



andrew warren associates

SOLICITORS & BARRISTERS



ACCREDITED SPECIALIST
FAMILY LAW

Family Law, children and compulsory mediation

Following changes made to the *Family Law Act* effective 1 July 2007, parents approaching the Family Court for an Order about their children, are now required to obtain a certificate from a Family Dispute Resolution Practitioner that they have attempted to resolve the dispute through mediation.

Parents who already have an Order in place now also have to obtain such a certificate if they want the Court to vary that Order.

This means that except in some special circumstances, for example if there is particular urgency involved, or in some family violence situations, all parents must obtain the appropriate certificate that they have attempted mediation before they are allowed to commence Court proceedings.

If the other parent refuses to mediate, a satisfactory certificate can still be obtained by the parent who wishes to commence Family Law proceedings.

I have had a number of clients approach me who believed that they must have a certificate if they wish to commence proceedings about property. This is wrong – the requirements only relates to children's matters. Mediation often helps to resolve these types of disputes however.

There are two important messages about the compulsory mediation system that readers should understand. The first is that that *before* a parent attends mediation, they should obtain competent legal advice. This helps the mediation process, because the parent should then have a clear understanding of realistically obtainable outcomes from their situation.

The second is that if agreement is reached in mediation, parents should *never* sign anything before running through the agreement with a competent lawyer. Generally the types of agreements drawn up by Family Dispute Resolution Practitioners, even if signed, are not enforceable, but they can be prejudicial to a parent's position if signed.

In general, I believe that the compulsory mediation process is a step in the right direction for parents who cannot agree about the arrangements for their children. Often better agreements are negotiated than can be achieved through the court system. There are difficulties with the mediation system including delay, availability of mediation services and unwieldiness, but I have seen some excellent outcomes for parents (and their children) who approach mediation in the right spirit.