



FDR CENTRE

TE POKAPŪ MŌ TE WHAKATAU I NGĀ TAUTOHE WHĀNAU

GUIDE TO FDR MEDIATION

**A GUIDE TO THE RIGHTS AND RESPONSIBILITIES
OF PARTICIPANTS IN FDR MEDIATION**

2018 Revision

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FDR MEDIATION GUIDE

1.0 PREAMBLE

- 1.1 FDR Mediation is a consensual, confidential, and informal negotiation process in which parties to a dispute use the services of a skilled and independent person (the **Mediator**) to assist them to define the issues in dispute, to develop and explore settlement options, to assess the implications of settlement options, and to negotiate a mutually acceptable settlement of that dispute which meets their interests and needs.
- 1.2 The Mediator is an independent and impartial person in whom the parties to a dispute repose trust, respect, and confidence to assist them to negotiate a settlement of that dispute without making decisions for them.
- 1.3 Generally, all types of parenting and guardianship disputes are suitable for FDR Mediation provided that all parties and their representatives are prepared and committed to negotiate settlement of the dispute in good faith.
- 1.4 The objective of FDR Mediation is to enable and empower the parties to negotiate and resolve disputes concerning the care of children promptly, cost effectively, and confidentially, rather than to have a decision imposed upon them by a judge. FDR Mediation enables the parties to negotiate flexible and creative solutions which need not conform to strict legal rights or general community standards.
- 1.5 The purpose of this Guide is to promote and encourage the negotiated settlement, and early and cost effective resolution of care and contact disputes by FDR Mediation.
- 1.6 The objective of this Guide is to provide a guide to the rights and responsibilities of all participants in the FDR Mediation process.

2.0 INITIATING MEDIATION

- 2.1 Any party to a parenting or guardianship dispute (also known as care and contact of children dispute) may apply for the appointment of a Mediator by completing the online Application for FDR Mediation on the FDR Centre's website at www.fdrc.co.nz.
- 2.2 On receipt of the Application for FDR Mediation, the FDR Centre will appoint a Mediator and make the necessary administrative arrangements for the FDR Mediation.

3.0 APPOINTMENT OF THE MEDIATOR

- 3.1 On receipt of the Application for FDR Mediation, the FDR Centre will appoint a Case Manager to manage and administer the FDR Mediation. The Case Manager will

immediately appoint the most appropriate available Mediator to mediate the particular dispute on the earliest practicable date.

- 3.2 In making that appointment, the Case Manager will have regard to, but will not be bound by, any preference or agreement as to a Mediator indicated by the parties in the Application for FDR Mediation.
- 3.3 The parties must accept the appointment of the Mediator appointed by the Case Manager unless a party can demonstrate on reasonable grounds that circumstances exist that give justifiable doubts as to the Mediator's impartiality or independence in the eyes of any of the parties.
- 3.4 The decision as to whether to appoint a substitute Mediator will be made by the FDR Centre promptly after giving due consideration to the request. The decision is of an administrative nature and is final and binding on the parties and the Mediator. It is not subject to appeal to the FDR Centre and the FDR Centre is not required to state or communicate reasons for its decision.

4.0 THE MEDIATOR'S ROLE

- 4.1 The Mediator is an independent and impartial person in whom the parties to a dispute place trust, respect, and confidence to assist them to negotiate the settlement of that dispute.
- 4.2 A Mediator must not accept an appointment to act as Mediator in a dispute if any circumstances past or present exist that would be likely to give rise to justifiable doubts as to the Mediator's impartiality or independence in the eyes of any of the parties to the Mediation, or which may be seen to prejudice or impair the performance of the Mediator's duties in the conduct of the FDR Mediation. The only exception to this rule is where, after full disclosure of all relevant facts, the parties to the FDR Mediation agree to the appointment of the Mediator.
- 4.3 In accepting an appointment, the Mediator assumes a continuing duty to disclose immediately to the parties and the FDR Centre any circumstances arising in the future likely to give rise to justifiable doubts as to the Mediator's impartiality or independence in the eyes of any of the parties, or which may be seen to prejudice or impair the further performance of the Mediator's duties in the conduct of the FDR Mediation, until the FDR Mediation is concluded.
- 4.4 If, during the course of the FDR Mediation, the Mediator discloses to the parties and the FDR Centre any circumstances that arise which the Mediator considers might reasonably be likely to give rise to justifiable doubts as to the Mediator's impartiality or independence in the eyes of any of the parties, or which may be seen to prejudice or impair the performance of the Mediator's duties in the conduct of the FDR Mediation, the parties must confer. Unless the parties agree to continue the FDR Mediation with the Mediator, the Mediator must withdraw from the FDR Mediation.
- 4.5 The Mediator must maintain impartiality towards all parties at all times during the FDR Mediation.
- 4.6 The Mediator does not have the authority to make binding decisions.
- 4.7 The Mediator's role is to define and manage the conduct of the FDR Mediation process.



