

**Family
Mediation
Parenting
and
Property**

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Welcome to Family Dispute Resolution (mediation)

Positive Solutions is an independent, not-for-profit, community organisation. We receive funding from the Australian Government to provide services to families at affordable fees.

Family Dispute Resolution aims to resolve parenting issues following a relationship breakdown. Participants include the separated couple and mediator(s). Sometimes new partners may also be involved. Family mediation may also be used to resolve disputes arising in other kinds of family relationships such as between siblings or between parents and children.

The *Family Law Act 1975* uses the term 'Family Dispute Resolution' to describe these services. Our Family Dispute Resolution Practitioners (mediators) are registered trained professionals with specialist dispute resolution training. Our mediators come from a variety of backgrounds including law, counselling and community services. They bring a variety of skills to our organisation and to our clients.

Fees

People without the capacity to pay, are not refused access from the service.

It is preferred that payments are made on the day of the pre-mediation/ mediation. Fees may be paid by cash, cheque or EFTPOS. Arrangements can be made for payment by instalments.

Family Dispute Resolution

- The fees for family dispute resolution services are assessed according to the gross annual income of each client. One dollar (\$1) is charged for every \$1,000 earned per year. For example if you earn \$40,000 per year, you will be charged \$40 per hour.
- There is a minimum fee of \$30 per hour and a maximum fee of \$120 per hour.
- Clients' fees will be calculated at intake. Clients agree to pay the fee by signing the Agreement to Mediate.
- Clients are expected to advise Positive Solutions if their financial circumstances change (up or down) and their fee for service will be adjusted accordingly.
- In cases of real financial hardship a fee reduction may be approved by the General Manager upon completion of an Application for a Fee Reduction Form.

Hours that are charged

- Time spent in pre-mediation and mediation (including private sessions).
- Time spent by a Mediator on the telephone with the client in excess of 15 minutes.
- Time spent in drawing up Draft and Final Agreements. As a guide, approximately 2 hours is needed for a parenting plan, and 2 – 5 hours may be required for a complex property agreement. Extra hours may be charged if clients decide to make substantive changes to the Draft Agreement, keeping in mind that substantial changes are made during a mediation session at the hourly rate for mediation.
- In child-inclusive mediation each parent pays \$20 per child. The feedback time (the meeting with parents, child consultant and mediator) is at normal rates.

Cancellation fee

A one hour fee will be charged for cancellation or postponement of the mediation, unless 24 hours' notice is given.

Agreement to pay the other party's fee

A client may agree to pay the other party's fee at an agreed rate.

How to pay fees

Fees are payable at the time of the meeting with the family dispute resolution practitioner or counsellor, unless alternative arrangements have been agreed in advance. Payment options by cash or credit card.

Things to know before you begin mediation

The process of family dispute resolution is also called 'mediation.' It is a process where parties with the assistance of Family Dispute Resolution Practitioners (also called 'mediators'):

- Isolate issues in the dispute;
- Develop and consider options to resolve those issues;
- If appropriate - attempt to agree to one or more of those options; and
- Always consider the best interests of young people and children.

The **aim** of the process is not to adopt a one-dimensional focus on settlement. Other outcomes can be equally important, such as:

- New insights are reached;
- Choices are clarified;
- New understandings of each-others' views are obtained.

If you are concerned about your safety

If you are concerned about your physical or psychological safety, it is important you discuss your concerns with your mediator at your confidential pre-mediation. If you have family violence orders in place, please bring a copy of these orders with you to this initial session and discuss them with your mediator. Once a pre-mediation has been had with each party, mediators review each case carefully with our family program team and managers. Sometimes mediation is deemed not suitable following a review and sometimes we can offer different kinds of mediation processes to keep you feeling safe. For example, we can offer shuttle mediation where parties arrive & leave at different times and mediate in separate rooms in the building. You can discuss with your mediator the option of bringing a support person with you and you may bring a support person to your initial pre-mediation session. Mediators make referrals to support agencies and may talk with you about referring you to the right place to get the support you need.

