

# Mediation in Family Law



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Cecilia Lee, Solicitor, Women's Legal Services NSW on 22 November 2012. This webinar can be downloaded for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

## This fact sheet covers:

- Brief overview of parenting arrangement after separation
- Family Dispute Resolution & Exemptions
- Options for Family Dispute Resolution

## Parenting Arrangements after Separation

- When parents **can** agree on an arrangement, they can do this by:
  - Informal verbal or written agreement
  - Parenting plan
  - Court orders made by consent
- When parents **cannot** agree on an arrangement, there will be a court order made by a judicial officer

## Family Dispute Resolution (FDR)

- Family Dispute Resolution (FDR) is compulsory for both parents to attempt before an application to the court is made
  - Communications and admissions made during FDR are confidential and not admissible in court with a few exceptions
  - There may be costs implications for not making a genuine effort

## Exemptions & Exceptions from FDR Requirement

You may be **exempt** from continuing the FDR process if:

- An FDR practitioner provides a certificate by reason of:
  - Other party failed to attend; or
  - Genuine effort made to resolve; or
  - One party did not make a genuine effort to resolve; or
  - Not appropriate to attempt dispute resolution; or
  - Not appropriate to continue dispute resolution

**Note: This applies to when you are required to participate in the FDR process but are exempted**

There are **exceptions** from starting the FDR process at all if:

- You are applying for consent orders (where parents have reached an agreement already)
- The Court is satisfied that there are 'reasonable grounds to believe there has been or is a risk of abuse or family violence,' and thus mediation may not be appropriate
- Some contravention applications
- Urgent applications
- A party is unable to participate in FDR because they have a disability or live in a remote location

**Note: This applies to exceptions from starting the FDR process at all**

## Options for FDR

- **Family Relationship Centres**
  - Dispute resolution by mediation
  - Emphasis on developing a parenting plan
  - Child-inclusive mediation
  - Legally assisted FDR
  - Contact details [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)



- **Legal Aid NSW Family Dispute Resolution**
  - Only offered if one party legally aided (satisfies Legal Aid's means and merits test)
  - Always a lawyer assisted mediation (can give advice and assistance during the process)
  - Emphasis on finalising through consent orders
- **Accredited Family Dispute Resolution Practitioners**
  - Parties can find their own private FDR practitioner

### Styles of Mediation

- Usually, a **face-to-face joint FDR**
- **Shuttle FDR**
  - Mother sits in one room, father sits in one room, and mediator goes back and forth to mediate
  - Where one party would feel uncomfortable or unsafe to sit in one room
- **Telephone shuttle FDR** – Often offered by Legal Aid
  - Mediator contacts mother with her lawyer and then father with his lawyer, and goes back and forth
  - Takes longer, but can work just as well as face-to-face mediation

### Child-inclusive Mediation

- Children are assessed/interviewed by a child consultant
  - The children are not asked to express their views or make decisions about what they want
  - The children are asked about their feelings and reactions to parents' post-separation conflict
- The child consultant feeds back the information from the child to the parents in the next mediation session

### Legally Assisted FDR (LAFDR)

- LAFDR is offered by Legal Aid and a number of Family Relationship Centres
- Determining the appropriateness of LAFDR:
  - Vulnerable clients (ie. domestic violence, disability and language barriers are considered)
  - Complex issues
  - Lack of understanding of family law
  - Entrenched conflict
- The process of LAFDR
  - Mediator at Family Relationship Centre decides a standard FDR would not be appropriate

### Parenting Plans & Consent Orders

#### What is a Parenting plan?

- Voluntary written agreement between parents
- Sets out future care arrangements for children such as:
  - Parental responsibility & form of consultation about decisions
  - Who the child lives with and spends times with
  - Communication the child will have with each parent
  - How to resolve future disputes
- Not legally binding - cannot be enforced in court

#### What are Consent Orders?

- Parents can formalise their agreement (parenting plan) by applying for parenting orders by consent
- Enforceable through Contravention Application to Family Law Courts
- Consent orders stay in place until child turns 18
- Threshold issue if you wish to vary orders:
  - Must be able to justify in court that there has been enough significant change in circumstances to warrant a change in the consent orders