

Family law *Family dispute resolution*

Working out what's best for my children

**Good outcomes, better solutions,
best for children**



Legal Aid 
NEW SOUTH WALES

Family dispute resolution

The *Family Law Act* encourages parents to resolve their issues by family dispute resolution instead of going to court. The Court will not be able to hear an application for a parenting order unless a certificate from a family dispute resolution practitioner is filed with the court application. This requirement will not apply in particular situations, including child abuse, or domestic violence.

What is family dispute resolution?

Family dispute resolution is mediation that assists families to reach agreements in the best interests of children.

Agreements can include where the children will live and how much time they will spend with family members.

Agreements can also help with property and financial matters.

You can bring your lawyer to help you reach an agreement.

Who can use this service?

In order to use the dispute resolution service at least one person must have a grant of legal aid.

The service is available to separated parents, grandparents and other people important to the care of the children.

How can family dispute resolution help me?

It can help everyone involved to focus on the children, discuss possible arrangements and come up with practical solutions to meet the needs of children. You can also discuss your financial and property problems.

Family dispute resolution is confidential and a very successful way of resolving differences. It is faster than going to court, costs less, and may be less stressful. It allows parents, grandparents, relatives and any other important people to control the decision making and planning about the children.

There are some situations where family dispute resolution may not be a good idea. If there is a background of domestic violence, intimidation, child abuse, mental illness or other matters of concern please speak with your lawyer or Legal Aid NSW first.

Do I have to attend family dispute resolution?

You must attend family dispute resolution before you start any court proceedings about children, unless you can show that an exception applies to your case.

Some exceptions are:

- your case is urgent;
- there is a risk of family violence or child abuse;
- someone is unable to be involved due to a physical or mental incapacity, or because of where they live; and/or
- you have parenting orders which are less than 12 months old, and the other person has disobeyed these orders.

You have to attend family dispute resolution before you can start a case at court. If you do not attend, and the case proceeds to court, the Court may send you back to family dispute resolution, and you may have to pay court costs.

What is a family dispute resolution practitioner?

Someone very experienced in mediation who is accredited with the Commonwealth Attorney General's Department. They will help everyone involved discuss issues co-operatively. They are independent and do not take sides.

Legal aid

What will legal aid cover?

A grant of legal aid will cover your family mediation, including the costs of your lawyer. This service is called a “conference”.

Can I still get legal aid if the other person already has a grant?

If you have been invited to take part in a conference, but you do not have a grant of legal aid, check the Legal Aid NSW website below, or call LawAccess NSW to see if you are eligible for a grant of legal aid to pay for a lawyer to attend.

Even if other people have a lawyer from legal aid, you can still be given a grant of aid to pay for a private lawyer to represent you.

What if I am not eligible for legal aid?

If you have been invited to take part in a conference, but you are not eligible for legal aid, then you do not have to pay for attending the conference. However if you want your own lawyer to attend, you will have to pay them. You can attend without a lawyer, but it is a good idea to get legal advice before the conference and before signing any parenting agreement.

If you and the other people involved are not eligible for legal aid, you can arrange mediation with another service. You can do this by contacting LawAccess NSW on 1300 888 529 or the Family Relationship Advice Line on 1800 050 321.

Applying for legal aid?

You need to be eligible under the Legal Aid NSW means and merit tests. Call **LawAccess NSW** on 1300 888 529 (1300 889 529 TTY) to discuss your eligibility, or for free legal information and referrals. Information about grants of aid and Legal Aid NSW services can be obtained on the Legal Aid NSW internet www.legalaid.nsw.gov.au

Aboriginal and Torres Strait Islander (ATSI) family dispute resolution

Aboriginal family dispute resolution practitioners are available to work with Aboriginal families. Please let your conference organiser know if you would like an Aboriginal practitioner.

Cultural and linguistically diverse family dispute resolution

Legal Aid NSW will provide an interpreter for you and/or the other parties for free. You need to tell the conference organiser which language you speak. You can also bring along a cultural support worker, or support person, provided all of the parties attending agree to this person being present.



Your family dispute resolution conference

How does a conference happen?

A conference organiser from Legal Aid NSW will invite each person involved and their lawyers (if they have one) to attend a conference, at a time that suits everyone.

Conferences are available anywhere in NSW. They can take up to half a day. You should keep at least four hours free. Children cannot be present and you will need to make your own childcare arrangements.

