees capped
- Experienced & Less experienced Panels
- Mediators appointed: numbers and experience level
- Type of referral: by parties directly and by Court
- Time between referral and mediation
- Factors relevant to Court referral
- Settlement rate*
- Court's feedback on the Referral Scheme
- Fairly sharing referrals amongst available barristers

Family Property List Scheme

- Two tiers of cases for referral
- Fees capped
- Experienced & Less experienced Panels
- Mediators appointed: numbers and experience level
- Type of referral: by parties directly & by Court
- Time between referral and mediation
- *Standard timetabling orders requiring mediation*
- Settlement rate*
- Court's feedback on the Referral Scheme
- Fairly sharing referrals amongst available barristers



Victorian Bar Office – Administering the Referral Schemes

- Bar Office staff: in-house lawyers' management of referrals received
- Sending and collating EOI's per referral
- Application of Nomination Process after EOI's received
- Liaison with ADR Committee where guidance needed
- Liaison with Bar President: advising mediators to nominate
- Liaison with parties and mediators and appointed mediator
- Maintaining records in support of the Referral Schemes and transparency of nomination process



ADR Committee Role & Oversight



- Drafting Referral Schemes
- Liaison with Court: Judge Woodward, Judge Tran, Judicial Registrar Muller
- Checking EOI's sent to mediators; reviewing court documents provided
- Initially, selection of mediators to nominate from EOIs: now automatic by Nomination Process
- Drafting Nomination Process approved by Bar Council
- Guidance to Bar Office re whether to send to Experienced Panel only



Benefits of the Referral Schemes

- Parties
- Court
- Accredited Mediators
- Mediation Standards

Future use of private mediation



- Victorian Bar Referral Schemes are a blueprint for more private mediation in Courts and Tribunals especially those with a high volume of cases
- Parties are funneled to private mediation in cases where legal costs will make judicial determination unfeasible
- Parties get faster resolution of their court dispute by referral out of the system to private mediators
- High standards of mediation maintained by availability of senior and experienced mediators matched to the case at capped rates
- Court resources reallocated to other important judicial tasks
- Some opportunities for junior mediators to gain experience in appropriate cases if appointed by the parties or Court



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Questions?

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