



FAMILY DISPUTE RESOLUTION STATUTORY REQUIREMENTS

WHAT IS FAMILY DISPUTE RESOLUTION?

- (a) the process of family dispute resolution is one by which the parties involved, together with the assistance of the family dispute resolution practitioner:
 - (i) isolate issues in the dispute; and
 - (ii) develop and consider options to resolve those issues; and
 - (iii) if appropriate - attempt to agree to one or more of those options; and
 - (iv) if a child is affected - attempt to agree to options that are in the best interests of the child;
- (b) if the Dispute involves a child:
 - (i) that each parent has parental responsibility for the child, within the meaning of section 61 B of the Act; and
 - (ii) that the best interests of the child are the paramount consideration in any decision that affects him or her;

RIGHT TO OBTAIN LEGAL ADVICE

- (c) A party has the right to obtain legal advice at any stage in the family dispute resolution process;

TERMINATION OF FAMILY DISPUTE RESOLUTION

- (d) A party has the right to terminate the family dispute resolution at any time;

INFORMATION TO BE PROVIDED BEFORE FAMILY DISPUTE RESOLUTION

Regulation 28 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* requires that:

(1) Before family dispute resolution is started under **sub regulation 25(3)**, each party to the family dispute resolution must be given the following information:

- (a) that it is not the role of the family dispute resolution practitioner to give people legal advice (unless the family dispute resolution practitioner is also a legal practitioner);
- (b) the family dispute resolution practitioner's confidentiality and disclosure obligations under **section 10H** of the Act;
- (c) that provided **section 10J** of the Act applies, evidence of anything said or an admission made at family dispute resolution is not admissible:
 - (i) in any court (whether exercising federal jurisdiction or not); or
 - (ii) in any proceedings before a person authorised by a law of the Commonwealth or a State or Territory, or by the consent of the parties, to hear evidence;
- (d) the qualifications of the family dispute resolution practitioner to be a family dispute resolution practitioner;



- (e) the fees (including any hourly rate) charged by the family dispute resolution practitioner in respect of the family dispute resolution;
- (f) that family dispute resolution must be attended if required under **section 60I** of the Act, before applying for an order under Part VII of the Act;
- (g) that if a person wants to apply to the court for an order under Part VII of the Act, the family dispute resolution practitioner may provide a certificate under **subsection 60I (8)** of the Act, including a certificate to the effect that the person:
 - (i) did not attend family dispute resolution due to the refusal, or the failure, of the other party or parties to the proceedings to attend; or
 - (ii) attended family dispute resolution with the other party or parties to the proceedings but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues;
- (h) if a certificate under **subsection 60I (8)** of the Act is filed, the court may take it into account in considering whether to make an order under section 13C of the Act referring the parties to family dispute resolution or to award costs against a party under section 117 of the Act;
- (i) information about the complaints mechanism that a person who wants to complain about the family dispute resolution services may use. The organisation to which complaints may be referred is the Australian Mediation Association. www.ama.asn.au info@ama.asn.au.

Note 1 Paragraphs (b) and (c) outline the general rule that communications during family dispute resolution are confidential and not admissible in court. However, sections 10H and 10J of the Act specify exceptions to the general rule when disclosure by a family dispute resolution practitioner is permitted.

Note 2 **Sections 12G and 63DA** of the Act may impose additional information-giving obligations.

(2) A family dispute resolution practitioner must not start family dispute resolution until subregulation (1) is complied with.

IS THE FAMILY DISPUTE RESOLUTION APPROPRIATE?

Subregulation 25 (2) provides as follows:

- (1) Before providing family dispute resolution under the Act, the family dispute resolution practitioner to whom a dispute is referred must be satisfied that:
 - (a) an assessment has been conducted of the parties to the dispute; and
 - (b) family dispute resolution is appropriate.
- (2) In determining whether family dispute resolution is appropriate, the family dispute resolution practitioner must be satisfied that consideration has been

given to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters:

- (a) a history of family violence (if any) among the parties;
- (b) the likely safety of the parties;
- (c) the equality of bargaining power among the parties;
- (d) the risk that a child may suffer abuse;
- (e) the emotional, psychological and physical health of the parties;
- (f) any other matter that the family dispute resolution practitioner considers relevant to the proposed family dispute resolution.