- 4.8 The Mediator may conduct the FDR Mediation in any manner that the Mediator thinks fit, having regard to the nature and circumstances of the parties and the matters in dispute.
- 4.9 The Mediator, in consultation with the parties, will establish basic rules and guidelines for procedure at the outset of the FDR Mediation session. Such rules may include, but are not limited to:
- (a) the order of the presentation;
 - (b) the right of each party to speak freely and without interruption;
 - (c) that all participants are to treat each other with courtesy;
 - (d) the right of any party to take independent legal or other advice during the FDR Mediation;
 - (e) the right of any party to talk to legal advisers or Representatives or expert advisers in private during the FDR Mediation;
 - (f) the right of any party to talk to the Mediator in private at any time during the FDR Mediation;
 - (g) the right of any party to terminate the FDR Mediation after consultation with the Mediator; and
 - (h) basic common courtesies.
- 4.10 The Mediator will assist the parties to define and isolate the issues for resolution.
- 4.11 The Mediator will assist the parties to generate, explore, develop, and evaluate options for resolution of the issues in dispute.
- 4.12 The Mediator will assist the parties to endeavour to reach an agreement that accommodates their mutual needs and interests (**Parenting Plan**).
- 4.13 The Mediator may conduct joint and separate private sessions with any or all of the parties at any time during the FDR Mediation. Any information exchanged during those separate sessions will be kept confidential and will not be divulged to any other party unless the Mediator is specifically instructed to do so by a party.
- 4.14 The Mediator may, at his or her sole discretion, provide an analysis or evaluation of the relevant facts, evidence, and legal merits of the matters in dispute in the FDR Mediation to promote settlement discussions. In providing any such analysis or evaluation, the Mediator will be acting as an independent neutral expert and not as an adviser to the parties. Any evaluation is not binding on the parties and any decision the parties may make for the purpose of settling the dispute, whether in whole or in part, must be based entirely in reliance on their own skill and judgement having taken independent legal advice and having made their own enquiries, and not in reliance on any understandings, statements, opinions, or representations made by the Mediator.
- 4.15 The Mediator will not direct or coerce the parties into agreement or make decisions for the parties.
- 4.16 Where agreement has been reached to settle the dispute in whole or in part, the Mediator will discuss with the parties the process for recording and implementing a Parenting Plan.



- 4.17 Where a partial agreement has been reached, the Mediator will discuss with the parties the procedures available to them to resolve the remaining issues.
- 4.18 If the Mediator considers that any agreement reached may be illegal or impossible to enforce or uphold, the Mediator may recommend to the parties that they take independent legal advice before signing the Parenting Plan.
- 4.19 The Mediator may suspend or terminate the FDR Mediation at any time if the Mediator feels unable to assist the parties to achieve resolution of the dispute.
- 4.20 On conclusion or termination of the FDR Mediation, the Mediator will destroy all documents and records provided by the parties for the purpose of the FDR Mediation.
- 4.21 A Mediator must maintain the confidentiality of the Mediation. To the extent that a Mediator is required to disclose any Confidential Information either by law or otherwise in accordance with the FDR Centre's Terms and Conditions for FDR Mediation, the Mediator must immediately notify the parties, their representatives, and the FDR Centre, and provide full details of the intended disclosure and the reasons for it.

