



## RETAIL AND COMMERCIAL LEASES MEDIATION RULES

**NB: A COPY OF THESE RULES IS TO BE PROVIDED TO BOTH PARTIES AND TO THE MEDIATOR**

### **Functions of the Mediator**

1. The Mediator will assist the parties to explore options for and, if possible, to achieve the expeditious resolution of their dispute by agreement between them.
2. The Mediator will not make decisions for a party or impose a solution on the parties.
3. The Mediator will not, unless the parties agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the dispute and then only from such person or persons and upon such terms as are agreed by the parties.

### **Conflicts of interest**

4. The Mediator must disclose to the parties to the best of the Mediator's knowledge any prior dealings the Mediator has had with either of them and any interest the Mediator has in the dispute.
5. If in the course of the mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator will immediately inform the parties of those circumstances. The parties will then confer, and if agreed, continue with the mediation before the Mediator.

### **Participation**

6. The parties must participate in good faith with the Mediator and each other during the mediation.
7. Each party must use its best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the dispute.

### **Authority and representation**

8. If a party is a natural person, the party must attend the mediation conference. If a party is not a natural person it must be represented at the mediation conference by a person with full authority to make agreements binding on it settling the dispute.
9. Each party may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party requires.

### **Conduct of the mediation**

10. The mediation, including all preliminary steps will be conducted in such manner as the Mediator considers appropriate, having due regard to the nature and circumstances of the dispute, the agreed goal of an efficient and expeditious resolution of the dispute and the view of each party as to the conduct of the mediation.
11. The mediation conference shall be held within fourteen (14) days of the selection of the Mediator or within such other period as the parties may agree.
12. Without limiting the Mediator's powers the Mediator may give directions as to:

- 12.1 The exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint experts' report with a view to identifying areas of agreement, narrowing the area of disagreement and clarifying briefly the reasons for disagreement.
- 12.2 The exchange of brief written outlines of the issues involved.
- 12.3 Service on the Mediator prior to the mediation conference of any such reports and outlines.

### **Communication**

13. The Mediator may meet as frequently as the Mediator deems appropriate with the parties together or with a party alone, and in the latter case the Mediator need not disclose the meeting to the other party.
14. The Mediator may communicate with any party orally and/or in writing.
15. Any document relied upon by a party and provided to the Mediator must immediately be served by the party on the other party.
16. Information, whether oral or written, disclosed to the Mediator by a party in the absence of the other party may not be disclosed by the Mediator to the other party unless the disclosing party permits the Mediator to do so.

### **Confidential information**

17. A party may prove objective facts, whether or not confidential, by direct evidence in any proceedings in respect of the dispute. Subject to that, all confidential information disclosed during the mediation, including the preliminary steps:
  - 17.1 May not be disclosed except to a party or a representative of that party participating in the mediation or if compelled by law to do so; and
  - 17.2 May not be used for a purpose other than the mediation.

### **Privilege**

18. The following will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings in respect of the dispute:
  - 18.1 Any settlement proposal, whether made by a party or the Mediator.
  - 18.2 The willingness of a party to consider any such proposal.
  - 18.3 Any admission or concession or other statement or document made by a party.
  - 18.4 Any statement or document made by the Mediator.

### **Subsequent proceedings**

19. The Mediator will not accept appointment as an arbitrator, in or act as an advocate in, or provide advice to a party to any arbitral or judicial proceeding relating to the dispute.
20. Neither party will take action to cause the Mediator to breach Rule 19.

### **Termination**

21. A party may terminate the mediation immediately by giving written notice to each other party and to the Mediator at any time during or after the mediation conference.
22. If, after consultation with the parties, the Mediator forms the view that the Mediator will be unable to assist the parties to achieve resolution of the dispute the Mediator may immediately terminate the engagement as Mediator by giving written notice to the parties of that termination.
23. The mediation will be terminated automatically upon execution of a settlement agreement in respect of the dispute.

### **Settlement**

24. If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties and the Mediator before any of the participants leave the mediation conference.
25. A copy of the settlement agreement is to be forwarded to the Operations Manager, Tenancies Branch, GPO Box 965, Adelaide 5001.

### **Exclusion of liability and indemnity**

26. The Mediator will not be liable to a party except in the case of fraud by the Mediator for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations in the mediation.
27. The parties shall jointly and severally indemnify the Mediator against all claims, except in the case of fraud by the Mediator, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations in the mediation.

### **Costs**

28. Mediation fees are subject to change but currently start at \$1500 (plus the applicable GST) for a 3 hours session and are payable to the Mediator 7 days before the scheduled mediation. (Mediator's reserve the right to charge their standard fee and participants should make enquiries as to that fee prior to commencement of proceedings). The cost is to be shared between the parties, ie each party pays half each (plus the applicable GST).
29. The Mediator may, at any time and from time to time, require each party to deposit with the Mediator such sum as the Mediator considers appropriate to meet the Mediator's anticipated fees and disbursements. The Mediator may decline to embark upon or continue the mediation until all such deposits are made.