The Role of mediators

- The mediators will remain impartial in all communications, discussions and interactions with parties to mediation and will not support the interests of one party over another. If a serious power imbalance is identified by the mediator/s objectivity, the mediators will raise this with the parties.
- The mediator/s will disclose any potential conflict of interest which may be relevant.
- Legal information or education may be provided by a mediator with the appropriate legal qualifications.
- The mediator/s will not;
 - (i) Advise clients as to what to do in relation to each other; or
 - (ii) Provide them with legal advice.
- The qualifications of the mediator to be a Family Dispute Resolution Practitioner are to be disclosed. This will occur at pre-mediation and the commencement of mediation.

Legal Advice

Positive Solutions does not provide legal advice or make decisions for parties. Parties have the right to obtain legal advice in relation to their dispute at any stage in the family dispute resolution process. It is recommended that parties' seek legal advice.

Duty of Dispute Resolution Practitioners and Counsellors to notify and inform;

Family Dispute Resolution Practitioners will not disclose a communication made to the practitioner while the practitioner is conducting family dispute resolution, unless the disclosure is required or authorised by law. The *Family Law Act 1975* however determines situations where a Family Dispute Resolution Practitioner may/must disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of;

- protecting a child from the risk of harm (whether physical or psychological); or
- preventing or lessening a serious and imminent threat to the life or health of a person; or
- reporting or preventing a likely offence involving violence or a threat of violence to a person; or
- preventing or lessening a serious and imminent threat to the property of a person; or
- reporting or preventing a likely offence involving intentional damage to property of a person or a threat of damage to property; or
- If a lawyer independently represents a child's interests under an order under section 68L—assisting the lawyer to do so properly.
- A family dispute resolution practitioner may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.
- A family dispute resolution practitioner may disclose information necessary for the practitioner to give a certificate under subsection 60I (8) of the *Family Law Act 1975*.

Outside of the circumstances outlined above by the *Act*, evidence of anything said or any admission made by or in the company of a family dispute resolution practitioner conducting family dispute resolution; or a professional to whom a family dispute resolution practitioner refers a person for medical or other professional consultation (while the professional is carrying out professional services for the person) is not admissible in any court or in any proceedings before a person authorised to hear evidence.

Invitations to Mediate

We send a written invitation to the party, inviting them to attend mediation. Parties are given 7 days from the date of the letter to respond. If they do not respond to the first letter, we send a second. Again, the recipient has 7 days to respond to the date of the letter. **If after 10 days you have not heard from our Office, we ask you to please contact us to find out if the other party has made contact.**

Family Mediation Model

Every mediation is unique to your circumstances and needs. A standard mediation process however is as follows;

- A. A person makes contact and organises a time to have a confidential PRE-MEDIATION session (Intake) with a Family Dispute Resolution Practitioner (mediator). This session usually takes an hour.
- B. After the intake session, the Mediator will contact the other party and invite them in writing to attend a PRE-MEDIATION (Intake) session. This party has the right to refuse to engage.
- C. If the Mediator deems mediation to be appropriate and suitable, a joint two-hour mediation session is organised. We contact each person after the pre-mediation sessions to arrange the mediation. While generally mediations have both parties' in the same room, mediations may be by Shuttle (separate rooms) or by phone. The Mediator will decide if shuttle mediation is to be utilised.
- D. Joint sessions occur until an agreement is reached or the parties and/or the Mediators decide that an agreement will not occur.
- E. Most mediations resolve with agreements. When agreements are reached, the Mediators prepare a Mediation agreement document or parenting plan that is to be signed by both parties.
- F. If no agreement occurs in a parenting mediation, we can provide a section 60I certificate if requested by a party for legal purposes. Note that a s60I certificate is necessary for the parties wanting proceed with lawyers following mediation.

Parenting

Parenting plans and Parenting information

Family & Dispute Resolution Practitioners are "advisers" under the *Family Law Act 1975 (Cth)* as amended by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* ("the Act") and are obliged to inform parents of a number of matters relating to parenting plans.

