

Family Dispute

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WHAT IS FAMILY DISPUTE RESOLUTION?

Family Dispute Resolution ("FDR") is a process to provide separated parents with a forum, within which to engage in discussion about matters arising from their separation. It allows parents to raise concerns and explore ideas in a safe environment with the assistance of a qualified Family Dispute Resolution Practitioner.

It is compulsory to participate in FDR before making an application to the Court for parenting Orders, unless there are exceptional circumstances. Exceptional circumstances may involve family violence, child abuse or urgency.

FDR allows parents to attempt to resolve issues together, rather than through protracted Court proceedings that are often expensive and damage the parties' ability to co-parent. Through FDR, parents can achieve outcomes together, focusing on the needs of their children.

WHAT IS THE ROLE OF THE FAMILY DISPUTE RESOLUTION PRACTITIONER?

The Family Dispute Resolution Practitioner ("FDRP") is qualified to resolve disputes between parents arising out of their separation. (Hana holds a Bachelor of Laws, Graduate Diploma of Legal Practice and a Graduate Diploma of Family Dispute Resolution Practice).

It is integral to the role of the FDRP that they remain impartial throughout the process. The FDRP will not make any decisions regarding the issues discussed. Any outcomes must be achieved by agreement between the parties.

The FDRP will manage the process and ensure that it remains a productive and safe environment for both parents. The FDRP may 'reality check' some of the ideas discussed and ensure the focus of the

discussion remains on the needs and welfare of the children.

Even if the FDRP is an experienced family lawyer, the FDRP will not provide any legal advice to the parties. It is recommended that both parties obtain independent legal advice prior to participation in FDR.

IS FDR CONFIDENTIAL?

The matters discussed in mediation are to remain confidential. This enables the parents to openly engage in conversation and discuss options without any concerns that it may be detrimental to them in future. There are some exceptions which are set out below.

The FDRP must not disclose a communication made during FDR unless:

- It is necessary to comply with a law of the Commonwealth, a State or Territory.
- Consent has been provided by the person who made the communication or for a child under 18, by the people with parental responsibility for the child or a Court.

The FDRP reasonably believes it is necessary to:

- Protect a child from the risk of physical or psychological harm;
- Prevent or lessen a serious and imminent threat to the life or health of a person, or to the property of a person;
- Report the commission or prevent the likely commission of an offence involving violence or threat of violence, or an offence involving intentional damage to property; or
- To assist an Independent Children's Lawyer appointed to represent a child's interests.

A FDRP may also disclose a communication in order to provide information (other than personal information) for research relevant to families.

Evidence that would be inadmissible in Court, or in proceedings before a person authorised to hear evidence, is not admissible merely because its disclosure has been authorised by the exceptions set out above.

IS ANYTHING SAID IN FDR ADMISSIBLE IN COURT?

Evidence of anything said in the company of a FDRP conducting FDR, or a person to whom a FDRP refers a person for medical or other professional consultation, is not admissible in any Court or in any proceedings before a person authorised to hear evidence. This does not apply to:

- An admission by an adult that indicates a child under 18 has been abused or is at risk of abuse; or
- A disclosure by a child under 18 that indicates the child has been abused or is at risk of abuse, unless, in the opinion of the Court there is sufficient evidence of the admission or disclosure available from other sources.

IF AN AGREEMENT IS REACHED, WILL IT BE ENFORCEABLE?

If an agreement is reached in relation to parenting matters it can be recorded by way of a Parenting Plan. A Parenting Plan is an agreement in writing between the parents of a child which is signed by the parties and dated. A Parenting Plan may deal with some or all of the following:

- The people with whom a child may live;
- The time a child spends with another person;
- Who has parental responsibility for the child;
- The form of consultations to take place in the exercise of shared parental responsibility;
- The communication a child has with another person;

- Maintenance of a child;
- The process to be used for resolving disputes about terms of the plan or changing the plan to take into account the changing circumstances/needs of the child;
- Any aspect of care, welfare or development of the child, or parental responsibility.

A Parenting Plan can be varied or revoked by agreement in writing between the parties to the plan.

A Parenting Plan is not enforceable. If you wish to make a Parenting Plan enforceable it must be made into Parenting Orders. This can be done by filing a Form 11 Application for Consent Orders in the Family Court. You can find information about an Application for Consent Orders, and the Form itself, on the Family Court website: www.familycourt.wa.gov.au.

WHAT IF NO AGREEMENT IS REACHED?

Parents must participate in FDR before making an application to the Court for Parenting Orders unless there are exceptional circumstances. Exceptional circumstances may involve family violence, child abuse or urgency. The applicant needs to file a certificate given to them by a FDRP, along with their application for Parenting Orders.

A FDRP may give a certificate to a person on one of the following grounds:

- The person did not attend FDR due to the refusal or failure of the other party to attend.
- The person did not attend FDR because the FDRP considers having regard to the matters prescribed by the regulations, that it would not be appropriate to conduct the FDR.
- The person attended FDR with the other party and both parties made a genuine effort to resolve the issues.
- The person attended FDR with the other party however the other party did not make a genuine effort to resolve the issues.

- The person began the FDR however the FDRP considers having regard to the matters prescribed by the regulations, that it would not be appropriate to continue the FDR.

The Court may take into account the kind of certificate filed in considering whether to make an order referring the parties to FDR and in determining whether to award costs against a party.

FEES

The costs of mediation are as follows:

- Individual in-take session (up to 1 hour): \$300 plus GST. The costs of the in-take sessions will be included in the mediation cost if it proceeds to a mediation.
- Half-day mediation (up to 4 hours): \$1,200 plus GST.
- Full day mediation (up to 8 hours): \$1,800 plus GST.

Unless otherwise agreed between the parties, the parties must each pay for their own individual in-take session and share the costs of the mediation equally. The costs must be paid in advance.

The in-take may take place at the offices of HHG Legal Group in Perth or Mandurah, or by Team video meeting.

The mediation may take place at the offices of HHG Legal Group in Perth at no additional charge.

COMPLAINTS

A person who wishes to make a complaint about Family Dispute Resolution Services provided by Hana may use the complaints mechanism provided by the Resolution Institute (www.resolution.institute).



CONTACT DETAILS

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