



FAMILY MEDIATION

INFORMATION PACKAGE FAMILY DISPUTE RESOLUTION

Note: Offers made during mediation are protected by Section 10 H & J of the Family Law Act, 1975. They are therefore confidential and inadmissible in court.

Agreement to Participate

Parenting Plans

Making Decisions in the Best Interests of Children

Making Decisions about Property



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AGREEMENT TO PARTICIPATE

This agreement represents the commitment of each person to actively participate in the family dispute resolution process with a spirit of finding resolution to the issues in dispute if at all possible.

With this in mind the following principles will be applied to the process:

FAMILY DISPUTE RESOLUTION AND MEDIATION

Family Dispute Resolution is a process of mediation provided by a Family Dispute Resolution process for people who seek to resolve Family Law Act issues that relate to children, parenting or the support or contact with children. Family Dispute Resolution, often referred to as mediation, is a process that helps couples affected by separation and divorce to sort out family disputes outside of Court.

It can help parties reach agreement on a range of issues relating to property, money, and most importantly their children.

Under the Family Law Act, before any party goes to Court about parenting matters, they must make a genuine effort to resolve the dispute through mediation. This does not apply in cases where:

- The parents are making an application for orders by consent, OR
- There has been a history of Family Violence or Child Abuse, OR
- The application relates to issues that requires the urgent attention of the court.

The Court requires a Certificate from a family dispute resolution practitioner (S60I) before a case about children can go ahead. This certificate indicates whether or not there was a genuine effort to resolve the dispute via mediation in the first instance. In circumstances where a party has not made a genuine effort to resolve the issues at Family Dispute Resolution, the Court can make an order that a party pay the costs of the court proceedings, and/or attend non court-based programs including Family Dispute Resolution. Changes to the Family Act in 2012 mean that a child's safety is the paramount priority in considering parenting matters when determining what is in a child's best interests.

The Family Law Act continues to promote a child's right to a meaningful relationship with both parents where this is safe for the child.

THE FAMILY DISPUTE RESOLUTION PRACTITIONER DOES NOT GIVE ADVICE.

It is not the role of the mediator to provide legal advice at any time. It is recommended that all parties seek independent specialised legal advice from a reputable family lawyer as part of the mediation process and before they commence a joint session.



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RIGHT TO BE HEARD

The parties agree that Family Dispute Resolution will be more successful if each person has the right to speak for themselves, to be heard and treated with respect.

FAMILY DISPUTE RESOLUTION IS VOLUNTARY

The parties acknowledge that Family Dispute Resolution is a voluntary process. It is voluntary on two levels; firstly, any party can seek to adjourn or withdraw from the process if continuing in does not appear to be in their best interest. Secondly a party may elect to not answer a particular question or line of questions. In addition, the Family Dispute Resolution Practitioner may conclude the process at any time if in their opinion such action is warranted.

FAMILY DISPUTE RESOLUTION IS CONFIDENTIAL

Subject to the exceptions listed below, the parties agree that the following will be privileged and will not be disclosed or be the subject of a subpoena to give evidence or to produce documents in any proceedings in respect of the dispute:

1. Any settlement proposal whether made by a party or the mediator. Offers made during mediation are protected by section 10H and J of the Family Law Act, 1975 and are therefore confidential and inadmissible in Court.
2. The willingness of a party to consider any such proposal;
3. Any statement made by a party or the mediator during the mediation; and
4. Any information prepared for the mediation that is communicated to another party during the mediation.
5. Any information disclosed to a mediator in private is to be treated as confidential by the mediator unless the party making the disclosure states otherwise.

This allows parties to have open and frank conversation in mediation without the concern of any of the communication being used against them in Court.

When will confidentiality not apply?

In accordance with the Family Law Act 1975, confidentiality will not be maintained where the Family Dispute Resolution practitioner reasonably believes it is necessary to divulge information to:

- Protect a child;
- Prevent or lessen a serious and imminent threat to a persons' life, health or to property; or
- Report an offense or likely offense involving violence or a threat of violence.