This information sheet contains information about the following matters:

- (a) What is a parenting plan?
- (b) Why make a parenting plan?
- (c) What assistance is available to develop a parenting plan?
- (d) What matters must be considered when developing a parenting plan?
- (e) What matters do Courts consider when they make parenting orders?
- (f) Where to obtain help if you are experiencing difficulty in complying with a parenting plan.

Please note that Positive Solutions does not provide legal advice. Information in this booklet and provided to you by Mediators is information only.

What is a parenting plan?

A parenting plan is a **written agreement** between the **parents** of a child.

An agreement is not a parenting plan unless it is made free from any threat, duress or coercion.

A parenting plan **must** be:

- (i) Signed by the parents of the child,
- (ii) Dated, and
- (iii) Deal with one or more of the following matters:

★ *References to "person" or "persons" above may include persons other than parents, such as grandparents or other relatives of the child.*

- The person or persons the child is to live with;
- The time the child is to spend with another person or persons;
- The allocation of parental responsibility for a child;
- If 2 or more persons are to share parental responsibility for a child, the way in which those persons communicate and make decisions in the exercise of that responsibility;
- The communication a child is to have with another person or persons;
- Maintenance of a child;
- The process to be used for resolving disputes about the operation of the terms of the Plan;
- The process to be used for changing the plan to take into account the changing needs and circumstances of the child or parties to the Plan;

- Any aspect of care, welfare or development of the child or any other aspect of parental responsibility for a child.

Why make a parenting plan?

There are many benefits from making your own agreements about parenting. Parents usually know their child/ren better than anyone else and can take into account the needs of everyone in the family in constructing agreements. A parenting plan can be made into formal court orders by consent of both parents.

The court is required to consider the terms of the most recent **parenting plan** about a child when making a **parenting order** about that child if it is in the best interests to do so.

Section 63B of the Act provides that the parents of a child are encouraged:

- (i) to agree about matters concerning the child; and
- (ii) to take responsibility for their parenting arrangements and for resolving parental conflict; and
- (iii) to use the legal system as a last resort rather than a first resort; and
- (iv) to minimise the possibility of present and future conflict by using or reaching an agreement; and
- (v) in reaching their agreement, to regard the best interests of the child as the paramount consideration.

S60I Certificates under the *Family Law Act 1975*

You will need to attend mediation before you can be issued with a s60I certificate and apply for a Family Court order in relation to children. If you are applying for a Family Court Order that pertains to parenting matters and you require a certificate, a Family Dispute Resolution Practitioner may provide a certificate to the effect that;

- I. The person did not attend family dispute resolution, but the person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend; or
- II. The person did not attend family dispute resolution because the practitioner considers that it would not be appropriate to conduct the proposed family dispute resolution; or
- III. The person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues; or
- IV. The person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues.
- V. That the person began attending family dispute resolution with the practitioner and the other party or parties to the proceedings but the practitioner, having considered matters in sub regulation 25 (2), that it would not be appropriate to continue family dispute resolution.

The requirement to lodge a certificate does **not** apply in some circumstances such as where the Court is satisfied that there is family violence or a child is in danger. See s60I(9) of the Family Law Act for the exemption circumstances.

For more information, have a look at fact sheets by going to;
www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Documents/

What assistance is available to help develop a parenting plan?

Parenting plans may be developed with the assistance of any of the following:

- a family dispute resolution practitioner (mediator);
- a family counsellor;
- a family consultant;
- a legal practitioner.

At **Positive Solutions** we can offer you assistance from family dispute resolution practitioners, family counsellors and family consultants. We recommend that our clients seek their own legal advice from a private legal practitioner or Legal Aid. Please ask any of our staff if you would like further help to locate assistance for the making of a parenting plan.

What matters must be considered when developing a parenting plan?

Professionals and parents need to consider;

- Is equal time suitable? (s63DA(2)(a) of the *FLA*).
- Is equal time in the best interests of the child/ren?
- Is equal time reasonably practical?

If equal time is not suitable:

- Is substantial and significant time suitable? (s63DA(2)(b) of the *FLA*).
- Is substantial and significant time in the best interests of the child/ren?
- Is substantial and significant time reasonably practical?