(3) If after considering the matters set out in subregulation (2) the family dispute resolution practitioner is satisfied that family dispute resolution is appropriate, then subject to regulations 28 and 30, the family dispute resolution practitioner may provide family dispute resolution.

(4) If, after considering the matters set out in subregulation (2), the family dispute resolution practitioner is not satisfied that family dispute resolution is appropriate, the family dispute resolution practitioner must not provide family dispute resolution.

CONFIDENTIALITY

Section 10H of the Act provides:

Confidentiality of communications in family dispute resolution

(1) A family dispute resolution practitioner must not disclose a communication made to the practitioner while the practitioner is conducting family dispute resolution, unless the disclosure is required or authorised by this section.

(2) A family dispute resolution practitioner must disclose a communication if the practitioner reasonably believes the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory.

(3) A family dispute resolution practitioner may disclose a communication if consent to the disclosure is given by:

- (a) if the person who made the communication is 18 or over--that person; or
- (b) if the person who made the communication is a child under 18:
 - (i) each person who has parental responsibility (within the meaning of Part VII) for the child; or
 - (ii) a court.

(4) A family dispute resolution practitioner may disclose a communication if the practitioner reasonably believes that the disclosure is necessary for the purpose of:

- (a) protecting a child from the risk of harm (whether physical or psychological);
- or
- (b) preventing or lessening a serious and imminent threat to the life or health of a person; or
- (c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person; or
- (d) preventing or lessening a serious and imminent threat to the property of a person; or
- (e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to property of a person or a threat of damage to property; or
- (f) if a lawyer independently represents a child's interests under an order under section 68L--assisting the lawyer to do so properly.

(5) A family dispute resolution practitioner may disclose a communication in order to provide information (other than personal information within the meaning of section 6 of the *Privacy Act 1988*) for research relevant to families.

(6) A family dispute resolution practitioner may disclose information necessary for the practitioner to give a certificate under subsection 60I(8).

(7) Evidence that would be inadmissible because of section 10J is not admissible merely because this section requires or authorises its disclosure.

Note: This means that the practitioner's evidence is inadmissible in court, even if subsection (2), (3), (4), (5) or (6) allows the practitioner to disclose it in other circumstances.

(8) In this section:
"communication" includes admission.

Section 10J of the Act provides:

Admissibility of communications in family dispute resolution and in referrals from family dispute resolution:

- (1) Evidence of anything said, or any admission made, by or in the company of:
 - (a) a family dispute resolution practitioner conducting family dispute resolution; or
 - (b) a person (the *professional*) to whom a family dispute resolution practitioner refers a person for medical or other professional consultation, while the professional is carrying out professional services for the person; is not admissible:

- (c) in any court (whether or not exercising federal jurisdiction); or
 - (d) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law of the Commonwealth, a State or a Territory, or by the consent of the parties).
- (2) Subsection (1) does not apply to:
- (a) an admission by an adult that indicates that a child under 18 has been abused or is at risk of abuse; or
 - (b) a disclosure by a child under 18 that indicates that the child has been abused or is at risk of abuse;
- unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.
- (3) Subsection (1) does not apply to information necessary for the practitioner to give a certificate under subsection 60I(8).
- (4) A family dispute resolution practitioner who refers a person to a professional (within the meaning of paragraph (1)(b)) must inform the professional of the effect of this section.

SECTION 60 I CERTIFICATES

Subsection 60I (8) of the Act provides:

Attending family dispute resolution before applying for Part VII order

Object of this section:

- (1) The object of this section is to ensure that all persons who have a dispute about matters that may be dealt with by an order under this Part (a *Part VII order*) make a genuine effort to resolve that dispute by family dispute resolution before the Part VII order is applied for.
- (2) The dispute resolution provisions of the *Family Law Rules 2004* impose the requirements for dispute resolution that must be complied with before an application is made to the Family Court of Australia for a parenting order.
- (3) By force of this subsection, the dispute resolution provisions of the *Family Law Rules 2004* also apply to an application to a court (other than the Family Court of Australia) for a parenting order. Those provisions apply to the application with such modifications as are necessary.
- (4) Subsections (7) to (12) apply to all applications for a Part VII order in relation to a child that are made on or after 1 July 2008.