Family dispute resolution practitioners are mandatory reporters - this means they must report any child abuse, or anything said that indicates a child is at risk of abuse and this may be used as evidence in some circumstances.



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THE MEDIATOR'S COMMITMENT

As Mediators (or Family Dispute Resolution Practitioners), we will work with the parties to resolve the dispute by helping to:

- Clarify and isolate the issues in dispute;
- Improve communication and build understanding;
- Develop options for the resolution of these issues;
- Explore the usefulness and reality of these options;
- Meet with the parties together or separately;
- Where appropriate reach agreement on actions and behaviour for the future

The mediators will not:

- Give legal or financial advice to any party;
- Impose a result on any party;
- Make decisions for any party.

In accordance with their obligations under the Family Law Act 1975, all of the above will be done focusing on the best interests of the children involved.

Mediators will:

- Remain impartial and not support the interests of one party over another;
- Disclose to the parties if we discover any potential or actual conflicts of interests due to a previous dealing, association or relationship with either participant;
- Provide a typed copy of any agreements reached by the parties within 5 business days following a mediation session.

THE PARTIES COMMITMENT

The parties each agree that:

- They have a responsibility to support their children in having a meaningful relationship with each parent as well as other significant other people in the children's lives as long as it is safe to do so;
- They must make full and frank disclosure of any information relevant to the issues being discussed including topics such as finance and property;
- The parties agree to communicate in good faith regarding all documents and information disclosed during mediation. Note: Any agreement reached through Family Dispute Resolution that has been based on inaccurate or incomplete information, will be at risk of being set aside in later court proceedings;
- They come to Family Dispute Resolution with an intention to make decisions in the best interests of their children by:

1. Developing and considering options to the issues presented;
2. Showing a willingness to negotiate; and
3. Treating each other with respect and allowing each party to be heard.



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DUTY OF DISCLOSURE

The parties agree that participation in the Family Dispute Resolution requires full and frank disclosure of all the information relevant to the situation by each person.

ISSUES ABOUT CHILDREN

Where the issues at Family Dispute Resolution involve children, the parties agree that all of their decisions will seek to maintain the children's best interests as the paramount consideration. In appropriate circumstances, where the children are school age and with the agreement of the parties and the mediator/s, the perspective of the children may be obtained through a Child Consultation process conducted by a qualified child consultant. The feedback from the children then becomes a part of the mediation process.

This would be discussed further with the parties should it be deemed appropriate.

ISSUES ABOUT PROPERTY

A property settlement can be addressed during mediation with a focus on the principle of fairness and equity for each parent, with consideration for future needs and that of the children.

Should a property agreement not be reached through mediation, it can then be heard before the court. Some of the matters that the Court will consider are set out below:

- The property the Court considers is that which has been brought into the marriage or acquired during the marriage or after separation
- Property comprises all assets such as houses, land, shares, money in the bank, furniture, motor vehicles, insurance policies and the like. A superannuation entitlement is not technically property but can be treated like property and can be split between the parties.

Both parties are obliged to make full and frank disclosure of their assets.

In deciding what Order to make, the Court takes into account numerous factors, which include: The direct or indirect financial contribution made by either party towards the acquisition, conservation or improvement of an asset. An example would be coming into the marriage with an interest in real estate. The contribution other than financial contribution made directly by a party to the acquisition, conservation or improvement of an asset. For example, a party who paints the house makes a non-financial contribution.

- The contribution made by a party to the welfare of the family.
This includes the role played by one or other partners as the homemaker and parent.
- The effect of any proposed order on the earning capacity of either party.



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- A whole range of matters, which are directed more to the future needs of each party. Included here are issues such as the state of health of each party, the question of whether one or other party has an obligation to support a child of the marriage and the ability of each party to obtain or continue to work.
- The Court will also consider the fairness and equity of the proposed division of assets

An application for property settlement can be made immediately following separation and it is not necessary to wait until divorce. However, once a divorce has been obtained the application for property must be made within twelve months of the date of the decree absolute (a month after the divorce hearing). If the application is not lodged within that time a person must prove to a Court that there are special circumstances, which allow the application to be made late.

