

PRACTICE DIRECTION NUMBER 17 OF 2022

SUPREME COURT OF QUEENSLAND

SCHEME FOR PRO BONO MEDIATION IN PROCEEDINGS INVOLVING SELF-REPRESENTED LITIGANTS

This Practice Direction modifies the practice for the making of referral orders set out in Part 6, *Civil Proceedings Act 2011* (Qld) (CPA) and in Chapter 9 Part 4, *Uniform Civil Procedure Rules 1999* (Qld) (UCPR) so as to apply to the scheme for court-supervised pro-bono mediations in proceedings in which one or more of the parties do not have legal representation (the **scheme**).

The Practice Direction commences on the date of publication and applies to all matters arising in the civil jurisdiction of the court filed in the Brisbane registry. A review of the scheme will be conducted within 12 months of commencement of this Practice Direction, following which it may be extended to civil matters filed in the Cairns, Townsville and Rockhampton registries.

Objective

1. Court-supervised pro-bono mediation in proceedings in which one or more of the parties do not have legal representation improves access to justice by removing the cost of the process as an obstacle to mediation, providing an opportunity for litigants to resolve their dispute, or narrow the issues in the dispute, without the need for determination by the court.

Referral to pro bono mediation

2. An order referring a proceeding to mediation under the scheme (**a pro bono mediation referring order**) may be made by the Court:
 - a. of its own motion;
 - b. on application by a party to a proceeding in which one or more of the parties do not have legal representation; or

- c. by consent of the parties, consequent upon the parties to such a proceeding notifying the court that they wish to have the proceeding referred to mediation under the scheme by sending an email to the Supervised Case List Manager at supcasemanager@justice.qld.gov.au.
- 3. If a pro bono mediation referring order is proposed to be made other than by consent, the court may direct the resolution registrar to give written notice to the parties under rule 319 UCPR that the parties' dispute is to be referred, by order, to a mediation to be conducted pursuant to the scheme by specified mediators and then the procedure there stated must be followed.

Parties' duties once a pro bono mediation referring order is made

- 4. A pro bono mediation referring order is to be regarded as an order under Part 6 of the CPA and Chapter 9 Part 4 of the UCPR.
- 5. Once a pro bono mediation referring order is made, the parties' obligations are those set out in s 44 of the CPA and in rules 322 and 325 UCPR, including that each party
 - a. must attend at the mediation as directed by the mediator(s);
 - b. must co-operate with the mediator(s) and make a genuine effort in good faith to resolve the issues in dispute.
- 6. If a party impedes the mediation process, the court may impose sanctions against the party, including those stated in s 44 of the CPA.

Form of order

- 7. Rule 323 UCPR does not apply to a pro bono mediation referring order.
- 8. If a pro bono mediation referring order is made, the following requirements of this Practice Direction apply.

Confidentiality

- 9. Prior to the mediation the parties must sign a mediation agreement requiring them to maintain the confidentiality of the mediation.

10. The mediation is conducted on a “without prejudice” basis. The law relating to without prejudice communications applies to information shared at, and documents prepared for, the mediation.
11. If the case does not resolve at mediation, subject to an order of the court, no person may give evidence at the trial of the proceeding of anything said or done, or any admission made at the mediation, unless all parties agree.
12. If the mediator(s) hold private meetings with the parties, then subject to court order, the mediator(s) will not disclose to any other party or participant any information provided during a private meeting without the express authority of the informing party.
13. The mediator(s) will not provide the registrar, or the court, with any details of discussions which take place at the mediation, or the terms of any agreement reached by the parties, unless they have the consent of all parties or are legally required to do so.

Appointment of Mediators

14. The mediation may be conducted in accordance with a co-mediation model. This means that there will be two mediators working together to assist the parties to resolve their dispute.
15. The resolution registrar will select and appoint the mediator(s) from the panel provided by the Queensland Law Society of nationally accredited mediators under the Australian Standards (NMAS).
16. The mediator(s) and the venue will be provided at no cost to the parties.
17. The resolution registrar will provide the mediator(s) with copies of the latest pleadings filed in the proceeding.

Pro Bono Representation for the Self-Represented Litigant

18. The resolution registrar will refer the self-represented litigant (**the litigant**) to LawRight.
19. The resolution registrar will provide LawRight with copies of the latest pleadings filed in the proceeding.

20. If the referral is accepted, LawRight will explain to the litigant the process of applying for pro bono representation at the mediation.
21. If the litigant applies for representation, and the matter meets LawRight's eligibility criteria, LawRight will endeavour to obtain an advocate to represent the litigant at the mediation at no cost.
22. If the referral is not accepted, the matter does not meet LawRight's eligibility criteria, LawRight is unable to obtain representation for the litigant, or the litigant decides not to apply for assistance, the litigant must arrange their own representation or represent themselves at the mediation.
23. If a barrister accepts a direct brief from a litigant under the scheme they may comply with the requirement under paragraph 3(c)(i) of Practice Direction 20 of 2012 by emailing a copy of the document to the resolution registrar, who will arrange for the document to be placed on the court file.

Participants in the Mediation

24. If the party is an individual, they must attend in person.
25. If the party is a company, partnership, business, or unincorporated association, or if an insurer is conducting the claim or defence in the name of the party, the party must ensure that an officer with authority to sign a binding settlement attends the mediation or that the mediator and the other party or parties are informed of the arrangements that will be made to bind the party to any negotiated settlement agreement made as a result of the mediation.
26. If a party needs an interpreter to understand what is being said at the mediation, they must advise the mediator(s) and the other party or parties and arrange for the interpreter to attend. The cost of the interpreter is to be borne by the party who requests it.

Preparation for the Mediation

27. The mediator(s) may make directions as to the conduct of the mediation, which may include:
 - a. date, time, and venue;

- b. documents to be briefed to the mediator(s);
- c. participants;
- d. the mediation agreement;
- e. preparation for the mediation;
- f. intake (or preparatory) meetings with all or some of the participants.

The Mediation Process

- 28. The mediation will take no more than six hours, which time may only be extended with the agreement of the parties and the mediator(s) or by order of the court.
- 29. The mediator(s) may gather information about the dispute from the parties in any way they decide is appropriate.
- 30. The mediator(s) may meet with the parties together and separately during the mediation.
- 31. The mediation should be conducted within 28 days of appointment of the mediator(s).

Termination of the Mediation Prior to Completion

- 32. The mediator(s) may terminate a mediation if:
 - a. they consider that continuing will not assist the parties to resolve their dispute; or
 - b. they believe (on information that provides a reasonable basis for the belief) that a party is or was engaging in illegal, improper, or unethical conduct in the mediation.
- 33. The mediator(s) must advise the parties before terminating the mediation but are not required to give reasons for doing so.

Outcome of the Mediation

- 34. If the parties agree on resolution of their dispute, or part of it, the agreement must be written down and signed by or for each party and by the mediator(s) (the **resolution agreement**).

35. The resolution agreement must be placed in a sealed envelope, marked with the court file number and the notation “Not to be opened without an order of the court” and filed in the court.
36. The mediator(s) must notify the resolution registrar whether the dispute resolved (wholly or in part) at the mediation and must file a certificate in accordance with rule 331 UCPR and section 49(1) CPA.
37. After the certificate has been filed, a party may apply to the court for an order giving effect to a resolution agreement reached at or after the mediation.



Helen Bowskill

Chief Justice

27 July 2022