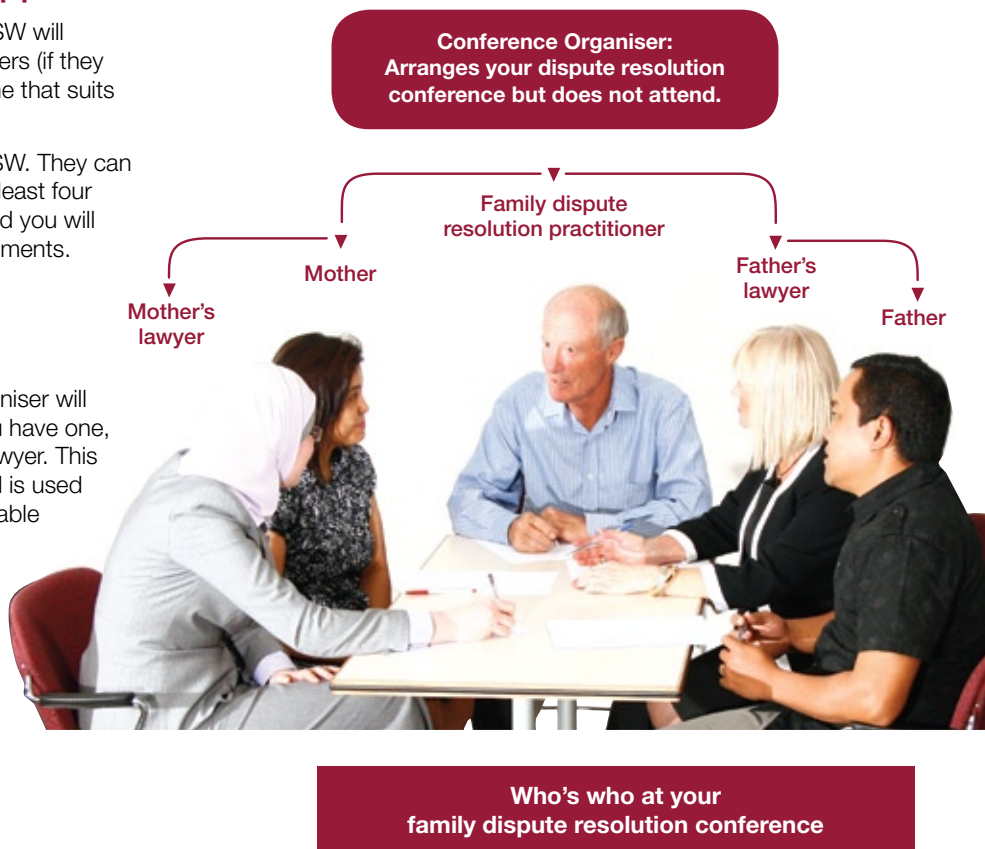
What happens before the conference?

Before a conference, the conference organiser will collect information from your lawyer, if you have one, or directly from you, if you don't have a lawyer. This information is kept strictly confidential and is used only to decide whether your matter is suitable for a conference.

What happens at the conference?

The family dispute resolution practitioner will explain your rights and provide information about parenting plans and other services if the dispute is about children. You and the other people will then be given the opportunity to discuss your issues. The dispute resolution practitioner will help you and the other participants involved to listen and talk to each other to try and resolve the dispute. You can ask your lawyer for advice at any stage.

Dispute resolution can take place either face to face or with each person in separate rooms. Many dispute resolution sessions take place by telephone, particularly if you or the other people live a long way apart.



Who's who at your family dispute resolution conference

Will I be safe?

It is really important that you let Legal Aid NSW and your lawyer know if you have any safety concerns or if you feel intimidated by any of the other people involved.

If you wish to bring a support person along to the conference, provided everyone involved in the conference agrees to this, they can attend but not take part in the process.

Children are not involved in a legal aid family dispute resolution conference, but their best interests are represented at all times.

Can I attend family dispute resolution if my matter has gone to court?

Yes - this could occur because:

- you can ask to have a conference at any time;
- the Court may direct you to attend a conference; or
- Legal Aid NSW may require you to attend.



Certificates

You must have a certificate from a family dispute resolution practitioner before you take your case to court, unless your case comes within one of the exceptions outlined above.

What are certificates?

Your dispute resolution practitioner must issue one of the following types of certificate.

1. Certificates which allow you to go straight to court.

These may state:

- you were willing to attend but that the other person, or people were not willing, or did not attend; or
- your matter was not suitable for family dispute resolution.

2. Certificates when you attend a conference

These may state:

- you and the other person, or people made a genuine effort to resolve the matter;
- you or the other person, or people did not make a genuine effort; or
- your matter was not suitable for family dispute resolution.

Agreements

What happens if you reach an agreement about the children?

Your agreement can be recorded as either:

1. **A parenting plan.** A parenting plan must be in writing, signed and dated by both parties.
2. **Consent orders.** If you want your agreement to be legally binding, you or your lawyer can apply to the Court to have your agreement made into a consent order.

A parenting plan or consent orders can include details on how they can be changed and how you will work out disagreements.

What happens if you cannot reach an agreement?

A certificate will be issued to you and the other person/s. See the information above about certificates.

Your dispute resolution practitioner will also make recommendations to Legal Aid NSW about whether legal aid should be continued. These recommendations are mainly based on the legal merits of your case, including whether it has a reasonable chance of success in court.

Contact us

For more information about family dispute resolution with Legal Aid NSW please call (02) 9219 5118 or (02) 9219 5119.



If you are hearing or speech impaired, you can contact us by calling the National Relay Service (NRS) on 133 677 or TTY 9219 5126.



The Translating and Interpreting Service provides free interpreters if you do not speak English. TIS can help you talk to services in your language. Call TIS on 131 450.

About this brochure

This brochure is available in Arabic, English, Traditional Chinese, Farsi, Korean, Spanish, Turkish and Vietnamese.

For copies of this brochure:
www.legalaid.nsw.gov.au/pubsonline
Publications Unit: T 9219 5028
publications@legalaid.nsw.gov.au

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