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Accredited Family Law Specialist, Independent Child Lawyer, Mediator and registered Family Dispute Resolution Practitioner

Family Dispute Resolution information

What is Family Dispute Resolution?

Family Dispute Resolution is a form of mediation in which an accredited Family Dispute Resolution Practitioner undertakes the role of mediator to assist parties to a family dispute, usually concerning children, to resolve outstanding issues between them, with an emphasis on the future and the best interests of the subject children.

Dispute resolution is designed to assist people to settle their Family Law dispute by:

- identifying issues and exploring options
- assisting parties to consider alternative solutions which may be mutually satisfactory to themselves and their children
- assisting parties to reach and, in many cases documenting an agreement, without having to engage in litigation in the Family Court

The dispute resolution practitioner ("mediator") is both neutral and independent. It is not the role of the mediator to provide legal advice to the parties or determine the outcome of the dispute, but rather to assist the parties to develop their own mutually acceptable solution.

Advantages of dispute resolution

- FDR is a private and voluntary process and save for some limited exceptions, discussions are confidential
- Participants generally find the process less stressful, less formal and more flexible than court
- A successful outcome can be a substantial financial saving to the parties by way of legal fees and court costs

- A resolution may be documented as effectively as a court determination
- You have control over what is discussed and decisions affecting your family into the future. Nobody else decides for you
- Timing - you choose when to mediate and meetings can be arranged at times convenient to you both
- Subject to suitability requirements, you may access mediation in a timely manner (within weeks) and avoid the lengthy delays associated with Family Court proceedings
- Mediation can proceed with or without lawyers
- The focus is on workable outcomes tailored to your children's needs and parties are encouraged to communicate in a constructive, future focused manner, thereby avoiding the commonly destructive aspects of litigation
- The process is flexible and can be suspended/terminated at any time
- Costs can be much more readily estimated than in the case of family court proceedings
- Each party has an opportunity to be heard and to express what is important to them in relation to their children
- Dispute resolution often leads to improved communication between parents and agreed mechanisms for resolving any further disputes

Do I need to or can I be made to attend dispute resolution?

Mediation is voluntary and no one can be compelled to attend. However, the law in Australia requires separating/separated parties who are unable to resolve their differences, to make a genuine effort to resolve matters between them, concerning their children before filing an application for parenting orders in the family Court.

Please note that there are some exceptions to this requirement such as cases involving family violence, child abuse or are of an urgent nature. If you have any queries as to whether your matter may be exempt from the dispute resolution requirement, then we urge you to obtain prompt independent legal advice.

What happens if the other party is unwilling to participate in FDR?

If the other party has received an invitation and the mediator has contacted them twice, including once in writing, and they have failed to accept the invitation, then the mediator may issue a section 60 I certificate.

What is a section 60I certificate?

A section 60 I certificate may be issued by the mediator in the following circumstances:

- When one party does not attend mediation
- When the matter is not appropriate for mediation
- When both participants attend and make a genuine effort to resolve the matter
- When both participants attend, but one or more did not make a genuine effort to resolve the issue(s) in dispute
- When both parties attend but part way through the mediation, the mediator decided it was not appropriate to continue

In cases where one party fails to attend mediation or fails to make a genuine effort to resolve the matter, the court, may at its discretion make a costs order against that party.

Can Lucy Thomas issue a section 60 I certificate?

Lucy is registered with the Attorney General of Australia's office and may issue Section 60 I certificates.

What does the process involve?

A typical dispute resolution will proceed as follows:

One party to a dispute may approach an accredited FDRP to conduct dispute resolution and an appointment is arranged for an initial private intake session. During the intake session that party will have an opportunity to provide background information and explain what is important to him/her. The mediator will have an opportunity to assess the suitability of the matter for FDR and prepare that party for a joint session.

Assuming that following the initial session, that party wishes to proceed with dispute resolution, then an invitation will be extended to the other party to engage in dispute resolution.

If the other party is willing to participate they will also undertake a private intake session with the mediator in a similar format to the intake session undertaken with the first party. Each intake session is private and confidential and the mediator will only share information between the parties with the consent of the parties.

The mediator will then confirm with both parties as to whether the matter is suitable to proceed and arrangements can then be made for a joint Dispute Resolution meeting on a mutually convenient day and time.

Joint sessions will usually be of 3 to 4 hours' duration although depending upon the issues a longer period can be scheduled.

In some matters the parties benefit from having several joint sessions, again depending upon the issues and in the event that parties wish to trial an arrangement.

During a FDR meeting each party will be encouraged to freely express topics that they wish to discuss and what is important to them in relation to each of those matters. An agenda will be formulated in relation to agreed topics for discussion.

