



MEDIATION



SERVICES

www.centacarenenw.com.au



Introduction

This Information Booklet provides information on family mediations within Centacare New England North West and the Tamworth Family Relationship Centre. We have offices in Tamworth, Armidale, Glen Innes, Inverell, Moree, Narrabri and Gunnedah, and service all of the New England North West region.

At Centacare, we offer a range of mediation services, including family relationships, parenting, property settlement, workplace and school mediations.

This Information Booklet will focus primarily on parenting mediations.

Parenting mediation is a confidential process to help parents, who cannot agree, find a way forward in the best interests of their children.

The aim is to allow each party to feel heard and to create a plan that works for everyone - especially your children. The process is designed in the hope that parents avoid all the emotional and financial costs of going to court.

The Family Law Act and Family Dispute Resolution Regulations require us to provide you with the following information prior to your mediation to enable you to understand the important elements of Family Dispute Resolution ("FDR" also known as 'mediation').

The Mediation Process



Step One

You **initiate the mediation process**; we arrange an appointment for you with a mediator

Step Three

We **invite the other party**, and do an intake and assessment session with them. If they don't engage, we will contact you to discuss

Step Five

Each party completes an **education session** with a Facilitator that can cover a range of topics such as post-separation communication, age-appropriate arrangements for children and other relevant matters (some exemptions apply)

Step Seven

A joint **mediation** session is conducted (allow up to 3hrs), and if agreement is reached, a **Parenting Plan** will be drafted

Step Two

You meet with a mediator for a confidential **intake and assessment session** either face-to-face, via phone or online (lasting approx. 2hrs)

Step Four

The mediator will **assess for suitability** for mediation - this assessment is ongoing. If assessed as unsuitable, your mediator will discuss your options with you

Step Six

Your mediator will conduct a **pre-mediation session** with you to prepare you for mediation



Further details about the process can be found in our FAQ document at:

<https://www.centacarenew.com.au/family-services/>



Staff qualifications

Your mediation will be conducted by a registered Family Dispute Resolution Practitioner, and often there will also be a co-mediator in your mediation to assist.

Family Dispute Resolution Practitioners have the necessary qualifications to conduct your family mediation and are registered with the Australian Attorney-General's Department.

For the purposes of this Information Booklet, we refer to the Family Dispute Resolution Practitioner as the "Mediator".

The fees charged by our service

If you earn under \$50,000 or hold a current concession card:

- Your first mediation session is free.
- Subsequent mediations are \$70.

If you earn over \$50,000 and do not hold a concession card:

- The first hour of your mediation session is free, and each hour thereafter will be \$30. Our mediation sessions usually go for no longer than 3 hours. Therefore, you will pay a maximum of \$60 for your mediation.
- Subsequent mediations are \$100.

All other aspects of your mediation, including intake assessment sessions, referrals, education, phone calls and communications, are free.



Information on services that assist reconciliation

If you are married and considering a divorce, considering going to court about your children or your finances, and if there is a possibility of reconciliation, we will give you information about family counselling and mediation services to help with reconciliation.

Information in cases that involve family violence or child abuse

A person does not need to attend mediation before making an application to the court about a child in a number of circumstances, including where there has been family violence, child abuse or a risk of family violence or child abuse. You will need to obtain legal advice about whether an exemption applies in your matter.

Where these circumstances exist, the court must be satisfied that the person making the application has received information from a family counsellor or a mediator about services and options (including alternatives to court action) where available. A Section 60I Certificate may be provided by our mediators if your matter is not suitable for mediation, but we must conduct an assessment of the matter before issuing a certificate.

Mediation must be attended before applying for an order in relation to a child, unless an exemption applies

In Australia, you cannot make an application to the Federal Circuit and Family Court of Australia for an order regarding your child/ren, unless you have attempted mediation, or unless an exemption applies.

We encourage you to get legal advice about whether an exemption might apply in your case.

If you want to apply to the court for an order in relation to a child, you will need to obtain a certificate from our service before applying, unless an exemption applies

As stated, unless an exemption applies, you must attempt mediation before applying to the court for parenting orders.

The court will only accept a Section 60I Certificate from a registered Family Dispute Resolution Practitioner as evidence that you attempted mediation.

There are five reasons why we might issue a Section 60I Certificate:

1. One parent refused or declined to participate in the mediation process;
2. Mediation was assessed not appropriate by the mediator;
3. Parents made a genuine effort during the mediation but could not come to an agreement;
4. One or both parents did not make a genuine effort to reach agreement during the mediation; or
5. The mediation started but it was inappropriate to continue.