LEGAL EFFECT OF AGREEMENTS

The parties agree that the agreements reached during Family Dispute Resolution are goodwill agreements and as such are not legally enforceable or binding. The parties can by agreement take steps outside of the Dispute Resolution Process to make their agreements enforceable.

A parenting agreement could be verbal or may be an arrangement that has been recorded via email or on paper. If the parties reach an agreement on arrangements for their child and want to make the agreement more formal, this can be recorded as a Parenting Plan. To be recognised under the Family Law Act, a parenting plan must be in writing, dated and signed by both parents.

A parenting plan is a voluntary agreement that sets out parenting arrangements for children. It can cover day to day responsibilities of each parent, the practical considerations of a child's daily life, as well as how parents will agree and consult on important issues about their children. Other people such as grandparents and stepparents can be included in a parenting plan.

Some examples of what can be included in a parenting plan include:

- How parents will share parental responsibility and consult on decisions such as which school the child will attend;
- Who the child will live with and when;
- How the child will communicate with the other parent;
- What arrangements are in place for special occasions such as birthdays and holidays.

The agreement or parenting plan can include details on how the plan can be changed and how disagreements about the plan will be resolved. Agreements can be renegotiated over time, if necessary. Any change has to be approved by both parents.



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A parenting plan is not legally enforceable and is different from a parenting order, which is made by a court.

If parents end up in court at a later date, the court must consider the terms of the most recent parenting plan when making parenting orders in relation to the child, if it is in the child's best interests to do so. Parties can decide to have their parenting plans converted into consent orders via their lawyer/solicitor, which then makes the agreements legally binding.

INVOLVEMENT OF OTHERS IN THE MEDIATION

The parties can request that other people be available in or to the Family Dispute Resolution for the provision of support or advice. Support people and advisors do not have a voice at the mediation table. In some circumstances independent advice can be useful to assisting in finding a resolution to the issues. Where the parties and the Family Dispute Resolution Practitioner agree such an advisor can be asked to speak during the Family Dispute process (this includes the use of Child Practitioners, financial advisors and accountants). Support persons must also agree to sign a Confidentiality Agreement prior to the joint mediation commencing.

SUSPENSION OR TERMINATION OF THE MEDIATION

- A party may terminate the mediation at any time after consultation with the mediator. They can then request a Certificate 60I from the mediator and proceed to court if they choose to do so;
- The mediator has the discretion to terminate or suspend the process at any time;
- The mediator may terminate the mediator's involvement in the mediation if, after consultation with the parties, the mediator feels unable to assist the parties to achieve resolution of the dispute.

RAISING CONCERNS ABOUT YOUR MEDIATION

Our hope is that we will be able to assist you to resolve all of the issues in dispute, and if not have a clear plan for how resolution may be achieved in the future. If you have any concerns about the services provided, please contact Mikadie in writing at mjbfamilymediation@gmail.com

The mediator will investigate the circumstances of the complaint and respond to the party in writing within 7 working days of receipt of same. Should the party be unsatisfied with the response or resolution, they may contact the Mediation Institute. Contact details are available at <https://www.mediationinstitute.edu.au/contacts/>



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The parties to this mediation agree that they shall seek to work with the mediator/s under the above conditions for the resolution of their issues.

Date _____

Signed Party

Signed Party

Support Person

Support Person

Signed Mediator

Signed Mediator

Child Consultant

Other



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Fees of the Mediation Process

Mediator's fees: for the pre- mediation session
\$320 / hour per party.

Mediator's fees: for the joint mediation session (minimum 3 hours)*
\$320/ hour per party.

Mediator's fees: for the all-day joint mediation session (6 hours)
\$1,800 per party.

Drafting of mediation agreements reached at mediation
\$320 / hour per party.

Issuing of Certificate 60I \$240 administration fee.

Once **joint mediation** has commenced - phone calls or emails will not be charged

Fees

Each party will be liable to the mediator for the mediator's fees described as above. The parties will each be responsible for their own fees, unless otherwise agreed.