The mediator will facilitate discussions in relation to each topic on the agenda and assist the parties to formulate options and solutions having regard to their respective needs, interests, concerns and the children's interests, as well as the practicalities of any options/potential solutions which may be generated.

What is the role of the mediator?

The mediator will:

- Be neutral
- Decide all the procedural aspects of the conference
- Assist the parties to agree the agenda, to clarify and explore issues, and to consider options and alternatives for settlement
- May decide to end the conference if he/she considers it appropriate without being required to give an explanation
- It is not the role of the mediator to give legal advice to the participants unless the FDRP is also a legal practitioner in which case he/she may offer a view, but is not required to do so

What is the role of the participants?

The participants will be responsible for determining matters/topics for discussion and are encouraged to:

- Listen respectfully to the views of all participants and explain their own views
- Discuss one issue at a time
- Consider a variety of options for each issue
- To be child focused
- Choose a settlement that considers the needs of all involved, including the children

Can lawyers attend?

You may bring your lawyer to the intake session and providing that there is agreement between the participants, lawyers may participate in any ensuing FDR. Lawyers can be of great assistance to parties in the way of providing legal advice before and during FDR and documenting any agreement arising. During the course of a joint session there is likely to be one or more breaks to enable participants to consult with their lawyers in private and take updated advice in relation to any options/potential solutions which may be generated during any joint session.

Whilst lawyers may attend joint sessions participants will be encouraged, where possible, to speak for themselves.

May I bring a support person?

You may bring a support person to your initial intake session. The involvement of support persons at any joint session will need to be considered and agreed in advance of any joint session.

Can the discussions in mediation be referred to in any subsequent Court proceedings?

The discussions in a mediation are generally not admissible in any subsequent court proceedings. There are however some exceptions including disclosures related to child abuse or risk of child abuse in some, but not all circumstances.

What happens if we reach agreement at the conference?

If you reach an agreement at the conference and wish to make the agreement legally enforceable, further steps will need to be taken by you to arrange for the necessary documents to be drafted. You can decide at the mediation which participant or whose lawyer may assist with the drafting of the necessary documentation. One option is for you to have an application for consent orders drafted and submitted to the Family Court. Once the orders are pronounced and issued by the court they are enforceable.

What is a Parenting Plan?

Some participants choose to document their agreement by way of a parenting plan which does not require the involvement of the court. A parenting plan is a written record of agreed arrangements regarding children. To constitute a parenting plan, the agreement must be signed and dated by both parents and entered into without threat, duress or coercion.

A parenting plan they cover anything relevant to the care, welfare and development of the child/children involved and may include details in relation to where the child lives, time spent with the other parent, communication, education and health issues, extracurricular activities, and travel.

A parenting plan:

- a) May be varied, subject to the agreement of both parents
- b) Is not enforceable by law, whereas a parenting order is
- c) Will be taken into consideration by the Family Court, but does not in any way bind the court in any subsequent proceedings. The court may take into consideration the degree to which each parent has fulfilled their obligations in the parenting plan

A parenting plan may be entered into by parties wishing to vary previous court orders made after 1 July 2006.

What happens if we don't reach an agreement at the conference?

If you have not reached an agreement at the end of your joint meeting, some discussion may take place as to what might need to happen to reach an agreement. It is possible, subject to the agreement of both parties, to schedule a further meeting to allow either of both parties to follow-up any agreed actions before giving further consideration to the matters in dispute. If it is apparent that no agreement can be reached and the parties do not wish to engage in further FDR, then the mediator may issue a 60 I certificate to each party.

Confidentiality of communications in Family Dispute Resolution

The mediator's confidentiality and disclosure obligations are set out in section 10 H of the Family Law Act. **Attached** is a copy of the relevant section and we urge you to read and familiarise yourself with the contents.

Admissibility of communications in Family Dispute Resolution

Attached is a copy of section 10 J of the Family Law Act which explains the restrictions and exceptions in relation to the admissibility of statements made during FDR in any subsequent court proceedings. If you decide to proceed with FDR then it is most important that you read and familiarise yourself with the contents of the attached section.

If you have any queries in relation to issues as to confidentiality or admissibility, then we recommend that you obtain independent legal advice.

Fees

Attached is a schedule of Lucy's fees as at 1 July 2018. Unless otherwise agreed in advance, each participant is required to meet their own share of the fees. Payment is required on the day of each session.

What do I do if I wish to provide the mediator with a suggestion, feedback or make a complaint?

Please contact Lucy on 9226 3300 or you may also contact Resolution Institute at www.resolution.institute.org

Making arrangements to proceed with FDR

For enquiries in relation to current availability and scheduling appointments please contact Lucy's assistant Danielle Tsokos on 9226 3300.