It is not the role of the mediator to give people legal advice

A mediator is a neutral person who assists parents to focus on the best possible plan for their children. Mediators do not provide legal advice, decide who is right or wrong, or force parents to make an agreement. They assist parents to communicate with each other, guide discussions, and assist with exploring options for agreement. Parents make the decisions and develop the plans.

We can give you general advice on some legal processes, but we strongly advise that all parents get legal advice for your circumstances before attending mediation. Ask your mediator for referrals when you attend the Intake Assessment.



We are bound by confidentiality and disclosure obligations; and communications made in mediation are generally inadmissible (i.e. not able to be used as evidence in court proceedings)

The confidentiality and admissibility provisions under the Family Law Act only apply where the mediation is being conducted by an accredited family dispute resolution practitioner (“mediator”). In terms of inadmissibility, according to the Act, ‘evidence of anything said, or any admission made, by or in the company of, a family dispute resolution practitioner is not admissible’.

We must not disclose a communication made in mediation unless we reasonably believe that the disclosure is necessary for the purposes of complying with a law of the Commonwealth or State. For example, where something is said or done that leads us to believe that a child is at significant risk of harm, where someone intends to hurt themselves or someone else, or commit a crime or damage property, we would be required to report that to the relevant authority. We must also disclose information to any independent children’s lawyer to properly represent a child’s interests.

Additionally, your mediator may disclose a communication made by you with your consent. We can also disclose communication made by a child who is under 18 if the parents consent to disclosure.

Communications made in mediation are not admissible (i.e.: not able to be used as evidence) in any court or proceedings, in any jurisdiction (unless they concern child abuse). This extends to communication that is made when a professional consultation is being carried out on referral from the mediator.

Despite the legislation, there has been a decision made by a Magistrate that communications in the Intake Assessment session may not be covered by the inadmissibility provisions.

A court may take into account any certificate issued under subsection 60I(8) of the Family Law Act when deciding whether to make an order referring the people to mediation or to award costs against a person

The court may look at the reason given on the Section 60I Certificate when they are deciding whether to make an order referring people to mediation or to award costs against someone.

Information about the complaints mechanism that you can use should you wish to complain about our mediation service

Complaints and feedback can be made at any time by contacting our reception staff. They will take your complaint and refer it to the appropriate person.

If you are not satisfied with the services you have received or the response given to your concerns, and you would like to lodge a formal complaint with our organisation, you can do so by emailing complaints@centacarenew.com.au and the Complaints Administrator will review and action your complaint.

If we're unable to resolve your complaint internally, you can use the Attorney-General's Department complaints process by contacting:

Email: flscomplaints@ag.gov.au

Phone: 02 6141 6666

Post: Family Law Services Section, Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
Barton ACT 2600



Information about the best interests of the child

When considering parenting arrangements, the paramount consideration must be the best interests of the child. This is also the paramount consideration of the family law court when determining parenting orders.

The best interest factors to consider are:

1. The safety of the child and people who care for the child (including any history of family violence and family violence orders)
2. The child's views
3. The developmental, psychological, emotional and cultural needs of the child
4. The capacity of each person who will be responsible for the child to provide for the child's developmental, psychological, emotional and cultural needs
5. The benefit of the child of having a relationship with each of their parents, and other people who are significant to them (e.g.: grandparents and siblings), where it is safe to do so
6. Anything else that is relevant to the particular circumstances of the child.

Also, if the child is an Aboriginal or Torres Strait Islander child, you should also consider how any parenting arrangements will help that child to experience their Aboriginal and Torres Strait Islander culture.



Information about parenting plans

A parenting plan is a voluntary agreement that covers the day-to-day responsibilities of each parent, the practical considerations of a child's daily life, as well as how parents will agree to consult on important long-term issues about their children, such as choosing which school they will go to.

A parenting plan is not legally enforceable and is different from a parenting order, which is made by a court. Parents who make a parenting plan can ask the court to make an order in the terms of that plan. Once made, these orders are legally binding.

If parents end up in court at some 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 interest to do so. The court will also consider the extent to which both parents have complied with their obligations in relation to the child, which may include what is included in the parenting plan.

More specific information about Parenting Plans is in the attached brochure.





Contact Us



02 6762 9263

or freecall 1800 372 826



familylawreferrals@centacarenenw.com.au



An Australian Government Initiative





Parenting plans

Information for parents to consider when making a parenting plan

Separation can be challenging for everyone involved, especially children. During this difficult time, children need support from their parents and other significant people in their lives, such as grandparents and siblings. Some certainty for the future is also important for everyone.