The parties agree to pay fees on receipt of invoice. Payment can be made by direct bank transfer

Some mediation cases take more than one session to resolve all issues relating to a parenting plan or financial settlement. The number of sessions is dependent on the complexity of the issues and the ability for each party to collaborate and negotiate with the support of the family dispute resolution practitioners.

A 100% upfront payment prior to all joint mediations sessions is required. An invoice will be issued to each client prior to the mediation and only once payment is received, will the mediation date and appointment be confirmed.

If face to face mediation is required there is an additional room cost of \$165 per party for a three-hour joint mediation.

Bank account details – ME Bank BSB 944-600 A/C 000788329

Debit and Credit Cards – Visa, MasterCard, American Express, Diners Club – Clients will be responsible for any bank service fees related to their Credit card.

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MAKING DECISIONS IN 'THE BEST INTERESTS OF CHILDREN'

KEEPING THE FOCUS ON THE CHILDREN

In recent years we have gained a lot more knowledge about the impact of conflict and trauma on children. The family law reforms aim to assist children by helping families build better relationships and to focus on their children's needs. This includes intact families, families in conflict and separating families.

When a couple does separate, it is intended that more parents will be able to establish effective arrangements for the care of their children and will keep their relationship conflict separate. Ideally, all arrangements will take the unique needs of the children into account. Many families will be able to do this independently or with the help of other people, eg friends and other family members.

Some families may need additional support and help before they can agree on a viable parenting arrangement which respects the needs of the children. This could include accessing counselling and/or family dispute resolution services.

Parents are encouraged to remember the importance of a range of significant relationships and supports that children have when making decisions about their post-separation parenting arrangements. Grandparents, step-parents, guardians, extended family and other carers are all important in the lives of children and preserving these relationships can help lessen the impact of family separation. Parents are also to consider, as a priority, the psycho-developmental needs of their children, rather than just focusing on their own wants and preferences. A child's views and experiences will be different yet are as important as those of the parents and should be listened to wherever possible. Each child may have a different perspective and a child-focus will encourage parents to become attuned to each child's needs. 'Separating parents experience a wide variety of personal and interpersonal stresses and distractions. These stresses and distractions impact on parents' sense of readiness to look beyond their own needs and seriously consider the needs of their children.'

'But if capacity is ruled in, it is imperative that parents in ongoing serious conflict are supported to find ways of again seeing [focusing on] their children and their children's needs.'

At all times, family dispute resolution practitioners should take the opportunity to encourage parents to be cooperative and respectful because this will be better for their children.



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BEST INTERESTS OF THE CHILD

The way the Family Law Act 1975 (the Act) ensures the focus is on children is to make the best interests of children the most important consideration.

The primary considerations are:

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

In applying these considerations, the court is to give greater weight to the need to protect the child from physical or psychological harm.

The 'additional considerations' that the court must take into account in determining the best interests child are:

- the views of the child, their age and maturity
- the relationship the child has with each parent and other people, including grandparents
- the extent to which the child's parents have taken the opportunity (or failed to take the opportunity) to spend time with and communicate with the child and to participate in making decisions about major long term issues.
- the extent to which the parents have fulfilled (or failed to fulfil) their obligations to maintain the child
- the likely effect of separating the child from a parent, other siblings or other significant people, including grandparents
- the practical difficulty and expense of a child spending time and communicating with a parent how well each parent can meet the child's needs
- the maturity, sex, lifestyle and background of the child and the parents
- an Aboriginal or Torres Strait Islander child's right to enjoy that culture
- The attitude to the child and to parenthood shown by the parents
- any family violence involving the child or a member of their family
- any final or contested family violence order
- making orders that are likely to avoid further proceedings, and any other matter the court thinks rel

The court must also consider the extent to which each parent has fulfilled, or failed to fulfil, his or her responsibilities as a parent, particularly after separation and particularly the extent to which they have

- participated in making decisions about major long-term issues in relation to the child
- spent time with, and/or communicated with the child
- assisted the other parent in decision-making, or spending time with, or communicating with, the child, and maintained the child.