Requirement to attempt to resolve dispute by family dispute resolution before applying for a parenting order:

(5) Subject to subsection (9), a court exercising jurisdiction under this Act must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (8). The certificate must be filed with the application for the Part VII order.

(6) A family dispute resolution practitioner may give one of these kinds of certificates to a person:

(a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but the person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;

(aa) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;

(b) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;

(c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues;

(d) a certificate to the effect that the person began attending family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the family dispute resolution.

Note: When an applicant files one of these certificates under subsection (7), the court may take the kind of certificate into account in considering whether to make an order referring to parties to family dispute resolution (see section 13C) and in determining whether to award costs against a party (see section 117).

Exception:

(7) Subsection (7) does not apply to an application for a Part VII order in relation to a child if:

- (a) the applicant is applying for the order:
 - (i) to be made with the consent of all the parties to the proceedings; or
 - (ii) in response to an application that another party to the proceedings has made for a Part VII order; or
- (b) the court is satisfied that there are reasonable grounds to believe that:
 - (i) there has been abuse of the child by one of the parties to the proceedings; or
 - (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
 - (iii) there has been family violence by one of the parties to the proceedings; or
 - (iv) there is a risk of family violence by one of the parties to the proceedings; or
- (c) all the following conditions are satisfied:
 - (i) the application is made in relation to a particular issue;
 - (ii) a Part VII order has been made in relation to that issue within the period of 12 months before the application is made;
 - (iii) the application is made in relation to a contravention of the order by a person;
 - (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order; or
- (d) the application is made in circumstances of urgency; or
- (e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or
- (f) other circumstances specified in the regulations are satisfied.

Referral to family dispute resolution when exception applies

- (8) If:
 - (a) a person applies for a Part VII order; and
 - (b) the person does not, before applying for the order, attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with; and

(c) subsection (7) does not apply to the application because of subsection (9);

the court must consider making an order that the person attend family dispute resolution with a family dispute resolution practitioner and the other party or parties to the proceedings in relation to that issue or those issues.

(9) The validity of:

(a) proceedings on an application for a Part VII order; or

(b) any order made in those proceedings;

is not affected by a failure to comply with subsection (7) in relation to those proceedings.

(10) In this section:

"dispute resolution provisions" of the *Family Law Rules 2004* means:

(a) Rule 1.05 of those Rules; and

(b) Part 2 of Schedule 1 to those Rules;

to the extent to which they deal with dispute resolution.

OBLIGATIONS OF FAMILY DISPUTE RESOLUTION PRACTITIONERS

Section 12G of the Act provides as follows:

Obligations on family counsellors, family dispute resolution practitioners and arbitrators

(1) A family counsellor, family dispute resolution practitioner or arbitrator who deals with a married person considering instituting:

(a) proceedings for a divorce order in relation to the marriage; or

(c) financial or Part VII proceedings in relation to the marriage;

must give the married person (and in appropriate cases, that person's spouse) documents containing the information prescribed under 12C (about reconciliation).

Note: Section 63DA also imposes information-giving obligations on family counsellors and family dispute resolution practitioners (not arbitrators) dealing with people involved in Part VII proceedings.

(2) A family counsellor, family dispute resolution practitioner or arbitrator does not have to comply with subsection (1), if he or she:

(a) has reasonable grounds to believe that the person has already been given documents containing the prescribed information; or

(b) considers that there is no reasonable possibility of a reconciliation between the parties to the marriage.

Section 63DA of the Act provides as follows:

Obligations of advisers:

(1) If an adviser gives advice or assistance to people in relation to parental responsibility for a child following the breakdown of the relationship between those people, the adviser must:

(a) inform them that they could consider entering into a parenting plan in relation to the child; and

(b) inform them about where they can get further assistance to develop a parenting plan and the content of the plan.

