

Your Guide to Family Dispute Resolution

Family Dispute Resolution

Family Dispute Resolution (FDR) is the legal term for family mediation, a process for people who want to resolve issues that come under the Family Law Act.

FDR is suitable for matters arising post-separation or divorce, including parenting arrangements, children's living arrangements, property and other financial matters.

Mediation is a confidential¹ and private solution to help you and your ex-partner to talk about issues safely, explore options and work out the best way forward; for you, your family, and most importantly – your children.

Benefits of Family Dispute Resolution

FDR has many benefits to you and your ex-partner over other litigious pathways.

Family mediation can help you and your ex-partner work through your issues in a confidential and private setting, unlike a public court room.

You are both responsible for your own agreement and the decisions you make are yours, as opposed to decisions imposed on you by a judge.

With the help of your family dispute practitioner, you will be encouraged to discuss a wide variety of matters that are important to you and your family and to focus on the future.

Mediation is a cost-effective, time-efficient and private alternative to court proceedings.

Mediation provides valuable insights into each other's point of view and concerns, helps foster productive relationships, and typically results in better buy-in with agreements reached.

Role of the Practitioner

The Family Dispute Resolution Practitioner (FDRP) is an independent, impartial professional who guides you through the mediation process. This includes setting out guidelines and treating all parties fairly and equally.

Your mediator is a qualified Family Dispute Resolution Practitioner, registered with the federal Attorney-General's department; is a nationally accredited mediator and a Professional Member of the Resolution Institute, Australia.

It is not the role of the mediator to provide any legal advice or make decisions as to who is right or wrong. Rather, we will assist you work through your disputes and make your own decisions on what is in the best interests of your children.

Family Dispute Resolution Process

The process can be summarised as follows:

1. Preliminary Meeting (60-90mins)

The first step is for the mediator to meet with each person separately, for a confidential meeting. This meeting will allow you to share your concerns and to ask any questions you might have.

The mediator will also be considering the suitability of mediation and any variations or safety concerns that needs to be considered. It is recommended that people seek independent legal advice prior to mediation.

The mediator will spend time becoming familiar with your family history and specific circumstances, in order to assist you explore your options moving forward.

Finally, the mediator will workshop with you how mediation may play out, reality test your initial assumptions and options, and generally help prepare you for mediation.

¹. Refer to page 3 for further information on confidentiality and inadmissibility.

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Family Dispute Resolution Process

2. Mediation (2-6hrs)

The mediation takes place in a suitable venue that typically includes a boardroom style room, together with a separate breakout meeting room to cater for private retreat and one-on-one sessions.

Other options are available and include: shuttle mediations, secure web-based meetings and teleconference based mediations.

Mediations commence with each party sharing their story or concerns with the other. This is an opportunity for each party to speak uninterrupted and for the other party to hear the other's point of view.

An agenda is then agreed on to focus discussions, explore interests and consider underlying needs. Further group discussions continue to explore each other's concerns and start to consider options going forward.

Private sessions between the mediator and individuals will take place and will also be used for breaks when required. Private sessions are confidential and discussions will not be shared by the mediator.

The next phase of mediation focusses on generating ideas and proposals, negotiating and reality testing assumptions. Should an agreement be reached, these will typically be documented by the mediator on behalf of the parties.

Mediation is voluntary and parties, including the mediator, are free to discontinue the mediation at any point should they no longer feel it is appropriate, productive or safe to continue.

Outcomes at mediation can range from:

- (a) no agreement (with enhanced understanding of each other's concerns or views).
- (b) a verbal or goodwill agreement, only.
- (c) a Parenting Plan that is documented, signed and dated. It is not legally enforceable and can be reviewed and updated periodically, as required.
- (d) Consent Orders, using a nominated lawyer to convert your plan into orders for the Court to endorse.

About Your Practitioner

Matthew Maxwell, Principal of Maxwell Parker Conflict Consulting is a qualified Family Dispute Resolution Practitioner (FDRP), registered with the Attorney-General's Department. Matthew is also a nationally accredited mediator (NMAS), qualified counsellor and a Professional member of the Resolution Institute.

Matthew's qualifications include a Grad. Dip. Family Dispute Resolution and is authorised to issue certificates under Section 60I of the Family Law Act 1975.

In addition to his Family Dispute Resolution studies, Matthew has over 20 years experience working for several of Australia's leading banks, specialising in the management of high risk rural and regional clients. Matthew is also a qualified counsellor and assists clients to learn and understand the affects of prolonged conflict. He is well equipped to deal with a wide range of issues, including business and family disputes, property settlements as well as all post-separation matters.

Matthew now resides in Kiama, NSW with his wife and 2 young children. As a solution-focussed facilitative mediator, Matthew works closely with his clients to explore outcomes that will stand the test of time and that are in the best interests of your children.

He is passionate about the benefits of mediation over other dispute resolution options. Mediation is cost-effective, timely and more suitable to dealing with family and relationship matters.

You can contact Matthew on:

m: 0403 436 453

e: info@maxwellparker.com.au



As a registered FDRP and nationally accredited mediator, Matthew follows the National Mediation Accreditation Standards (NMAS) (www.msb.org.au) and Family Law Act 1975 (Regulations 2008). If you wish to make a complaint about the mediation process, please contact the Resolution Institute (www.resolution.institute/).

General Information

Confidentiality and Inadmissibility

The confidentiality and inadmissibility provisions under the Family Law Act only apply when a practitioner as defined in section 10G(1) of the Act is conducting the mediation. FDR by an unaccredited person does not attract these confidentiality provisions.

Family dispute resolution (FDR) practitioners must not disclose a communication made in FDR unless the disclosure is required or authorised under the Family Law Act.