5.0 THE ROLE OF A REPRESENTATIVE

- 5.1 The presumption is that any representatives of the Parties, whether legally trained or otherwise, will not attend any joint FDR Mediation session.
- 5.2 In exceptional circumstances, parties may seek permission from the Mediator for them to be represented at a joint FDR Mediation session by any person whether legally trained or not, provided that the engagement of that representative by a party does not threaten or bring into question the integrity of the FDR Mediation due to a past or present relationship with any party or the Mediator, unless none of the parties object after proper disclosure.
- 5.3 The Mediator may withhold approval for a representative to attend a joint FDR Mediation session where the Mediator, in his or her sole discretion, considers the representative's attendance could threaten or bring into question the integrity of the FDR Mediation.
- 5.4 The role of a representative is to assist the party he or she represents to prepare for FDR Mediation and to participate effectively in the process.
- 5.5 A representative must co-operate with the Mediator and be courteous to the Mediator and all other participants.
- 5.6 A representative should act in good faith and advise the party he or she represents to act in good faith.
- 5.7 The role of a representative in preparing a party for FDR Mediation includes:
- (a) explaining the meaning and effect of the FDR Centre's Terms and Conditions for FDR Mediation;
 - (b) explaining the process, including the Mediator's role;
 - (c) explaining the meaning and nature of without prejudice and confidential discussions, documents, and negotiations;



- (d) assisting the party to define the problem and the issues;
- (e) assisting the party to identify his or her needs and interests;
- (f) exploring with the party why an issue has arisen and what kinds of things the party would like to see happen to assist with generating possible settlement options;
- (g) assisting the party to evaluate the strengths and weaknesses of each party's case;
- (h) discussing how the issues would be dealt with by a court and the possible range of outcomes;
- (i) assisting the party to consider creative settlement options that would not be available in a court, and the legality and feasibility of such options; and
- (j) advising the party of the costs that will be incurred up to and including the FDR Mediation and the likely costs if the dispute cannot be settled at FDR Mediation.

5.8 In the event that a Mediator gives approval for a party's representative to attend a joint FDR Mediation session, the role of that representative during the joint FDR Mediation session includes:

- (a) participating in a non-adversarial manner and co-operating with other representatives, participants, and parties;
- (b) conveying to the other parties such legal, technical, practical, and personal matters as the party he or she represents may wish the representative to present;
- (c) providing legal advice;
- (d) providing counsel, support, and encouragement;
- (e) assisting the parties to define the problem and develop possible settlement options; and
- (f) preparing and recording the terms of any agreement reached in a Parenting Plan for signature by the parties.

5.9 A representative must maintain the confidentiality of the FDR Mediation. All representatives must sign the FDR Centre's Confidentiality Agreement as a condition of their attendance at any joint FDR Mediation session.

5.10 If a representative is required to disclose any Confidential Information either by law or otherwise in accordance with the FDR Centre's Terms and Conditions for FDR Mediation, the representative must, save for where the safety of any person is endangered, immediately notify the parties, the Mediator, and the FDR Centre, and provide full details of the intended disclosure and the reasons for it.

6.0 THE ROLE OF A PARTY

6.1 A party must provide the FDR Centre, the Mediator and every other party, with the names of those persons (if any) who that party wishes to accompany that party at any joint FDR Mediation, no less than three days prior to the joint FDR Mediation session.



- 6.2 A party should be prepared to make a brief statement about the relevant facts, the issues in dispute, the outcome sought, and other relevant factors, and to participate in the FDR Mediation process in good faith with the intention of negotiating a mutually acceptable settlement of that dispute which meets the parties' interests and needs, and which puts the interests of the children first, and recording that agreement in a Parenting Plan.
- 6.3 A party must co-operate with the Mediator and be courteous to the Mediator and all other participants.
- 6.4 A party must comply with reasonable requests and directions made by the Mediator to promote the fair, prompt, and cost effective resolution of the dispute before and during any joint FDR Mediation session.
- 6.5 A party must maintain the confidentiality of the FDR Mediation. To the extent that a party is required to disclose any Confidential Information either by law or otherwise in accordance with the FDR Centre's Terms and Conditions for FDR Mediation, that party must immediately notify every other party, the Mediator, and the FDR Centre, and provide full details of the intended disclosure and the reasons for it.
- 6.6 Unless the parties agree otherwise in writing, each party will meet its own costs and expenses of the FDR Mediation regardless of the outcome.
- 6.7 A party must pay the relevant Fees and Expenses for FDR Mediation as set out on the FDR Centre's website.
- 6.8 A party must pay the FDR Centre's Fees within three days of demand.

