



# family flyer



## Special Edition - Compulsory Mediation

### Introduction

The Family Flyer is a free community service by Michael Lynch Family Lawyers. The publication is designed to be informative and topical and to assist you in understanding the ever-changing field of Family Law.

### This edition includes:

- Compulsory Mediation - commencing 1 July 2007

### COMPULSORY MEDIATION - COMMENCING 1 JULY 2007

With mediation compulsory for all Court Applications for Parenting Orders from 1 July 2007 it is timely to clarify what the new mediation requirements are all about.

#### What is happening?

On 1 July 2006 the *Family Law Act* was amended to introduce the Shared Parenting legislation.

In addition to the introduction of the presumption of shared parental responsibility, the new concepts of "equal time" and "substantial and significant" time, Independent Children's Lawyers and the Children's Cases Program, the amendments also introduced a number of changes with respect to the family dispute resolution (mediation) provisions of the *Act*.

#### When is mediation compulsory?

From 1 July 2007, if a person wants to apply to the Court for a Parenting Order they will need a Certificate from a Registered Family Dispute Resolution Provider which confirms that an attempt at family dispute resolution has been made.

#### Who does the mediation?

A Registered Family Dispute Resolution Provider is an individual or organisation who has met the required standards of training and experience for inclusion on the family dispute resolution Register.

Registered Family Dispute Resolution Providers can conduct family dispute resolution sessions (i.e mediation) and, if needed, issue a Certificate that can be taken to Court to confirm that an attempt at family dispute resolution has been made.

Individuals working in private practice can apply to be registered as Family Dispute Resolution Providers. The register is accessible at [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au).

The on-line register will provide information about individuals and organisations who meet the requirements of a Family Dispute Resolution Provider under the *Act*.

#### Who can be registered?

Approved organisations will be automatically registered and can authorise specific individuals to provide family dispute resolution services on their behalf.

The requirements for an individual Family Dispute Resolution Practitioner are set out in Section 10G of the *Family Law Act* and provide two pathways for registration prior to 30 June 2009, either pursuant to regulation 83 or under the interim rules.

Registration under regulation 83 must occur before 1 July 2007 and under that there are (2) options. These are:

- (1): Have an appropriate tertiary qualification, have completed 10 hours of dispute resolution and have completed 5 days of training; or
- (2): Complete a tertiary qualification by August 2008 and have provided at least 150 hours of mediation since June 1991 (with at least 50 hours provided since June 1994).

Alternatively, a practitioner may meet the interim rules. These impose a more stringent requirement, i.e they must:

- Have an appropriate tertiary qualification, at least 30 hours of supervised family dispute resolution and have completed 5 days training in mediation.

Final accreditation requirements will be in place after 1 July 2009.





**Are there exceptions to the requirement for a Certificate?**

A Certificate of attendance at mediation is not required where:

- Parties are applying for Consent Orders;
- Where the matter is urgent;
- Family violence has occurred or there is a risk of violence and the mediation would result in a delay;
- It is not practical for either or both of the parties to attend; or
- A person has shown serious disregard in contravening a Court Order in the previous 12 months.

**What will the Certificate say?**

The Certificate will say one of the following, either:

- One of the party's did not attend; or
- Both parties attended and made a genuine effort to resolve the dispute; or
- Both parties attended but one did not make a genuine effort; or
- The mediator decided that the case was not appropriate for mediation.

A standard form for the Certificate is provided in Schedule 7A of the Act.

**Information to clients**

Family Dispute Resolution Practitioners must provide parties with a statement about the process, the parties rights and about the qualifications of and fees charged by the practitioner, before family dispute resolution can start.

The practitioner must also give the parties information about Parenting Plans and other services available to help with the preparation of a Parenting Plan. (Readers are referred to Family Flyer Edition 59 on "Tips and Traps in Parenting Plans").

**Is the process confidential?**

Everything said to a Family Dispute Resolution Practitioner is confidential except in special circumstances, such as to prevent the commission of a crime.

**What if one of the parties does not attend?**

If one of the parties does not attend or make a genuine effort the Court will take this into account in deciding any Costs Order or the Court may order that that party attend mediation.

**Costs**

Private providers will set their own fees. Family Relationship Centres provide up to 3 hours of family dispute resolution free.

**Caution**

It is hoped that people will seek legal advice before engaging in any mediation process so as to ensure they are fully advised of their legal position and the options open to them. It may well be the case that mediation is not appropriate for them at that time and that negotiations may be a more appropriate course.

**More Information**

If you require information regarding the Shared Parenting laws please telephone us on (07) 3221 4300 or read Family Flyer - Edition 44. Visit [www.mlfl.com.au](http://www.mlfl.com.au).



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