

October 2007

## **FACT SHEET: MEDIATION IN FAMILY LAW**

### **Compulsory Family Dispute Resolution (FDR) in Parenting Matters**

Since 1 July 2007 separated parents are required to attend compulsory FDR with a registered FDR practitioner before making an application to the court for parenting orders. This has been implemented in an attempt to encourage parents to reach agreement without going to court.

#### **What is Mediation?**

Mediation is a dispute resolution (DR) process whereby a neutral third party, assists people to come to an agreement on particular issues. Parents will have to participate in negotiations in an attempt to reach agreement. The mediator will help to identify the issues in dispute and guide both parties through the process. The mediator should not take sides, give legal advice or make decisions for either party.

#### **FDR Practitioners**

An FDR practitioner is a specialist family law mediator. They must be registered with the Federal Attorney-General's Department. Contact the Family Relationship to locate your nearest registered FDR practitioner.

#### **Who is Required to Attend Mediation?**

All parties seeking parenting orders are required to attend FDR, unless an exemption applies. The Family Court will not accept an application unless you lodge an FDR Certificate or you are claiming an exemption.

#### **Am I exempt from Attending FDR?**

You may make an application to the court without attending FDR if:

- The court has reasonable grounds to believe that child abuse or domestic violence has occurred or there is a risk it will occur if there is a delay in applying for an order;
- The matter is urgent (e.g. to provide immediate protection to a child, stop a parent relocating, or for the urgent location and recovery of a child);
- Where the parties have reached agreement and filed consent orders;
- Where an application has been made for procedural or interim orders while the main proceedings are happening;
- Cases of contravention within 12 months of a court order, where a person has shown a 'serious disregard' for his/her obligations under that order;
- Where a party is unable to participate effectively in DR in circumstances such as incapacity, disability or physical remoteness.

You will need to file an 'Affidavit – Non-Filing of FDR Certificate'. The court has discretion in determining whether the exemption applies.

If claiming an exemption because of child abuse or domestic violence, you must advise the court in your affidavit that you have received information from a family counsellor (authorised by the

Federal Attorney-General's Department) or a registered FDR practitioner about the DR services and options available to you and the alternatives to going to court. Information is available from the Family Relationships Advice Line.

The court can make an order about your case without the information being obtained if it is satisfied the order is necessary because of an immediate risk of child abuse or domestic violence.

### **Issuing of FDR Certificates**

If an exemption does not apply, you cannot make an application to the court without filing an FDR Certificate with the court. A FDR Practitioner may issue a certificate stating:

- you or your ex-partner refused or failed to attend a mediation session;
- you or your ex-partner are exempt from attending mediation;
- you or your ex-partner made a genuine effort to resolve the dispute;
- you or your ex-partner (or both of you) did not make a genuine effort to resolve the dispute.

It is important how you present and conduct yourself at mediation. The court will take into account whether parties made a 'genuine effort' in FDR. Failure to make a genuine effort may result in an order for legal costs being made against either party. The issuing of a certificate stating that you did not make a 'genuine effort' can also affect your ability to obtain legal aid.

### **Agreements Reached at Mediation**

Parties may reach a mediated agreement regarding parenting arrangements. A mediated agreement does not have to be in writing. It may be a verbal agreement, which is noted by the mediator. Parties may also consider entering into a parenting plan. A parenting plan is a written agreement between the parents. It must be dated and signed by both parties. It sets out the arrangements the parents have made regarding the care and welfare of their children.

Parenting plans are not court orders and therefore are not legally binding. However, the court may take a parenting plan into account in any future decisions it may have to make. Clauses in a parenting plan may be filed as consent orders to make them legally binding. You should obtain assistance from a legal practitioner to drafting these orders.

An agreement or parenting plan must be entered into free from threat, duress or coercion. A resist any pressure for an immediate decision. It is recommended that you seek legal advice before signing any parenting plan or agreement.

### **Confidentiality**

Information disclosed during mediation cannot be used in court or disclosed to anyone. However, there are exceptions including where a person admits that they have abused a child or that a child is at risk of being abused. Further exceptions apply where it is necessary for FDR practitioners to comply with the law. FDR practitioners **may** disclose information to the police if they believe a child is at risk of harm, to prevent a serious threat to someone's life, to prevent a person be subjected to violence or to prevent a threat of damage to property being carried out. An FDR practitioner **may** also disclose information obtained during mediation to the Independent Child Lawyer if they believe it would assist in the representation of the child.

### **Contacts**

**Family Relationship Advice Line – 1800 050 321**

**Family Law Court – 1300 352 000**

*Acknowledgement: Some information for this fact sheet is based on Mediation on Children's Issues in Family Law (2007), prepared by Women's Legal Service Inc.*

*Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to a court.*