Dispute Resolution in Family Law Proceedings

This fact sheet provides information for people who are involved in family law proceedings in the Federal Magistrates Court of Australia (the Court), and the Court has ordered them to attend dispute resolution.

What is dispute resolution?

Dispute resolution refers to services designed to help you resolve any disputes arising from separation or divorce and improve your relationship with the other party/s.

The Court may order you to attend:

FAMILY COUNSELLING

- a family counsellor will help you and your family deal with personal and interpersonal issues relating to marriage, separation, or divorce; including issues relating to the care of the child/ren.

FAMILY DISPUTE RESOLUTION

- a family dispute resolution practitioner, who is independent and impartial, will help you and the other party/s resolve parenting disputes arising from separation or divorce.

POST SEPARATION PARENTING PROGRAM

- these programs are usually provided in the form of a series of small group lectures and discussions. They are designed to teach you strategies for resolving disputes with the other party/s and practical ways to help your child/ren adapt to separation. A parenting orders program is a type of post separation parenting program designed for party/s who are having difficulty complying with Court orders. Parenting orders programs generally involve a combination of family counselling, family dispute resolution, and group lectures and discussions.

CONCILIATION

- a conciliator, who is independent and impartial, will help you and the other party/s resolve financial issues arising from separation or divorce.

What are the benefits of dispute resolution?

Dispute resolution provides you with an opportunity to improve your relationship with the other party/s and reach an agreement between yourselves without the need for a court order. This allows you to make your own decision and retain control of the outcome. Because all parties are involved in reaching a resolution, it improves the chances that the agreement will last into the future. You may also learn more effective ways to communicate with the other party/s which may assist you to resolve future disputes.

Dispute resolution is a more affordable, timely, and less stressful means of resolving disputes. With the exception of conciliation conferences, your lawyer, if you have one, does not attend.

This fact sheet provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Federal Magistrates Court of Australia cannot provide legal advice.

Where does dispute resolution happen?

In most situations, the Court will order you to attend dispute resolution at an external community-based organisation. The Court will select an appropriate agency as close as possible to where you and the other party/s live. In some cases the order will require you to make your own appointments with a specific organisation. You must do so within the time period specified in the order.

In other cases the order will require you to attend an organisation to be nominated by the dispute resolution co-ordinator. In such cases the Court will send your contact details to the selected agency. Upon receipt, the agency will contact you to arrange an appointment. If your contact details change, you should advise the agency, and the Court, as soon as possible.

Who will pay for the dispute resolution?

If you have been ordered to undertake a post separation parenting program, unless the order otherwise states, you will be required to pay.

In relation to family dispute resolution and family counselling, if your order directs you attend a specific organisation and arrange your own appointments, you will generally be required to pay. However, the services that the Court usually orders parties to attend are subsidised by the government and the cost to you will be based on your financial circumstances. If your order directs you to attend an organisation to be nominated by the dispute resolution co-ordinator, the Court will generally pay.

What documents should you take to dispute resolution?

You should take, if you have them, the following documents to your appointment:

- court orders
- family violence orders
- any other court documents.

Can child/ren be involved in dispute resolution?

The Court may make an order for your child/ren to participate in dispute resolution. Unless the Court makes this order, you should not take your child/ren to the appointment or discuss the appointment with them. However, if, in consultation with the dispute resolution provider, it becomes apparent that it may be appropriate for the child/ren to be involved, the consent of both parents is required.

Is dispute resolution confidential?

The dispute resolution practitioner will notify the Court in writing as to whether or not your matter settled, what issues (if any) remain in dispute, and any recommendations they have for future management of your case. However, communications in the course of dispute resolution are, except in certain circumstances, confidential and inadmissible in any Court.

What happens after dispute resolution?

If an agreement is reached, you and the other party/s can enter into a parenting plan or file consent orders with the Court. This will complete your court action.

NOTE – a parenting plan is not legally enforceable. It is different from a parenting order, which is made or endorsed by the Court. You should get legal advice about this.

If an agreement is not reached, your case will proceed to a hearing. It is important to remember that you and the other party/s can reach an agreement at any stage before the hearing.

Personal safety

If there is a history of family violence it may not be appropriate for you to attend dispute resolution. Speak to staff at the agency about your options and the support services that are available.

If you have a family violence order, or have been the victim of family violence, you should tell the person from the dispute resolution agency.