The family law system encourages separating parents to work out arrangements for children between themselves without going to court, where it is safe to do so. Parents can set out the arrangements they want to put into place for their children by making a parenting plan.

What is best for your child is the most important thing to consider when making a parenting plan.

What is a parenting plan?

A parenting plan is a voluntary agreement that covers the time a child will spend with each parent, the practical considerations of a child's daily life, and how parents have agreed to make decisions about major long-term issues for their children.

The parenting plan can be changed at any time, as long as both parents agree.

Who can make a parenting plan?

To create a parenting plan under the *Family Law Act 1975* (the Family Law Act), the plan must be made and signed and dated by both parents of the child. However, other people, such as grandparents and step-parents, can also be included in a parenting plan.

Parenting plans and the law

A parenting plan can take any form, as long as it is in writing, and signed and dated by both parents. It must be made free from any threat, duress or coercion. This is required under the Family Law Act.

Importantly, a parenting plan is not legally enforceable and is different from a parenting order made by a court. Parents who make a parenting plan can ask the court to make an

order in the same terms as that plan. If it is agreed by both parties that the parenting plan be made into court orders, parents can ask the court to make 'consent orders'. Once made, these orders are legally binding and have the same effect as any other parenting order made by a court.

If parents go to 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 best interests of the child to do so. The court will also consider the extent to which both parents have complied with their obligations in relation to the child, which may include the terms of a parenting plan.

If there is a court order setting out parenting arrangements, parents can agree to change those arrangements through a parenting plan (unless the court order says otherwise). This makes it easier for parents to agree on changes without going back to court.

If a parenting plan does change an existing parenting order, parents may not be able to enforce those parts of an old parenting order that are inconsistent with the terms of a new parenting plan.

Best interests of the child

When parents make decisions about a child, the child's needs must come first.

The law sets out a list of factors that describe what a court must consider when determining what is best for a child when making parenting orders. It can be helpful for parents to consider these factors when making parenting plans, and deciding things such as who will make decisions for the child and who they should live with and spend time with.

Some of the relevant factors are:

- the safety of the child and people who care for the child (including whether there has been any past family violence)
- the child's views
- the developmental, psychological, emotional and cultural needs of the child
- the capacity of each person who will be responsible for the child to provide for the child's developmental, psychological, emotional and cultural needs
- the benefit to the child of having a relationship with each of their parents, and other people who are significant to them (for example, grandparents and siblings), and
- anything else that is relevant to the particular circumstances of the child.

If the child is an Aboriginal or Torres Strait Islander child, it is also important to consider how the parenting plan will help that child to experience their Aboriginal or Torres Strait Islander culture.

What can be included in a parenting plan?

A parenting plan will be unique to the circumstances of a family after separation. It should be practical, simple and as specific as possible.

A parenting plan can deal with any aspect of the care, welfare and development of a child.

The kinds of things that may be covered under a parenting plan include:

- who the child will live with
- how much time the child will spend with each parent (see **Time arrangements**, below)
- how much time the child will spend with other people, such as grandparents
- how parental responsibility, including decision-making on major long-term issues, will be allocated (see **Parental responsibility**, below)
- consultations that should occur about making decisions on major long-term issues affecting the child
- how the child will communicate with each parent or other people (for example, by phone, email or letters)
- what arrangements need to be made for special days, such as birthdays and holidays
- what process can be used to change the plan or resolve any disagreements about the plan
- child support for the child*
- anything else significant about parental responsibility or the care, welfare and development of the child.

* Special rules apply about including child support in your parenting plan (see **Care decisions – impacts on child support and Centrelink**, below).

Can I include other things in my parenting plan?

A parenting plan under the Family Law Act *must* address a specific aspect of the care, welfare and development of a child. Other provisions, like spousal maintenance or property, can also be included, but these are not legally enforceable. These provisions can be made legally enforceable in other ways, such as seeking consent orders if these issues are agreed. Seeking consent orders involves both parties agreeing to the terms and submitting the agreement to the court for approval.

Time arrangements

The law does not contain any presumption about how much time a child should spend with each parent. Although some people assume Australian law entitles parents to spend equal time with their children, this has never been the case.

When deciding who a child should live with and spend time with, parents may find it helpful to check through the 'best interests' factors that the court would consider if it had to decide (see **Best interests of the child**, above).

Parental responsibility

Parental responsibility means all of the duties, powers, responsibilities and authority that parents have in relation to their children.

Each parent ordinarily has parental responsibility for the child, regardless of whether they are married, in a de facto relationship, never in a relationship, or otherwise. This means that each parent can independently make decisions about the child. When the parents of a child under the age of 18 separate, parents continue to have parental responsibility, unless this is changed by a court order.

