

Notification of UCPR Rule Change and Protection Provided by Court Referral

The Supreme Court of New South Wales ADR Committee has issued a reminder in respect of a change to Uniform Civil Procedure Rule (UCPR) 20.7.

Previously, UCPR 20.7 provided that, within 7 days after the conclusion of the mediation, the mediator must advise the court of the fact that the mediation has been concluded.

UCPR 20.7 now provides:

Within 7 days after the conclusion of the last mediation session, the mediator must advise the court of the following:

- (a) the time and date the first mediation session commenced; and
- (b) the time and date the last mediation session concluded.

These amendments arose from a recommendation by Justice Bergin.¹ The policy reasons behind the Rule are that:

- it is necessary to have certainty of the timeframe in which the 'mediation session' occurred so that the confidentiality of communications made within those sessions is protected; and
- the mediator's notification to the court can be used as evidence of the fact of when a mediation session commenced and concluded.

Justice Bergin noted that, in the main, mediators outside the court annexed mediation system have not been complying with UCPR 20.7. In order to comply with the requirements of UCPR 20.7, the mediator is obliged to notify the Registrar of the relevant Court or Division of the Court in respect of any matters referred to mediation pursuant to section 26 *Civil Procedure Act 2005* (NSW). The notification should include the name of the matter and the case number.

Protection afforded to mediators by the Civil Procedure Act 2005 (NSW)

The President of the Law Society of New South Wales has also issued a reminder to mediators about the various protections which are provided to mediators by Part 4 of the *Civil Procedure Act 2005* (NSW).

¹ See *Sharjade Pty Ltd v RAAF (Landings) Ex-Servicemen Charitable Fund Pty Ltd* [2008] NSWSC 1347

Matters referred to mediation by the Court pursuant to section 26 of the *Civil Procedure Act* acquire, amongst other things, the following protections:

- Privilege of the mediation session (section 30);
- Confidentiality of the mediation process with noted exceptions (section 31); and
- Protection from liability, for mediators (section 33).

There is also practical administrative assistance provided by this Part for mediators which relates to the allocation of costs of mediation (section 28), the enforceability of agreements and arrangements arising from mediation sessions (section 29), and the provision for directions by mediators as to the preparation for, and conduct of, the mediation (section 32).

[For the rule >>](#)

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