A child will be taken to have spent “substantial and significant time” with a parent ONLY if;

- (i) The time the child spends with the parent includes;
 - days that fall on weekends and holidays and;
 - days that do not fall on weekends or holidays.
- (ii) The time the child spends with the parent allows the parent to be involved in;
 - The child’s daily routine and;
 - Occasions and events that are of particular significance to the child; and
- (iii) The time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

If substantial and significant time is not suitable:

- Is a proposed parenting plan that is neither of the above in the best interests of the child?

What matters do courts consider when they make parenting orders?

The court **must** regard the best interests of children as a paramount consideration when making parenting orders (s60CA *FLA*)

The court **must** consider a number of matters about the child's best interests when making parenting orders, and **may** take these matters into account when considering an application for consent orders (s60CC *FLA*).

The **primary** considerations are:

- The benefit to the child of having a meaningful relationship with both parents;
- The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Additional considerations include:

- Views expressed by a child;
- The nature of the relationship of the child with each of the child's parents and other persons;
- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent;
- The likely effect of any change in the child's circumstances, including separation from either parent or any other child;
- The practical difficulty and expense of a child spending time and communicating with a parent;
- The capacity of the parents and other persons to provide for the needs of the child, including emotional and intellectual needs;
- The maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and the parents;
- If the child is an Aboriginal or Torres Strait Islander child, the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture and the likely impact of a parenting order on that right;
- The attitude to the child and to parenthood demonstrated by both parents;
- Any family violence involving the child or a member of the child's family;
- Any final or contested family violence orders;
- The extent to which each of the parents has taken or failed to take the opportunity to participate in decisions about major long term issues in relation to the child, to spend time with the child and to communicate with the child;
- The extent to which each of the parents has facilitated or failed to facilitate the other parent to participate in decisions about major long term issues in relation to the child, to spend time with the child and to communicate with the child;
- The court will take particular account of circumstances after separation.

When making a parenting order the court **must** apply a presumption that it is in the best interests of the child for the child's parents to have **equal shared parental responsibility** for the child (s61DA). **It does not provide for an assumption about the amount of time the child spends with each of the parents.**

The presumption of equal shared parental responsibility does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in abuse of the child, abuse of another child in the person's family, or family violence.

Where to obtain help if you are experiencing difficulties in complying with a parenting plan

Parents who are experiencing difficulty in complying with a parenting plan may seek the assistance of a family dispute resolution practitioner, family counsellor, child consultant or legal practitioner. Our staff can refer you to appropriate assistance if you are experiencing difficulty complying with a parenting plan.

Child Inclusive and Child focussed Process

At intake or in first joint session, the Dispute Resolution Practitioners (Mediator) may discuss the option of the child inclusive or child focused model.

For child inclusive, a time is arranged for the child or young person to meet with the child consultant. The mediator will talk with you about the best ways to talk about the child inclusive process with them. This process is to allow the child's presence to influence the mediation process. It is a process that allows the child's perspective of their world (via the child consultant) to be explored along with the child consultant's understanding of the child.

This process, whilst adding a step, often improves the outcome for the child/ren and may shorten the process overall. Keep in mind that Child Consultants do not interrogate or directly question children or young people. While some children and young people may like to talk, they are not pushed to. Often, children and young people prefer to play therapeutically. We have a play room where children and young people can play with dolls houses, engage in sand therapy and/or draw pictures of their family.

Child focused mediation is where the child or young person does not have a session with the Child Consultant due their being too young or because they did not want to. The Child Consultant therefore joins a mediation session with both parents and help parents reach parenting arrangements that are in the best interests of their child's age and stage of development.

For a Child Consultation to Occur

- ✓ Young people and/or children are wanting and willing to participate
- ✓ The mediators assess that it is in the best interests of the young person/children to participate
- ✓ Generally of 3 plus years. If children are younger child focused discussions may be beneficial.
- ✓ Consultant meets with child/ren for approximately 45 to 60 minutes.
- ✓ Children are met individually.
- ✓ For costs see cost policy (currently \$20 per child and full rates for parents at feedback)

Consultant reports back to parents (oral report)

- a) Either in a private or a joint session with the primary Mediators.
- b) Parents may ask the consultant questions and are encouraged to contribute to the discussion.
- c) Discussion occurs around
 - a. How children are feeling or coping with the separation;

- b. Any concerns they want to share with their parents;
 - c. Impact of conflict on children;
 - d. How parents can best support their children;
 - e. How parents can make arrangements that best meet their children's needs.
- d) The consultant normally leaves the mediation room and the primary mediators continue working with the parents with the new information about their child/ren.

