

Mediation in Parenting Matters



What is Mediation?

Mediation is a formal way of resolving disputes between people in conflict. An independent person (known as the ‘mediator’ or ‘FDRP’) assists people who have a disagreement to resolve the conflict. Mediation helps people settle disputes without the need to go to court.

There are various options available to clients regarding how the mediation will proceed. If it is not appropriate for the parties to be in the same room, the mediator can go back and forth between different rooms in a ‘shuttle mediation.’ Some mediations are able to occur virtually via Zoom, Skype, telephone or other means. You can discuss mediation options with the mediator. Some services offer a co-mediation model of dispute resolution in which there are two mediators who assist the parties in the discussion and resolution of issues.

During the mediation, the mediator will identify issues and help the parties reach a resolution.

The role of the Family Dispute Resolution Practitioner

The law requires separating families who have a dispute regarding children to make a genuine effort to try to sort it out through family dispute resolution (FDR) before filing an application for parenting orders in court.

A Family Dispute Resolution Practitioner (‘FDRP’) is an independent person who specialises in family disputes and has specialist skills in resolving matters pertaining to arrangements for children. They are trained to create safe, supportive environments to facilitate a resolution and are accredited under the Family Law (Family Dispute Resolution Practitioners) Regulations 2008. Importantly, an FDRP must have completed training to assess for family violence and child abuse before becoming accredited.

When is Mediation mandatory and when is it not required?

In parenting matters, Family Dispute Resolution (FDR) is, with limited exceptions, mandatory to attempt before any application can be filed with the family law courts. The purpose of mediation is to try and reach an agreement, which can then be formalised by way of a parenting plan or consent orders. If you and the other party do not reach an agreement, you may apply to the court for a parenting order.

You do not need to attend mediation if:

- You are already formalising an agreement through 'consent orders';
- When you are responding to an application to court; or
- you are applying for an exemption from mediation.

Applying for an Exemption

You may seek an exemption if any of the following circumstances are relevant:

- where your matter is 'urgent';
- where a child has experienced, is at risk of, or will be at risk of (in the future), child abuse or family violence;
- where a party is unable to participate effectively in FDR (e.g. physical incapacity, physical remoteness etc.); or
- where the other party has contravened a previous order (made within the last 12 months) in such a way that shows a serious disregard for their obligations under the order.

To apply for an exemption for any of the reasons above, you must either:

- file an Affidavit – Non-Filing of Family Dispute Resolution Certificate; or
- if already filing an Initiating Application (Family Law Court) seeking interlocutory or interim orders, you can provide reasons for why an exemption should be granted in the affidavit filed in support of your Initiating Application.

You should get legal advice before applying to the courts seeking an exemption from mediation.

Matters involving allegations of domestic violence

There are certain conditions which must be met before an FDRP can take in cases involving family or domestic violence. The mediator must complete intake processes to determine if the matter is suitable for mediation. As mentioned above, mediations can occur via shuttle mediation or virtually, particularly in cases involving domestic violence to ensure there is no contact between the parties.

What if the other party won't agree to Mediation

As discussed above, mediation is required before you can apply to the courts for parenting orders. However, if the other party won't consent to partaking in mediation, the FDRP can issue a section 60I certificate showing that you have completed the process of attempting to attend mediation.

Who attends Mediation?

Both parties must voluntarily agree to attend a mediation. You can usually bring a support person to a mediation if everyone involved in the mediation agrees.

Costs

Costs to attend mediation can vary depending on which service you engage. You should contact the services directly to obtain a fee estimate.

You can access a directory of family dispute resolution practitioners online. Costs will also vary depending on whether you choose to have a solicitor present in the mediation. However, the cost is usually significantly less than having to go to court.

If you are unable to fund the cost of a mediator, you can enquire with free mediation services such as Family Relationships Australia or BCLS Mediation Service (contact details on last page).

Confidentiality

Everything you say in a mediation session is confidential. Therefore, anything said during mediation cannot be used as evidence in court. An FDR must however report child abuse or anything else indicating a child is at risk of abuse. This may be used as evidence in some circumstances. Another exception is where there is a threat to someone's life or health or information regarding the commission of a crime.

What if the Mediation is Successful?

If a parenting mediation is successful and an agreement is reached, it can be formalised as either a parenting plan or consent order. A parenting plan is a written record between the parents of an agreement reached regarding parenting arrangements. This will be in writing, dated and signed by both parties. The plan can include reference to day-to-day details about the care of the children as well as more specific details such as how to change the arrangement in the future. The plan may also include mechanisms to resolve future disputes. It is important to note that a parenting plan alone is not binding or legally enforceable but it does reflect an intention of the parties to follow it.

A consent order differs in that once filed in the family courts, it becomes a binding and enforceable court order. If you and the other party reach an agreement you can apply to the family court for orders to be made regarding parenting matters by agreement. Once the order is made, they then have the same force and effect as if you had gone to court and the judge made the decision. If you breach a court order you are breaking the law and the court may give you a penalty.

You should get legal advice prior to filing an Application for Consent Orders.

What if the Mediation is Unsuccessful?

If mediation has occurred but was unsuccessful, you will obtain a section 60I certificate from the registered practitioner who helped you. This certificate states that you and the other party have been to, or attempted to go to, FDR, or that it is the FDRP's opinion that it is not appropriate for you to go. This certificate will allow you to file an application for a parenting order with the Courts within a year of its issue.

If you have attended mediation and obtained a section 60I certificate it is recommended that you then obtain legal advice regarding how to apply to the courts for parenting orders. You should also review the Federal Circuit Court prescribed brochure titled Before you file – pre-action for parenting matters.

Where to get Legal Advice?

BCLS provides FREE legal information, referrals, advice and assistance about parenting matters. We also have a free mediation service. To access our service see our contact details below.

Bayside Community Legal Service acknowledges the traditional owners of the lands across Queensland, and in particular the Quandamooka peoples, the traditional owners of this land where our Bayside community is situated. We pay our respect to elders past, present and emerging.



Contact Bayside Community Legal Service

Website: www.bcls.org.au

email: info@bcls.org.au

Phone: (07) 3162 3282

Office Hours: 8:30am-4:30pm Monday to Thursday

Address: Wynnum Community Centre, 105 Florence Street, Wynnum QLD 4178
PO Box 103, Wynnum QLD 4178