



## FAMILY COURT OF WESTERN AUSTRALIA

### MEMORANDUM TO PRACTITIONERS

#### Alternate Dispute Resolution

The Court has received a number of enquiries regarding the attendance of parties at Alternative Dispute Resolution (“ADR”) and dispensation of the requirement to attend a conciliation conference.

Paragraph 13.5 of the Case Management Guidelines provides as follows:

Where all parties are legally represented, the Court will require advice as to whether the parties have considered participating in alternate dispute resolution (“ADR”) including but not limited to mediation or private mediation style conferencing, and if the parties have not, or do not intend, participating in ADR, the reasons. If:

- (a) ADR has not been considered without good reason the Court will adjourn the procedural hearing without listing a conciliation conference to another date to allow such consideration to be given;
- (b) The parties intend participating in ADR, the Court will adjourn the procedural hearing to a date after the proposed ADR;
- (c) The parties have already participated in ADR, the Court may:
  - i. dispense with the requirement that the parties attend a conciliation conference pursuant to section 79(9) of the *Family Law Act 1975* or section 205ZG(9) of the *Family Court Act 1997*;
  - ii. make enquiries and orders in accordance with paragraphs 17.9, 17.11 and 21.2;
- (d) The parties have not attended ADR the Court may adjourn the proceedings without listing a conciliation conference, to enable the parties to participate in ADR.

The ADR contemplated by this paragraph is not in any way limited to “private mediation style conferencing”. There are many highly skilled private mediators and ADR/mediation services available that, if utilised, may satisfy the Court that a conciliation conference is not required in a particular case.

It is important to note that attendance by the legal representatives of the parties at the ADR is **not** a pre-requisite to seek dispensation of the requirement to attend a conciliation conference in a particular case. Although legally represented, parties may choose to attend ADR without the benefit or cost of representation.

The Court accepts that there are certain cases that are not appropriate for ADR. The requirements set out in paragraph 13.5 are designed to ensure that in all cases ADR is considered, and if not considered by the parties or their legal representatives to be appropriate, proper reasons exist for that decision.

## **Subpoenas to Service Providers**

Practitioners are reminded that notwithstanding the commencement of the Case Management Guidelines on 7 May 2012, Practice Direction 2 of 2011 remains in full force and effect.

A copy of that Practice Direction is attached for reference.

A handwritten signature in black ink, appearing to read 'Stephen Thackray', with a large, stylized flourish at the end.

**STEPHEN THACKRAY**  
**CHIEF JUDGE**  
**FAMILY COURT OF WESTERN AUSTRALIA**  
28 June 2012



## FAMILY COURT OF WESTERN AUSTRALIA

### PRACTICE DIRECTION

No. 2 of 2011

### SUBPOENAS TO SERVICE PROVIDERS

Evidence provided by some service providers is inadmissible in family law proceedings in circumstances prescribed by relevant legislation.

To reduce the number of subpoenas issued by the Court that may be the subject of objection, the following Practice Direction is now made, effective 1 January 2012.

A subpoena directed against:

- (a) a family dispute resolution practitioner;
- (b) a family counsellor; or
- (c) employees of Anglicare, Centrecare or Relationships Australia,

will not be issued unless the subpoena is accompanied by a letter certifying that reasonable efforts have been made to discuss with the person against whom the subpoena is directed (or their manager or supervisor):

- (i) the possible consequences of compliance with the subpoena, including the impact on the family or children involved;
- (ii) any objection that may be taken to the subpoena;
- (iii) the costs that would be sought to comply with the subpoena; and
- (iv) alternative means by which the evidence might be provided.

This Practice Direction applies only to subpoenas sought to be directed against a person in their professional capacity.

A handwritten signature in black ink, appearing to read 'S E Thackray'.

**S E THACKRAY  
CHIEF JUDGE**

**FAMILY COURT OF WESTERN AUSTRALIA**

20 December 2011

NOTE. The initial point of contact with Anglicare should be General Manager, Separation Services; Centrecare should be The Director and Relationships Australia should be Director, Operations.