7.0 THE ROLE OF A SUPPORT PERSON

- 7.1 The role of a support person is to provide reassurance and emotional support for a party.
- 7.2 The Mediator may withhold approval for a support person to attend any joint FDR Mediation session where the Mediator, in his or her sole discretion, considers that person's attendance could threaten or bring into question the integrity of the FDR Mediation.
- 7.3 A support person is not entitled to intervene or to participate in the FDR Mediation process in any other capacity whatsoever.
- 7.4 If a support person wishes to discuss any aspect of the process with the person they support, the proper approach is to suggest to the party that they support to request of the Mediator 'time out' in private for the purpose of offering such reassurance and/or emotional support or counsel as may be appropriate.
- 7.5 A support person must maintain the confidentiality of the FDR Mediation. All support persons must sign the FDR Centre's Confidentiality Agreement as a condition of their attendance at the FDR Mediation.



8.0 THE ROLE OF AN OBSERVER

- 8.1 The FDR Centre is committed to delivering professional and effective FDR Mediation services to the parties and to the ongoing training, support, mentoring, and professional development of its Mediators.
- 8.2 Accordingly, the FDR Centre will from time to time, as a function of its quality assurance and training programme, send a person or persons to observe the conduct of FDR Mediations conducted under its Terms and Conditions for FDR Mediation (**Observer**).
- 8.3 An Observer may observe the whole, or part, or any number of parts of any FDR Mediation, but an Observer has no powers or rights whatsoever in relation to the conduct of any FDR Mediation and no aspect of the matters at issue or the FDR Mediation process should be discussed by any participant with an Observer.
- 8.4 The sole function of an Observer is to report to the FDR Centre for the purpose of measuring and monitoring the professional development and performance of its Mediators.
- 8.5 An Observer must maintain the confidentiality of the FDR Mediation. An Observer must sign the FDR Centre's Confidentiality Agreement as a condition of his or her attendance at the FDR Mediation.
- 8.6 Any party may request that no Observer attends the FDR Mediation. The Mediator and the FDR Centre must uphold that party's request.

9.0 THE ROLE OF THE FDR CENTRE

- 9.1 The role of the FDR Centre is to manage and administer the FDR Mediation process in a professional, consistent, and certain manner, and to provide support and guidance to the parties and Mediators in respect of the FDR Mediation process.
- 9.2 In pursuit of those objectives, the FDR Centre will:
- (a) maintain a comprehensive, informative, and effective website;
 - (b) maintain a panel of competent, experienced, and respected Mediators; and
 - (c) provide a fully administered FDR Mediation service through the office of its Case Managers, who will:
 - (i) select suitably qualified, experienced, and respected persons for its panels;
 - (ii) appoint Mediators who are competent, experienced, and capable of discharging their duties to the parties independently and impartially in any particular case, and in the event that a Mediator becomes unable to act for any reason, appoint a substitute Mediator; and
 - (iii) provide all administrative functions necessary for the professional and competent delivery of its FDR Mediation services.
- 9.3 The FDR Centre will maintain the confidentiality of the FDR Mediation.



10.0 TERMINATION OF THE MEDIATION

- 10.1 The FDR Mediation may be terminated at any time by a party after consultation with the Mediator.
- 10.2 The FDR Mediation may be terminated by the Mediator at any time if the Mediator feels unable to assist the parties to achieve resolution of the dispute.
- 10.3 The FDR Mediation will be terminated upon signing of a Parenting Plan in respect of the matters referred to FDR Mediation.





Disclaimer

This Guide is intended to provide a guide to the rights and responsibilities of participants in the FDR Mediation process in accordance with the FDR Centre's Terms and Conditions for FDR Mediation. This Guide is not intended to be comprehensive or a substitute for independent legal advice, and parties must rely entirely on their own skill, knowledge, and judgement when using this Guide. Whilst every effort has been made to ensure that the information in this Guide is correct, all persons wishing to use this Guide should take independent legal advice. The FDR Centre, its agents, and its employees, do not assume any liability to any person for any loss or damage caused by any error or omission herein and expressly disclaim any and all such liability whether involving negligence, breach of contract, breach of fiduciary duty, or breach of statutory duty or any other duty, and any and all such liability is expressly disclaimed.

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