

## Compulsory dispute resolution

### *Changes to the Family Law Act*

Changes are being made to the family law system to better meet the needs of today's families and improve outcomes for children.

The reforms are based on the Australian Government's commitment to change the way people think about family breakdowns and to improve outcomes for children. They promote the right of children to know both their parents and recognise that parenting is a responsibility that should be shared, provided this does not put children at risk of harm.

Specific changes focus on the way family separations are managed, to move away from long and costly court battles and towards more co-operative parenting solutions.

### *What is the key change regarding parenting disputes?*

The Government is trying to encourage a spirit of agreement, which should result in better outcomes for children.

To do this the law will be changing over coming years to phase in a requirement for parents to attend family dispute resolution and make a genuine effort to resolve the issues in dispute, before taking a parenting matter to court. It is expected that this requirement will apply to new parenting cases from mid 2007, and to all parenting cases from mid 2008. The requirement does not apply in some cases such as family violence or child abuse.

### *Who is required to attend dispute resolution?*

The family dispute resolution requirement will only be compulsory for parents who want to go to court over a parenting issue.

Where there is a dispute over parenting issues the people in dispute will be required to attend compulsory dispute resolution (such as mediation) before the matter can proceed to court.

Where parents can agree on parenting arrangements following a separation without having to go to court, they will not be required to attend dispute resolution.

### *Exceptions to compulsory attendance at dispute resolution*

A number of exceptions apply to ensure that people will not be required to attend dispute resolution in circumstances where it would be inappropriate. These include the following situations:

- where people agree on an issue but want it formalised as a consent order from the court
- where an application has been made for procedural or interim orders while the main proceedings are happening
- where family violence or child abuse is involved. The court must be satisfied that there are reasonable grounds to believe that there has been, or would be, a risk of abuse or violence if there were to be a delay in applying for an order
- cases of contravention within 12 months of a court order. The court must be satisfied that a person has shown serious disregard for his or her obligations under that order
- where the matter is urgent. This may cover an application to give immediate protection to a child, or for the urgent location and recovery of a child, including cases of child abduction
- where a party is unable to participate effectively in dispute resolution. This covers circumstances such as incapacity or physical remoteness
- A court may also, at any time, order parties who have brought a case to court to attend family dispute resolution or another appropriate service or program that can help them. Any such decision is made at the discretion of the court.

### *Certificates from a family dispute resolution practitioner*

In cases where compulsory dispute resolution applies, the court cannot hear an application for a parenting order unless a certificate from an accredited family dispute resolution practitioner is filed with the application for the order.



This certificate must state that either:

- the person applying to the court did not attend family dispute resolution due to the refusal or failure of the other party or parties to attend, or
- the family dispute resolution practitioner considers that it would not be appropriate to conduct the family dispute resolution, or
- the parties attended family dispute resolution and made a genuine effort to resolve the dispute, or
- the parties attended family dispute resolution but one or more of them did not make a genuine effort to resolve the dispute.

#### ***Who will provide the dispute resolution services?***

Those who require the compulsory dispute resolution may attend any accredited dispute resolution practitioner. An accredited dispute resolution practitioner is a person who has professional training as a mediator and meets accreditation standards. (An accreditation system for family dispute resolution practitioners and family counsellors is currently being developed and will be in place prior to the introduction of compulsory dispute resolution.) Family Relationship Centres will provide up to three hours of dispute resolution free of charge to separating parents, but there is no requirement to attend a Centre. Parents may also use accredited practitioners in other services or in private practice.

#### ***How much will dispute resolution services cost?***

The cost of dispute resolution will vary depending on the dispute resolution practitioner who provides it. Private practitioners set their own fees. Dispute resolution services funded by the Government are required to have a fees policy in place that takes into account the capacity of the client to pay a fee.

Centres will provide individual advice free of charge. Centres will provide up to three hours of joint dispute resolution sessions (such

as mediation) free of charge. If further joint sessions are needed families may continue at the Family Relationship Centre or accept a referral to another service. Centres may charge fees after the first three hours of joint sessions. Any fees will take into account the family's ability to pay. In some cases fees will be waived.

#### ***When does this change in the law take place?***

The requirement for people to attend dispute resolution before applying for an order relating to children will be introduced for new cases from mid 2007 and for all cases from mid 2008.

#### ***Where can I find more information about the family law system?***

Look for the following fact sheets on [www.australia.gov.au/familyrelationships](http://www.australia.gov.au/familyrelationships)

1. *Our children come first*
2. *Changes to the Family Law Act*
3. *Additional services for families*
4. *Family Relationship Advice Line and Family Relationships Online*
5. *Family Relationship Centres*
6. *The benefits for children*
7. *The role of professionals*
8. *Parenting plans*
9. *Compulsory dispute resolution*
10. *Dealing with family violence and child abuse*
11. *The role of grandparents*

Call 1800 050 321 or visit [www.australia.gov.au/familyrelationships](http://www.australia.gov.au/familyrelationships)