(2) If an adviser gives advice to people in connection with the making by those people of a parenting plan in relation to a child, the adviser must:

(a) inform them that, if the child spending equal time with each of them is:

- (i) reasonably practicable; and
- (ii) in the best interests of the child;

they could consider the option of an arrangement of that kind; and

(b) inform them that, if the child spending equal time with each of them is not reasonably practicable or is not in the best interests of the child but the child spending substantial and significant time with each of them is:

- (i) reasonably practicable; and
- (ii) in the best interests of the child;

they could consider the option of an arrangement of that kind; and

(c) inform them that decisions made in developing parenting plans should be made in the best interests of the child; and

(d) inform them of the matters that may be dealt with in a parenting plan in accordance with subsection 63C(2); and

(e) inform them that, if there is a parenting order in force in relation to the child, the order may (because of section 64D) include a provision that the order is subject to a parenting plan they enter into; and

(f) inform them about the desirability of including in the plan:

(i) if they are to share parental responsibility for the child under the plan--provisions of the kind referred to in paragraph 63C(2)(d) (which deals with the form of consultations between the parties to the plan) as a way of avoiding

future conflicts over, or misunderstandings about, the matters covered by that paragraph; and

(ii) provisions of the kind referred to in paragraph 63C(2)(g) (which deals with the process for resolving disputes between the parties to the plan); and

(iii) provisions of the kind referred to in paragraph 63C(2)(h) (which deals with the process for changing the plan to take account of the changing needs or circumstances of the child or the parties to the plan); and

(g) explain to them, in language they are likely to readily understand, the availability of programs to help people who experience difficulties in complying with a parenting plan; and

(h) inform them that section 65DAB requires the court to have regard to the terms of the most recent parenting plan in relation to the child when making a parenting order in relation to the child if it is in the best interests of the child to do so.

Note: Paragraphs (a) and (b) only require the adviser to inform the people that they could consider the option of the child spending equal time, or substantial and significant time, with each of them. The adviser may, but is not obliged to, advise them as to whether that option would be appropriate in their particular circumstances.

(3) For the purposes of paragraph (2)(b), a child will be taken to spend *substantial and significant time* with a parent only if:

(a) the time the child spends with the parent includes both:

(i) days that fall on weekends and holidays; and

(ii) days that do not fall on weekends or holidays; and

(b) the time the child spends with the parent allows the parent to be involved in:

(i) the child's daily routine; and

(ii) occasions and events that are of particular significance to the child; and

(c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent.

(4) Subsection (3) does not limit the other matters to which regard may be had in determining whether the time a child spends with a parent would be substantial and significant.

(5) In this section:

"*adviser*" means a person who is:

(a) a legal practitioner; or

(b) a family counsellor; or

- (c) a family dispute resolution practitioner; or
- (d) a family consultant.

SERVICES THAT ASSIST RECONCILIATION

- (g) If the parties to this dispute are married and are considering instituting proceedings for divorce, or considering going to court in relation to proceedings about their children, finances or property under the Family Law Act, they should read the document entitled "Marriages, Families and Separation". This document contains information about family counselling and family dispute resolution services available to help with reconciliation between the parties to a marriage.
- (h) Information on relevant services can also be obtained by searching Family Relationships Online at www.familyrelationships.gov.au for family counselling services or by contacting the Family Relationship Advice Line on 1800 050 321.

WHAT IS THE COST OF FAMILY DISPUTE RESOLUTION?

- (i) The fees charged for the family dispute resolution are set out in the fees schedule.

FAMILY AND DOMESTIC VIOLENCE

If there has been any violence between the Parties, it is essential that you advised me of that position.

Penny Feil
Accord Mediation
P.O. Box 6036 Clifford Gardens Q 4350
07 46344712
penny@accordmediation.com.au

Thank you very much for your time and attention to this document.
Please do not hesitate to phone me if you have any queries at all.

WHAT ARE THE QUALIFICATIONS OF Penelope Ann Feil TO BE A FAMILY DISPUTE RESOLUTION PRACTITIONER?

Admission as a Solicitor:

- Supreme Court of Queensland - 2 February 1982
- High Court of Australia - 13 August 1982.

