

9 October 2015 | The Honourable Associate Justice Derham

Thriving in an increasingly complex legal world

Thank you, Chief Justice.

I am going to tell you a little about Judicial mediation in the Supreme Court – that is mediation by an Associate Judge or Judicial Registrar.

The Court is committed to resolving disputes in the most efficient manner possible including the use of non-adjudicative processes. Private mediation is well-known to you. I think judicial mediation is less well-known but it is very significant in the service it provides to the profession and the community.

It also has significant benefits for the management of litigation in the Court.

A matter referred to judicial mediation will usually have been unsuccessfully mediated privately.

It will also have one or more other features that make it suitable for judicial mediation, including the following

- That one or more of the parties having limited financial resources,
- The existence of a substantial risk that the costs and time of a trial would be disproportionately high compared to the amount in dispute or the subject matter of the dispute,
- That the estimated trial length will occupy substantial judicial or other court resources, or
- That there are other aspects which make it in the interests of justice for the matter to be referred to judicial mediation.

There are limiting factors as well. Thus cases where there is a self-represented litigant will not be mediated by an Associate Judge or Judicial Registrar - unless representation can be arranged for that litigant.

There are several discrete circumstances in which judicial mediation generally takes place:

- First, Circuit Judges are commonly accompanied on circuit by an Associate Judge who conducts mediations of the matters in the circuit list immediately at the commencement of the circuit. This has proved



very successful in reducing or eliminating the number of cases tried on circuit.

- Secondly, where a Judge identifies a matter that is about to be tried or has commenced to be tried as suitable for mediation. In these cases the Judge refers the matter to an Associate Judge, usually either Associate Justice Efthim or Associate Justice Wood, for an immediate mediation. Special arrangements were put in place in early 2014 to enable this facility to be provided as a service both to the Court, the profession and the administration of justice. It has worked exceedingly well.
- Thirdly, where very large and time consuming litigation (where estimated trial length will occupy substantial judicial and other court resources), like the bushfire litigation for example, call for special treatment. There have been a number of cases in this category that have benefitted from judicial mediation, particularly by Efthim and Wood AsJJ.
- Fourthly, where the parties have limited resources and the amount in dispute is modest. This is particularly the case in claims under Part IV of the *Administration and Probate Act*. That is, TFM cases. Where the value of the estate is \$500,000 or less the parties are offered a judicial mediation and generally accept it. This has proved very successful in settling these cases.

I think it is important to observe that in the last financial year the mediations conducted by Associate Judges and Judicial Registrars have saved over 900 court sitting days (based on the parties' estimates of the duration of the trial). When judgment writing is taken into account, the saving in terms of judge time is very significant.

The Court is proud of its contribution made by the provision of judicial mediation. We think it is a service to the profession, the community and the Court which deserves recognition.