An important aspect of parental responsibility that you can cover in your parenting plan is how decisions will be made on major long-term issues for your child. Major long-term issues include the child's education, religious and cultural upbringing, health, name and significant changes to the child's living arrangements.

Australian family law encourages separated parents to consult each other when making decisions on major long-term issues for their child, where it is safe to do so. The best interests of the child are the most important consideration when making these decisions.

There is no longer a presumption in place that, if court orders are necessary, a court will make orders for parents to share decision-making on major long-term issues equally. A court will look at the specific circumstances of the case and make orders based on what is best for the child. The orders can be for joint or sole parental responsibility including decision-making on major long-term issues. The court can also make orders for joint or sole decision-making in relation to specific major long-term issues.

Other considerations when developing a parenting plan

When developing a parenting plan, parents should consider the information contained in this document, including the legal implications of making a parenting plan. Parents may find it useful to include things from the list above in a parenting plan (see **What can be included in a parenting plan**, above).

It can be useful to include arrangements for resolving any disputes about the terms of a parenting plan, or for varying the parenting plan. This can help if the needs or circumstances of a child change as they get older (for example, when the child starts primary or secondary school).

Care decisions – impacts on child support and Centrelink

The Child Support Scheme and Family Tax Benefit (FTB) Part A are closely linked to reflect the long-standing principle that parents are primarily responsible for the financial support of their children, with the Australian Government providing family assistance where needed.

The care arrangement of a child can affect a parent's child support payments, FTB and income support payments.

More information can be found on the Services Australia website:
<https://www.servicesaustralia.gov.au/learning-about-child-support>.

Difficulties complying with a parenting plan?

If either parent has difficulty complying with a parenting plan which they cannot resolve by agreement with the other parent, there are a range of services available to help, such as counselling and family dispute resolution. For example, parents may be able to change an existing agreement or make a new parenting plan with the help of a professional.

For information and advice, contact the Family Relationship Advice Line on 1800 050 321, including for referrals to services in your local area, such as a Family Relationship Centre.

Need help making a parenting plan?

Services are available to help parents reach an agreement about their children, such as counselling and family dispute resolution. These services are offered by a range of organisations, including Family Relationship Centres.

About	Support available
Making parenting plans	<p>There are multiple services that can assist you with making and complying with parenting plans:</p> <ul style="list-style-type: none">• Family Relationship Advice Line – call 1800 050 321 or visit https://www.familyrelationships.gov.au/talk-someone/advice-line.• Family Relationship Centres and other family dispute resolution services – call 1800 050 321• Family Relationships Online – visit www.familyrelationships.gov.au.• List of accredited Family Dispute Resolution Practitioners – visit https://fdrr.ag.gov.au/.
Family law advice	<p>For information about family law, including services and support, visit the Australian Attorney-General's Department website:</p> <ul style="list-style-type: none">• Family Law Services and Support fact sheet -

	<p>https://www.ag.gov.au/families-and-marriage/publications/family-law-services-and-support-fact-sheet</p> <ul style="list-style-type: none"> • Overview of 2024 changes to the parenting framework for parents and parties: https://www.ag.gov.au/families-and-marriage/publications/family-law-amendment-act-2023-factsheet-parents
Parenting help	<p>The Australian Government funds a number of organisations to provide programs and support to parents:</p> <ul style="list-style-type: none"> • To find the nearest organisation to support your needs, visit https://serviceproviders.dss.gov.au/. • The Australian Government funds the Raising Children Network which has a range of information for parents - https://raisingchildren.net.au/grown-ups/family-life.
Child Support Scheme	<p>For information about Child Support, contact Services Australia on 13 12 72, or visit https://www.servicesaustralia.gov.au/learning-about-child-support?context=60015.</p> <ul style="list-style-type: none"> • Child Support Estimators – https://www.servicesaustralia.gov.au/online-estimators?context=64107. • Child Support Guide – https://www.servicesaustralia.gov.au/child-support-online-help-guides?context=64107.
Family Tax Benefit	<p>Contact Services Australia (Centrelink) on 13 16 50 or visit the Family Tax Benefit information webpage: https://www.servicesaustralia.gov.au/family-tax-benefit.</p> <ul style="list-style-type: none"> • A guide to Australian Government Payments – https://www.servicesaustralia.gov.au/guide-to-australian-government-payments?context=22. • Family Assistance Guide – https://guides.dss.gov.au/family-assistance-guide. • Child Support interactions with FTB – https://guides.dss.gov.au/child-support-guide. • Raising Kids – https://www.servicesaustralia.gov.au/raising-kids.