

# Family Mediation



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A GUIDE TO FAMILY MEDIATION  
AND PARENTING ARRANGEMENTS



# WELCOME

It is hoped this helpful fact sheet provides insight to the process of family mediation, registered practitioner obligations, and factors that parents may wish to consider before embarking on discussions about parenting arrangements.



MEDIATION



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# FOREWORD

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## SECTION 1

This guide is not intended to be interpreted as legal, financial or health advice and therefore cannot be relied upon as legal, financial or health advice.

If you need legal, financial or health care assistance to assist with preparation for matters concerning family separation, parenting arrangements or property division, please consider consulting an independent professional who practises in the area of expertise to meet your needs.

A registered Family Dispute Resolution Practitioner has a professional and ethical obligation to remain impartial at all times and will not make decisions or advocate on your behalf. They are not able to provide you with counselling, financial or legal advice or make recommendations relating to family law matters.



## WHAT IS FAMILY MEDIATION AND WHY SHOULD I CONSIDER PARTICIPATING?

Family mediation is a structured process of facilitated discussions between people who have been married or were living in a de - facto relationship and who wish to make final arrangements for the children and/or property division. Family Mediation is intended to assist people to formalise parenting arrangements and/or property division without relying on the court to decide for them.

In matters involving a child or children of the marriage or relationship, discussions are assisted by a qualified and registered Family Dispute Resolution Practitioner (FDRP). Only persons accredited and registered by the Attorney-General's Department are qualified to issue Section 60I certificates in accordance with the *Family Law Act 1975* (Cth). The FDRP is required to progress mediation in accordance with the Family Law (Family Dispute Resolution Practitioners) Regulations 2008 and this will require an intake session to assess suitability for Family Dispute Resolution if the matter involves children and discussions about parenting arrangements.



# MEDIATOR PROBLEM DISPUTE

## COMPELLING REASONS TO MAKE A GENUINE EFFORT

The law requires parents to make a genuine effort to reach an agreement at Family Dispute Resolution (FDR) before applying to the court to decide matters on their behalf. Only limited circumstances may exempt a party from attempting FDR first. Family mediation is a child focussed dispute resolution process about the future care and wellbeing of the children. The agreement may be drafted as a parenting plan and/or formalised as consent orders by the court. If you do not reach an agreement after a genuine effort has been made during FDR, either parent may request the FDRP to issue a Section 60I certificate. This will allow either parent to apply to the court for a decision to be made regarding the child/ren's care arrangements. Not all matters are suitable for FDR. In some cases either parent may refuse to participate or are not contactable. Importantly, FDR is voluntary and parties are not compelled to participate. FDR may not be suitable if a FDRP decides it is not appropriate due to safety reasons; or one or both parents did not make a genuine effort; or if there is a compelling reason which prevents the continuation of FDR. In these circumstances, the FDRP may issue a Section 60I certificate.

## PRIMARY FACTORS TO CONSIDER

If FDR is not able to occur because either or both parents did not make a genuine effort to reach an agreement at FDR or either parent refuses or if a parent cannot be contacted by the FDRP, this may be a lost opportunity to avoid delay, costs and uncertainty often associated with court proceedings. The FDRP is likely to include a notation identifying the parent who has refused or failed to participate in FDR when issuing a Section 60I certificate. The court may have regard to the reason why a Section 60I certificate was issued by the FDRP. The *Family Law Act 1975* (Cth) deals with matters relating to separating families. When making orders about the child/ren's care arrangements, the Court must have regard for the best interests of the child/ren as a paramount consideration which includes the need to promote the safety of the child/ren and their carer/s. Considerations may include how the child will spend time with others who are significant to their care, welfare, and development. Family Law is complex and for that reason, a lawyer who practises in the area of family law may assist parents with valuable preliminary advice about how the court will view their circumstances.



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## SECTION 3

# ROLE OF THE FDRP

The FDRP is an independent person with specialist skills, training and qualifications that empower the parties to reach a mutual agreement regarding parenting matters. The aim is to create a safe, supportive environment to facilitate child focused discussions. To assess suitability and lead the process, the FDRP must be accredited in accordance with the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* and must be currently registered with the Commonwealth Attorney-General's Department. You may wish to visit the national FDRP register at <https://fdrr.ag.gov.au> to ensure the FDRP you select to assist with your matter is qualified and registered. Only currently registered FDRP may issue a Section 60I certificate.





## FIRST SESSION

Once the parties have mutually and jointly decided to engage in the process, the FDRP will make contact with both parties and arrange an intake session to explain what to expect about FDR, obtain each parent's perspective and assess suitability for FDR. The FDRP won't take sides but they will assist the parties to prepare for FDR. The FDRP will likely request parents and any other attendees to agree to the terms of FDR. It's during this intake session that a FDRP will ask key questions to ensure that it is safe to proceed and to consider any necessary adjustments needed to promote the best possible chance for discussions to result in an agreement. If the FDRP decides FDR is not able to occur, the FDRP will notify the parties and issue a Section 60I certificate.



## MEDIATION SESSION

On the day of FDR, the FDRP will open the session with important information about the process, roles and expectations. FDR sessions may be conducted in a number of ways including joint and separate sessions or the FDRP may decide to shuttle between parents in private rooms. The parents will then be invited to open with a brief statement summarising issues for discussion. This will allow a FDRP to set the agenda as a list of topics to keep discussions on track. Parties will be encouraged to explore the topics, generate options to resolve matters and negotiate a way forward in the best interest of the child/ren. Parents are encouraged to invite their legal representatives to participate and assist with discussions. Each party will be responsible for their own costs such as independent legal representation and shared fees for FDR services.





