

Dear Colleagues,

Virtual Mediations

I am pleased to advise that, in spite of the present restrictions on travel and meetings in person, my colleagues and I are still able to offer mediation services in the form of partly or entirely “virtual” mediations. These, I believe, are likely to prove to be as conducive to settling matters as mediations in person. Recent experience both here and elsewhere in Australia confirms that virtual mediations do offer a viable alternative where attendance in person is not possible, and even where it is.

Last week, I conducted a mediation exclusively using Zoom (apart from the occasional mobile phone) with a party and his solicitor in Adelaide and a party and her solicitor in Alice Springs and her counsel in Darwin. The mediation started at 10am and agreement was reached by about 3pm. The benefits to the parties in terms of cost savings and convenience are obvious. In the light of this experience, it seems to me that mediations in person are likely to become less common particularly where parties are based out of Darwin, even after travel restrictions are lifted.

Mediations can also be conducted using programs like Microsoft Teams and Cisco Webex. My preference at the moment is Zoom, not least because of its breakout room facility.

A virtual mediation need not be entirely virtual. Subject to local social-distancing rules, it is still possible, for example, for the participants on one side to be in the same room, thereby avoiding the need for multiple devices for that side. William Forster Chambers has put in place two sets of web-based communication facilities in our mediation centre which may be used by participants who wish to meet in person or if they do not have access to the requisite equipment.

In addition to me, Miles Crawley SC, David Alderman, David Baldry, Josh Ingrames and Lindy Morgan and our interstate visiting members, Stephen Walsh QC, Campbell Bridge SC and William Lye OAM QC, accept appointment as mediators, including for virtual mediations. I attach a protocol which some of us are including as part of the mediation agreement to accommodate undertaking the mediation virtually.

If you have any queries or would like to discuss any aspect of virtual mediations, please do not hesitate to contact me, any of the other mediators or our Clerk, Marie Turbill. Contact details are at below and at www.williamforster.com.

Kind regards,



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Protocol for Virtual Mediations

1. This is the protocol referred to in the mediation agreement for the conduct of a “virtual mediation” wholly or partly using web-based video-enabled communication programs. It forms part of the terms of the agreement.
2. The mediation will be conducted using one or more web-based video-enabled communication programs like Zoom, Microsoft Teams or Cisco Webex agreed prior to the mediation. Participants should download the relevant software in advance of the mediation and become familiar with it. They should also check that their video and audio are operating properly.
3. Each participant or group of participants participating virtually should also have and supply to the Mediator an email address and mobile phone which should be available and monitored during the mediation in case resort to one of those methods of communication is required.
4. The Mediator will be the host or administrator of, and will control, the virtual mediation. The Mediator will have the appropriate subscription for the relevant program to permit the mediation to be conducted as efficiently as possible. The highest available security settings on that subscription will be used by the Mediator. Recording of any part of the audio or video of the mediation will be disabled by the Mediator as far as possible and, in any event, is strictly prohibited.
5. The Mediator may also establish or ask a party to establish a cloud-based folder of documents concerning the mediation and the underlying dispute which will be available to all participants and the Mediator for use during the mediation, using a program like Dropbox or similar. This folder is subject to the terms of the mediation agreement (including as to confidentiality) and will be deleted once the mediation has come to an end.
6. The Mediator notes that all communications within the mediation, whether written or spoken, are confidential and subject to formal, written contract; that is, no binding agreement will be reached unless and until the agreement has been reduced to writing in a document which purports to be a binding contract and the parties had signified their agreement to the terms of that contract by the mode agreed, noting that this may not necessarily be by the exchange of original, signed documents. Unless agreed otherwise, the parties agree that counterparts of a written contract may be exchanged such as to create a binding contract by the scanning and emailing of the original.
7. Otherwise, the Mediation will be conducted as far as possible as mediations usually are conducted where the parties attend in person.