

CARE AND PROTECTION EARLY INTERVENTION MEDIATION

What is a Care and Protection Early Intervention Mediation?

Care and Protection Early Intervention Mediations provide an opportunity for a lawyer assisted mediation to discuss concerns or issues that have been raised between the Department of Communities and Justice (DCJ) and a family. These mediations allow for an open discussion and for arrangements to be put in place in an attempt to avoid the need for a formal court process occurring.

These early intervention mediations allow families an opportunity to contribute to discussions relating to keeping children safe and keeping families together.

What type of matters are appropriate for this model?

The types of matters which should be considered for referral to a Care and Protection Early Intervention mediation are matters where:

- Significant safety issues for the child/ren have been identified, including risk of assumption
- The family and child/ren would benefit from a legally assisted mediation
- A family has been referred to FDR or advice in accordance with the Legal Assistance for Families: Partnership Agreement (LAFPA).

The categories of matters that should be considered for referral are:

- Where there is significant domestic and family violence
- Where the participants have co-morbidity issues including disability, addiction and mental health and are at risk of experiencing significant disadvantage
- If there is a significant power imbalance which can be assisted by the presence of a legal representative.
- Matters where the parent is a child.
- Children over the age of 12, in particular children seeking a representative or involvement in discussions.
- Aboriginal families who request to be part of this model
- Where a parent, carer or the family requests a lawyer assisted mediation.

Other matters may be considered at the discretion of Legal Aid NSW, including matters outside of LAFPA.

Who maybe at a Care and Protection Early Intervention Mediation?

The following people will or may come to the mediation:

- A Mediator who is trained to conduct the meeting will always be there
- Parent/s, current carers or Kin
- A case worker and/or manager casework
- Lawyer/s
- Extended family such as grandparents, siblings, other family members, carers of siblings
- Support people – this could be a friend, family member, Community Elder or a professional support person (such as a counsellor)
- A direct children's legal representative, if requested by the child over the age of 12
- An interpreter

Participation is voluntary.

Referral process

Any families seeking a Care and Protection, Early Intervention mediation, must be referred to Legal Aid for advice.

All referrals for an Early Intervention Care Mediation must be made by a solicitor following an assessment about the most appropriate model for their client and their individual circumstances.

If an interested participant contacts the FDR unit directly, they will be referred for legal advice.

What happens prior to the mediation?

After your matter has been referred to the Family Dispute Resolution Service, a Mediation Organiser will be in touch with all participants. For those that have a solicitor, all communication will take place with the solicitor directly. The mediation organiser will arrange the mediation date and time and invite all participants.

All participants will be required to complete a checklist prior to the mediation being arranged. All participants will also be required to sign a confidentiality agreement prior to mediation.

The checklist for DCJ will include a summary of concerns relating to the family. This document must be provided prior to a mediation being scheduled and will be shared with the parents/carers or relevant family members prior to the mediation and following the confidentiality agreement being signed and returned.

Timeframe

All attempts will be made to arrange a mediation within 21 days of receipt of all documents including checklists and summary documents.

Who will run the mediation?

All mediations will be facilitated by a mediator that is qualified, experienced and accredited through the Commonwealth Attorney-General's Department as Family Dispute Resolution Practitioner. This mediator will be appointed by the Family Dispute Resolution Service.

Mediation process

On the day of the mediation, all participants will get together to talk with and listen to each other and to try and reach an agreement. The mediation will occur as an on-line mediation or via the telephone in the majority of matters. There will be an opportunity for people to talk privately with the mediator and/or their solicitor and/or support person.

If the people attending the mediation reach agreement, then that agreement will be written up and signed at the mediation. The mediation may take up to 4 hours; all parties need to stay for four hours should this be required.

Roles of the participants

1. Cooperate with the Mediator/s
2. Be willing to negotiate
3. Consider the best interests of the child/ren
4. Act in a non-confrontational way
5. Listen to the views of others

Mediator/s

The mediator/s facilitate the mediation process and discussion. They are independent and do not act for any of the people attending the mediation. The mediator/s will:

1. Let everyone know the purpose of the mediation and explain the process.
2. Explain the rules of the mediation.
3. Assist in discussions and help identify issues and ways to resolve disputes; and
4. Confirm any agreement reached or further actions agreed to and close the mediation.

Lawyers

1. Be familiar with the issues.
2. Actively participate and encourage their client to participate in discussion and decision making; and
3. Assist in drafting any agreements reached at the mediation.

DCJ

1. Will be required to provide a document that summarises the concerns relating to the family prior to the mediation.
2. Attend the mediation, actively participate in the negotiation process, and encourage decision making.
3. Be familiar with all issues.

Parents, carers, extended family and other participants

1. Listen to the views of others; and
2. State their point of view as best they can.

Support people

You may have a support person present but only if Legal Aid NSW approves prior to the mediation. The role of support people is to provide professional, practical and emotional support. It is not to make decisions for the person they are supporting or to advocate on their behalf.