**This information is provided from the Commonwealth Attorney General's Department.
MJB Family Mediation strongly recommends that parties seek independent legal advice.**



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RESOURCES

Phone Numbers:

- Kids Helpline – 1800 55 1800. (5yo-25yo)
- Lifeline – 13 11 14
- Family Relationships Advice Line - 1800 050 321
- Mens Line Australia 1300 789 978
- Domestic Violence Line – 1800 656 463

Websites:

Family Law Courts Website – <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/home>

Family Relationships Online Website - <https://www.relationships.org.au/relationship-advice/publications>

Publications that could be useful for children:

Our Families Changed: Activity Book (5-7 year olds) -

<http://www.socialworkerstoolbox.com/my-familys-changing-activity-book-for-children/>

Family Separation: A Guide for Teens - <https://raisingchildren.net.au/teens/communicating-relationships/family-relationships/helping-teens-adjust-separation>

Kids' World: A Kids Guide to Changing Families –

<https://www.aftoncsd.org/Downloads/Changing%20Families%20Workbook.pdf>

Publications:

Because it's for the Kids - Building a secure parenting base after separation

https://www.familyrelationships.gov.au/sites/default/files/documents/06_2017/because-its-for-the-kids.pdf

Going through separation - <https://www.familyrelationships.gov.au/separation>

Share the Care: Collaborative Parenting Apart - <http://www.relationships.org.au/relationship-advice/publications/pdfs/share-the-care-parenting-plan>

What about the Children? – <http://www.relationships.org.au/relationship-advice/publications/pdfs/what-about-the-children.pdf>

Me and My Changing Family: Moving Forward

<https://www.centacarecq.com/wpcontent/uploads/2019/09/Me-My-Kids-and-My-Ex.pdf>

Me and My Kids: Parenting from a Distance - <https://www.ourfamilywizard.com.au/blog/5-key-considerations-long-distance-parent-child-relationships>



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MAKING DECISIONS ABOUT PROPERTY

What Does the Family Law Act Say?

Section 79(2)

The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

Section 79(4) Family Law Act

(4) In considering what order (if any) should be made under this section in property settlement proceedings, the court shall take into account:

(a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them; and

(c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent; and

(d) the effect of any proposed order upon the earning capacity of either party to the marriage; and

(e) the matters referred to in subsection 75(2) so far as they are relevant; and

(f) any other order made under this Act affecting a party to the marriage or a child of the marriage; and

(g) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage.



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Section 75(2) Family Law Act

(2) The matters to be so taken into account are:

(a) the age and state of health of each of the parties;

(b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;

(c) whether either party has the care or control of a child of the marriage who has not attained the age of 18 years;

(d) commitments of each of the parties that are necessary to enable the party to support: (i) himself or herself; and

(ii) a child or another person that the party has a duty to maintain;

(e) the responsibilities of either party to support any other person;

(f) subject to subsection (3), the eligibility of either party for a pension, allowance or benefit under:

(i) any law of the Commonwealth, of a State or Territory or of another country; or

(ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia; and the rate of any such pension, allowance or benefit being paid to either party;

(g) where the parties have separated or divorced, a standard of living that in all the circumstances is reasonable;

(h) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;

(ha) the effect of any proposed order on the ability of a creditor of a party to recover the creditor's debt, so far as that effect is relevant; and

(j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;

(k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;



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- (l) the need to protect a party who wishes to continue that party's role as a parent;
- (m) if either party is cohabiting with another person—the financial circumstances relating to the cohabitation;
- (n) the terms of any order made or proposed to be made under section 79 in relation to: (i) the property of the parties; or
 - (ii) vested bankruptcy property in relation to a bankrupt party;
- (na) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage; and
- (o) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and
- (p) the terms of any financial agreement that is binding on the parties.

This information is provided from the Family Law Act. MJB Family Mediation strongly recommends that parties seek independent legal advice.