

COURT OF APPEAL MEDIATION PILOT SCHEME

Members are reminded that the Court of Appeal is conducting a mediation pilot scheme. Limited funds to be expended before 15 June 2006 have been made available by the Attorney General's Department to subsidise the cost of mediations in the Court of Appeal.

The Registrar of the Court of Appeal will, at directions hearings, choose cases which are regarded as suitable for mediation and offer the parties the opportunity to participate in the Mediation Pilot Scheme. Where parties agree to participate in the scheme, a subsidy of \$2,500.00 will be paid after the conclusion of the mediation. As a condition of payment of the subsidy, the parties must provide the mediator's invoice for fees and a certificate from the mediator confirming that the mediation has been concluded. The parties must also join in furnishing information about the conduct and outcome of the mediation and in directing how the subsidy is to be paid. The Court contemplates that the subsidy will be used for payment of mediator's fees, but if the parties are in agreement it may also be used in payment of closely related expenses of the mediation such as room hire or legal fees associated with the mediation process.

Further information of the pilot scheme and copies of the scheme application form and certificate of completion of mediation can be found on the Supreme Court website at:

http://www.lawlink.nsw.gov.au/lawlink/supreme_court/ll_sc.nsf/pages/SCO_camediation

Where a case has been identified by the Registrar as suitable for mediation but one party does not favour it, the Bar Association proposed the use of a mediation facilitation scheme (set out below) which has been approved by the Court's ADR Steering Committee and President of the Court of Appeal. Copies of the protocol have been given to the Registrar to hand to parties and their representatives as appropriate.

PROTOCOL FOR FACILITATION OF MEDIATION

- 1 With the approval of the Court of Appeal, this Protocol will be made available to the Registrar of the Court of Appeal, for distribution by the Registrar to parties to appeals where appropriate.
- 2 The Protocol will apply where the Registrar offers parties the opportunity to participate in the pilot scheme and one party favours mediation but the other party(ies) do not. In this situation, the Registrar will make the Protocol available to the parties. The Protocol offers the party in favour of mediation the use of the New South Wales Bar Association's facilitation mechanism.
- 3 The appeal would be listed for hearing regardless of whether the offer was taken up.
- 4 If the offer of facilitation is accepted, the party in favour has the responsibility of contacting the Bar Association to request facilitation of mediation of the appeal.
- 5 The Bar Association will assign a senior member of its Mediation Committee (or a co-opted senior non-member) to be the facilitator.
- 6 Facilitation will involve:

- 6.1 Consultation with counsel or solicitors for the party in favour of mediation in the Court of Appeal, in order to assess the prospects of mediation of the appeal. The party in favour will make copies of the appeal papers available to the facilitator.
- 6.2 If the facilitator takes the view that the prospects of mediation are poor, he or she will communicate that view to counsel or solicitors for the party in favour and report that view to the Association.
- 6.3 If the facilitator takes the view that the prospects are reasonable or better, he or she will consult with counsel or solicitors for the party(ies) reluctant to mediate, with a view to articulating the advantages of successful mediation and suggesting that instructions to mediate be sought.
- 6.4 If the parties agree to a mediation, it will be their responsibility to notify the Registrar and seek any consequential orders (*e.g.*, if necessary, a later hearing date).
- 6.5 Because facilitation will be voluntary and unpaid, it is contemplated that the facilitator's involvement would be limited to several hours.