Tertiary Qualifications:

- Bachelor of Arts (University of Queensland) - 1980
- Bachelor of Laws (University of Queensland) - 1981
- Vocational Graduate Diploma of Family Dispute Resolution - 2010

Appointment / Accreditation as Mediator:

- | | |
|---|---------------|
| <input type="checkbox"/> Queensland Law Society | 10.05.95 |
| <input type="checkbox"/> Magistrates Court of Queensland | 04.09.96 |
| <input type="checkbox"/> District Court of Queensland | 17.05.96 |
| <input type="checkbox"/> Supreme Court of Queensland | 06.11.95 |
| <input type="checkbox"/> Legal Aid Queensland | April 1991 |
| <input type="checkbox"/> Queensland Building Tribunal | 23.05.95 |
| <input type="checkbox"/> Retail Shop Leases Registry | November 2001 |
| <input type="checkbox"/> Lifeline Sunshine Coast Family Mediation Service | 10.07.96 |

Attorney General's Department:

- Registered as a Family dispute Resolution Provider.
- Authorised to issue Certificates under Section 60I of the Family Law Act.

National Mediation Accreditation:

- LEADR - Advanced Mediator
- Queensland Law Society
- Australian Mediation Association

Mediation Training:

- | | |
|---|--|
| <input type="checkbox"/> April 1991 | Legal Aid Office Queensland Conference Training Programme - 3 days |
| <input type="checkbox"/> December 1995 | Legal Aid Office Queensland Chairpersons Refresher Workshop - 1 day |
| <input type="checkbox"/> June 1996 | Alternative Dispute Resolution Division, Department of Justice and Attorney General & Residential Tenancies Authority - 8 days |
| <input type="checkbox"/> January 1997 | Lifeline Sunshine Coast Family Mediation Service Advanced Mediation Skills Course – 2 days |
| <input type="checkbox"/> June 1997 | Legal Aid Office Queensland Advanced Family Mediation Training - 2 days |
| <input type="checkbox"/> March 1998 | Conciliation Training Residential Tenancies Authority – 4 days |
| <input type="checkbox"/> November 2001 | Legal Aid Queensland Advanced Family Law Mediation Training - 2 days |
| <input type="checkbox"/> November 2006 | ADRAS Mediation within the Workchoices Framework – 1 day |
| <input type="checkbox"/> September 2009 | Queensland Law Society – ADR Conference |
| <input type="checkbox"/> July 2010 | Queensland Law Society – ADR Conference |

Arbitration Training:

- October 2001 Australian Institute of Family Law Arbitrators & Mediators
– 3 days

Memberships:

- Queensland Law Society
- Downs and South West Law Association
- Australian Institute of Family Law Arbitrators and Mediators
- Family Law Practitioners Association
- Law Council of Australia – Family Law Section
- LEADR
- Women Lawyers Association of Queensland

Current Positions:

- Principal, Accord Mediation
- Member, Queensland Civil and Administrative Tribunal (formerly Guardianship and Administration Tribunal and Children Services Tribunal)
- Member, Mental Health Review Tribunal
- Mediation Coach, Mentor and Professional Supervisor

Nominations:

- 2005 Woman Lawyers Association of Queensland – Finalist, Regional Woman Lawyer Award.
- 2007 Woman Lawyers Association of Queensland – Short Listed Finalist, Regional Woman Lawyer Award.

Speaking positions:

- 2001 Downs & South West Law Association Mediation Seminar
- 2004 Queensland Law Society Seminar on Capacity
- 2005 Queensland Law Society Family Law Residential
“Mediation: A perspective from the coal face”.
- 2007 Queensland Law Society Family Law Residential
“Arbitration, Mediation and Collaborative Law: Where do these ideas fit into practice?”
- 2008 Family Law Practitioners Association Darling Downs Family Law Workshop
“Building effective working relationships with ADR Providers”
- 2008 Queensland Law Society – ADR Conference
“Building a Mediation Practice”
- 2009 Mental Health Review Tribunal – Members Professional Development
“The intersection of the Guardianship and Administration Act and the Mental Health Act”
- 2010 USQ Springfield
“Ethical Obligations of Mediators- Family Law Focus”
- 2010 Toowoomba Family Pathways Network – Professional Conversation
- 2010 Family Law Practitioners Association Toowoomba Workshop
“Section 60 I Certificates”

Mediation Coaching:

- Australian Centre for Peace and Conflict Studies – University of Queensland
- Queensland Law Society
- Bond University