Are you wanting to make an application for Consent Orders for parenting (i.e. turn your parenting plan into parenting orders?)

The application may be made by the parties themselves or with the assistance of one or more lawyers.

The finalised, signed Parenting Plan can be filed with an Application for Consent Orders, a 20 page form at the Family Court Registry. You can find more information online by going to www.familycourt.gov.au

Some parties are confident about completing the documentation themselves without assistance. Alternatively, assistance may be obtained to complete the documentation. You may contact Legal Aid for more information about your application for consent orders or you may consult a lawyer.

Whole of Family Mediation

involves all members of a family including young people, children, Grandparents, Step parents and/or Step Siblings and is facilitated as a group family conference. Since safety is assessed at every stage this process is suitable for families experiencing high-conflict separation, ongoing conflict and/or a breakdown in parenting arrangements

The process for Whole of Family Mediation looks different depending on the family and the needs of each person. Before a mediation with all parties can take place however, each party to the mediation is to have a pre-mediation with a Mediator. The Mediator makes an assessment after seeing all parties whether a Whole of Family Mediation is suitable.

If you are wanting to arrange a mediation, you need to make a pre-mediation appointment and the Mediator will invite the other parties to attend a pre-mediation in writing.

Step-Family Mediation

Stepfamilies Australia is represented by Positive Solutions as the Tasmanian branch. We provide Counselling, Dispute Resolution, Information, Education and Support for Adults and Children living in step families. How the process looks depends on who is involved in the mediation and the specific issues needing to be discussed. Each party to the mediation however, needs to have a confidential one-hour pre-mediation with a Mediator before all parties' come together for a mediation.

Property

The property process

After each party has had their pre-mediation session and a joint mediation session has been arranged, the following four-step process is followed in the first joint session;

1. Defining the Pool of Assets.

- a. The value of assets and liabilities.
- b. It is a legal requirement that full disclosure occurs. For financial mediations clients agree to fully disclose, in the presence of the other, all financial and personal information and papers relevant to the mediation process.
- c. Valuations of property real estate, superannuation and other major assets will be useful. This can be discussed in mediation.

2. Contributions made before, during and after the relationship

This includes;

- a. What each person put into the relationship at the start of the relationship
- b. The parenting, homemaking and breadwinning roles of the couple.
- c. What inheritances, substantial gifts or windfalls occurred during the relationship.
- d. Any other relevant issues

3. Future needs of the parties

This includes;

- a. Age, health of clients and dependants
- b. Care of children
- c. Employment and earning potential.
- d. Ability to financially recover after separation and
- e. Any other issues from the Act.

4. Just and equitable distribution.

At this stage of the process, Mediators impartially assist you to reach an agreement about your property settlement. We recommend you seek legal advice to ensure the agreement you have reached is just and equitable.

Steps to take after signing your Property or Parenting agreement at Family mediation

Your Mediator will provide you with a draft mediation agreement for your perusal. If no changes are required to the draft agreement, a final mediation agreement will be made available for both parties to sign at our office. To become legally binding, your property agreement reached in mediation must be converted into **Consent Orders**.

The advantages of converting your property agreement into Family Court Consent Orders includes: certainty, finality, protection from future claims from the other party, and the opportunity to avoid stamp duties on relevant transfers of property interests. We recommend you seek legal advice for more information.

Turning your mediation agreement into Consent Orders

This application may be made by the parties themselves or with the assistance of one or more lawyers. You may complete the application for consent order form yourselves or with the assistance of one or more lawyers. For more information go to www.familycourt.gov.au

Please call us to make an appointment and remember your pre-mediation appointment is the time to ask questions and discuss any concerns you may have with your mediator.