



RIGOLI LAWYERS

YOUR PROBLEM + OUR EXPERIENCE = STRESS FREE SOLUTION

Mediation in Family Law Matters

It is compulsory to attempt formal mediation in family law matters, before one can go to court to get orders relating to children. There are some exceptions to this rule. If the matter settles at mediation there are also advantages and disadvantages of finalising agreement within the mediation.

Mediation and Family Law requirements for children's matters

It is a prerequisite under the Family Law Act 1975 ("the Act") that parties attend mediation and obtain a certificate from a registered family dispute resolution practitioner. This must be done prior to an application to the Court for an order in relation to children under Part VII of the Act.

Part VII of the Act specifies initiating applications for a variety of orders relating to children, of these, parenting orders are the most common. Parenting orders regulate who children live with and have contact with, in addition to other related aspects of their care and welfare.

What is mediation?

Mediation is a process whereby the parties to a dispute (for instance parents), with the assistance of a mediator:

- Identify disputed issues
- Generate options
- Consider options
- Attempt to reach an agreement

The mediator does not act for or advise either party. Nor does the mediator make determinations regarding disputes or their resolution. Essentially, the mediator's role is as an impartial facilitator between the parties, aiding them to communicate, create opportunities to settle, consider the opportunities and ultimately settle.

Why mediation?

Mediation is a prerequisite in children's matters to allow parties to attempt to settle disputes before entering the Court system. The idea is to allow the parties to first attempt to settle their disputes and generate solutions using an effective, time and cost efficient method.

When a certificate is not necessary?

A party is not required to provide a certificate or attend mediation before going to court on children's matters if, in their application, they are seeking:

- Consent orders
- Financial orders only
- Property settlement only
- Child support only
- To file an amended application which relates to a child or children which are the subject of the current application, or an interim one within current proceedings
- Hague Abduction Convention orders only

When is mediation unsuitable?

A party may not need to attend mediation where specific exemptions are satisfied, namely:

- The matter is urgent (due to issues of the welfare and safety of the child); or
- There is a risk of family violence; or
- There is a risk of child abuse if the matter was delayed in going to Court; or
- There has been family violence or child abuse committed by one of the parties; or
- A party is unable, due to distance from the mediation service or physical incapacity or similar limitation, to participate effectively in mediation; or
- The application relates to a contravention of existing orders made within the past year and there are reasonable grounds that the person contravening the order has behaved with serious disregard for the orders.

If applying for exemption a party must file a Non-Filing of Family Dispute Resolution Certificate. Or alternatively a party may include this information in their affidavit in support of initiating application when they go to court.

The strengths of mediation are:

- Low financial costs in comparison to Court proceedings;
- Many matters settle at mediation on the first occasion;
- Parties communicate directly and decide the outcome, with assistance of mediator which is empowering to them;
- Informal environment and procedures;
- All discussions during the mediation are confidential, unless:
- the matter goes to Court to formalise agreement reached and enforce it; or
- the parties both agree to waive confidentiality; or
- matters of a criminal or fraudulent nature are discussed; or

- there is a risk posed to public safety.
- Parties can attend unrepresented if they feel comfortable in doing so;
- Mediations can operate by shuttle whereby the parties are in separate rooms (if they are unable to sit in the same room due to concerns of violence or inability to communicate face to face); and
- Mediations can operate via teleconference whereby the parties attend the mediation by telephone (if physical distance or concerns of violence are evident).

The weaknesses of mediation are...

- Agreements (parenting plans) reached and agreed to are not enforceable unless filed with the Court and changed into orders;
- Wait times can be lengthy once mediation is assessed as appropriate;
- Attending unrepresented can be hazardous as parties may agree to conditions which are unsuitable, impractical or place them at risk; and
- No strong penalty for parties who do not attend or not make a genuine effort at mediation
- Mediation may waste valuable time, when Court proceedings are more appropriate to get the result.



Rigoli Lawyers is an accredited Family Law Specialist firm.

Our lawyers have experience in varied areas including commercial and company law, conveyancing and contracts, criminal law, deceased estates, family law, business law and all court and litigation matters.

This document does not constitute legal advice for your matter. To obtain tailored and specific advice to your situation you must consult a legally qualified lawyer.

**www.rigolilawyers.com.au
(03) 8742 3199**

2016 Winner- Suburban Lawyer of the Year