An FDR practitioner **must** disclose a communication made in FDR if he or she reasonably believes that the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory (eg to comply with legislation requiring mandatory disclosure of suspected child abuse).

An FDR practitioner may disclose a communication made in FDR if he or she reasonably believes that the disclosure is necessary for the purpose of:

- a) protecting a child from the risk of physical or psychological harm
- b) preventing or lessening a serious and imminent threat to the life or health of a person
- c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person
- d) preventing or lessening a serious and imminent threat to the property of a person
- e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to the property of a person or a threat of damage to property
- f) assisting an independent children's lawyer to properly represent a child's interests.

In addition, an FDR practitioner may disclose a communication, with the consent of the person who made the disclosure where that person is an adult, or, where the disclosure was made by a child who is under 18, if parents consent to the disclosure. If agreement cannot be reached, the matter may be referred to the court for decision.

An FDR practitioner may also make disclosures in order to provide information for research relevant to families, as long as the information provided does not constitute 'personal information' as defined in section 6 of the Privacy Act 1988. 'Personal information' is information, or an opinion, from which an individual's identity is apparent, or can reasonably be ascertained.

In terms of inadmissibility, according to the Family Law Act, *'evidence of anything said, or any admission made, by or in the company of, an FDR practitioner is not admissible.'* Therefore, provided an accredited FDR practitioner is conducting or supervising the process, the inadmissibility provisions will apply.

Communications made in FDR are not admissible in any court or proceedings, in any jurisdiction. Additionally, a communication made when a professional consultation is being carried out, on referral from an FDR practitioner, is also inadmissible in any court or proceedings in any jurisdiction.

Section 60I Certificates

Except in certain conditions, FDR must be attended before applying to the court for an order in relation to a children's matter. A court may take the certificate into consideration when making decisions on an order and costs.

Parenting Plans

A parenting plan is an agreement that sets out parenting arrangements for children. A parenting plan covers the day-to-day responsibilities of each parent, the practical considerations of a child's daily life, as well as how parents will agree and consult on important, long-term issues, such as which schools children will attend.

A parenting plan, in itself, is not a legally enforceable agreement, and is different from a parenting order, which is made by a court. Parties to a parenting plan can ask the court to make 'consent orders' in the terms of that plan. The court will only make a consent order if it is satisfied that the terms of the plan are in the best interests of the child. Once made, consent orders are legally binding – they have the same effect as any other order made by a court.

If parents go to court at any time, the court will be required to consider the terms of the most recent parenting plan when making a parenting order in relation to a child, if it is in the best interests of the child to do so. In order to be recognised by the court, a parenting plan must be in writing, dated and signed by both parents. It must be made free from any threat, duress or coercion.

In addition, when considering the best interests of a child, the court will also consider the extent to which both parents have complied with their obligations in relation to the child, which may include the terms of a parenting plan.

General Information

Reconciliation

FDR practitioners must give a married person who is considering a divorce, or considering going to court about their children or their finances, information about family counselling and FDR services available to help with reconciliation.

Information does not need to be given if the FDR practitioner believes they already have the relevant documents or they believe there is no reasonable possibility of reconciliation.

Family Relationships Online or the Family Relationship Advice Line (1800 050 321) can provide information about family counselling services.

Disputes Involving Family Violence or Child Abuse

A person does not need to attend FDR before making an application to the court about a child in a number of circumstances including where there has been family violence, child abuse or a risk of family violence or child abuse.

Where these circumstances exist the court must be satisfied that the person making the application has received information from a family counsellor or an FDR practitioner about services and options (including alternatives to court action) available.

Under the Family Law Act, a practitioner:

- i) must make a notification report to a prescribed child welfare authority where the practitioner has reasonable grounds for suspecting that a child either has been abused or is at risk of abuse
- ii) may make a voluntary notification report to a prescribed child welfare authority where the practitioner has reasonable grounds for suspecting that a child either has been ill treated or is at risk of ill treatment or has been exposed or subjected to behaviour which psychologically harms the child
- iii) need not notify a prescribed welfare authority of his or her suspicion that a child has been abused, or at risk of being abused, if the practitioner knows that the authority has previously been notified about the abuse or risk, but the practitioner may notify the authority of his or her suspicion.

Obligations on advisors: Parenting Plans

All advisors must inform people:

a) that where it is in the **best interests of a child**, and reasonably practicable, they could consider as an option an arrangement where they **equally share the time spent with the child** (note: a court will only consider equal shared time or substantial and significant time if there is equal shared parental responsibility. A court will not presume there is equal shared parental responsibility where there is family violence or child abuse)

b) that if an equal time arrangement is not appropriate, they could consider whether an arrangement where **the child spends substantial and significant time with each person** would be in the best interests of the child and reasonably practicable.

'Substantial and significant time' is defined in the Family Law Act. People considering this should ensure that the focus is not just on the amount of time that each parent spends with the child but also on the type of time that is spent.

The definition encourages people to ensure that there is a mix of holidays, weekends and other days and that both parents are able to participate in the child's daily routine and in events that are significant to the child.

Advisors must only inform people that they could consider the options of the child spending equal time, or substantial and significant time, with each person. It does not require the adviser to provide advice as to whether such arrangements are practicable or in the best interests of the child. However, the advisor may provide such advice if that is appropriate.

c) that decisions made in developing parenting plans should be made in the best interests of the child

d) about the matters that may be dealt with in a parenting plan

e) that the terms of the parenting plan may alter a previously made court order about the child (in exceptional circumstances the court may order that this cannot occur)

f) that it is desirable to include in a parenting plan information about how people will consult and resolve disputes about the plan and the process to be used for changing the plan, and

g) about the programs that are available to help people who experience difficulties in complying with parenting plans.