## SECTION 4

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FDR is not intended to be adversarial or combative. The main aim of the process is to keep the parties out of court. While the distinct phases of FDR may seem structured, parents are encouraged to feel relaxed and confident to raise important issues regarding the child/ren's best interests and care arrangements. FDR is private and confidential to ensure parents feel free to negotiate a way forward without the fear of discussions being used as evidence. Importantly, parents cannot be compelled to reach agreements. Parents are required to attempt a genuine effort which may require suitable and appropriate compromise or generating further solutions. More and more parents are requesting that FDR is conducted remotely by video conference. At AMS the practitioner uses Zoom video conferencing. Parents have reported they feel more relaxed in familiar environments. If parents agree, they have access to reliable Wi-Fi and a device with a video camera and audio technology, remote FDR may be beneficial. If remote sessions are preferred, it is recommended that a private space without distractions are arranged prior. This may include asking a trusted friend or family member to care for the children for the duration of FDR. Allow approximately 4-6 hours of uninterrupted time. An in-person mediation can be arranged, however this will increase the costs for the hire of the conference rooms. The following page sets out a few tips on how to prepare for family mediation to maximise the best use of the time and the process.

## PREPARING FOR MEDIATION



## LEGAL REPRESENTATION

While you are not required to have legal representation during FDR, lawyers may assist parents with discussions. Only a qualified legal practitioner is able to provide legal advice regarding family law. Lawyers can be a voice of reason during a very emotional time. They are experts in family law and they are able to separate themselves from the conflict and negotiate pragmatically on your behalf. That doesn't mean that you take a back seat in the process. You will be encouraged to participate and empowered to put your perspective forward, to be heard and to make decisions about your child/ren's care arrangements. You will be provided with an opportunity at all times to seek advice from your lawyer during private sessions. If you decide to retain a legal representative to assist, you will be responsible for their fees in addition to your share of the FDR fees and associated costs, where applicable.

## PREPARATION IS KEY

Before you commence discussions about the care arrangements, you may wish to consider making notes about practical solutions and how this might impact everyone. Remember the paramount consideration must be the safe development of the child/ren. Depending on the age of the child/ren, this may also mean addressing their future developmental needs including cultural needs during age related phases. You may also wish to consider how long a parent is able to provide care to promote the child/ren's development and how other significant carer's such as new partners, step or half siblings, grandparents and other family members may benefit a child/ren's development.



## OPTIONS, COMPROMISE & AGREEMENT

The success of FDR relies on respectfully exploring as many options as possible about how to care for the child/ren as co-parents. During FDR, parents remain in control of making decisions, so it's important to put forward as many options as possible during FDR. Once all the options are tabled, there may be some compromise needed to reach a mutual agreement. Compromise however must not be at the cost of the paramount wellbeing of the child/ren's safe development. If an agreement is reached, a Parenting Plan may be drafted and if agreeable, the parents may request for their Parenting Plan to be formalised as Court Orders made by consent of the parents. If there are no agreements reached in one session, parents may consider future sessions until they reach an agreement on all issues. If this is not possible a Section 60I certificate may be issued.



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## SECTION 5

AMS is able to provide registered and accredited services without lengthy waiting times or delay often experienced with non-for-profit organisations or government funded agencies. Once parents have agreed to jointly engage FDR services, the process can commence in as little as one week or in some cases only a few days.

Fees are kept to a minimum where possible, which is why we recommend remote video conferencing to conduct FDR. If an in-person mediation is preferred and agreed, this will increase the fees to cover the costs of the hire of a suitable venue. Professional fees are charged by the hour at a rate of \$450 + GST shared between the parties for time spent managing the FDR process including reading position statements, medical or child development recommendations and other relevant material supplied by the parents. Fees will be charged for time spent reading submissions, conducting intake sessions, facilitating FDR sessions, drafting Parenting Plans and issuing Section 60I certificates. Parents will be required to pay fees invoiced within seven (7) days to confirm the commencement of the process. The FDR may issue further invoices at intervals according to the agreed process of FDR and as required. The parties will be responsible for their own additional costs which may include legal representation. In the event that either party cancels services within seven (7) days, all monies paid will be retained. Parties will be required to agree to and sign the terms of the FDR Service Agreement, which sets out aspects of confidentiality, scope of FDR services and fees.

# SERVICE TERMS AND FEES



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## SECTION 6

Angela Little is admitted as an Australian Lawyer at the Supreme Court of Victoria. Angela trained in Family Law, but prefers not to practise as a legal practitioner so that she is able to independently specialise in alternative dispute resolution as an accredited mediator and registered Family Dispute Resolution Practitioner.

Angela has successfully completed a Master of Laws (Applied Law) majoring in Family Dispute Resolution Practice and is one of only a limited number of practitioners who has successfully completed this highly regarded post graduate legal qualification. Angela is registered with the Attorney-General's Department, qualifying her to assist separating parents to navigate a better way forward during FDR or issue section 60I certificates if considered and assessed that FDR is not able to occur. Angela is also a nationally accredited AMDRAS (formerly NMAS) mediator, trained Parenting Co-ordinator listed with Parenting Co-ordination Australia and is a qualified Trainer and Assessor specialising in conflict resolution management. Angela is a skilled and licensed Mental Health First Aid instructor.

Angela has over 30 years experience in people management. Angela is an advanced skilled practitioner who provides a stabilising presence for parties who find themselves in highly emotive and complex disputes with others. She is able to guide parties through respectful discussions and empower them to focus on solutions for the future needs of the child/ren.



**Angela Little**

OUR  
PRACTITIONER



*"Changes are inevitable and not always controllable. What can be controlled is how you manage, react to and work through the change process"*

--- Kelly A Morgan

## CONTACT US



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