

Alternative Dispute Resolution

Confidentiality Fact Sheet

What is confidentiality?

Section 244C of the *Children and Young Persons (Care and Protection) Act 1998* sets out the law relating to the confidentiality of information disclosed in Alternative Dispute Resolution (ADR). Section 244C states that anything said or done or any admission made during the process must not be disclosed to any other person.

This means that any information you give as part of an ADR process must not be disclosed by anyone who was at the ADR conference.

It also means you must not disclose any information given to you during the ADR conference process.

However, you need to be aware that there are exceptions to this rule.

Why is confidentiality important?

ADR is a process where a person helps parties to resolve the issues between them, without taking sides. ADR works best if everyone feels that they can have an open and honest discussion about what action should be taken in the best interests of a child or young person.

Everyone who participates in an ADR process can expect that information they disclose during the process will remain private and confidential.

Who does confidentiality apply to?

Confidentiality applies to any person who conducts or participates in any ADR process. This may include:

- Parents and their lawyer (if they have one)
- The child's lawyer
- Family and Community Services Managers and Caseworkers
- NGO Managers and Caseworkers
- The lawyer for Community Services
- Any other person who is a party to the proceedings and their lawyer (if they have one)
- Support persons.

When does it apply?

The confidentiality rules apply when you attend any ADR process, including:

- Dispute Resolution Conference
- Family Group Conference
- External mediation (for example, mediation to resolve contact disputes)
- Aboriginal Care Circle.

The confidentiality rules also apply to documents that are prepared for the purpose of the ADR process.

Exceptions – when can confidential information be disclosed?

A person conducting the ADR process may disclose information if:

- The person who gave the information agrees
- They have reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to property
- They have reasonable grounds to suspect that a child or young person is at risk of significant harm as a result of obtaining the information as part of the ADR process
- Any other law requires them to disclose the information.

Any person participating in ADR may disclose information if:

- They have reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to property.

Any person conducting or participating in ADR may disclose information if:

- The person conducting the ADR process or a legal practitioner participating in the ADR process is being referred for professional misconduct.

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When can information be used in court?

Section 244B(4) of the *Children and Young Person's (Care and Protection) Act 1998* states that information disclosed during any ADR process cannot be used as evidence in court unless the persons participating in the ADR have agreed to it being used.

Section 244B(4) also states that any document prepared for, or during, or as a result of the ADR process cannot be used as evidence in court unless the persons named or identified in the document have agreed to it being used.

Other limits on how confidentiality works

You should also be aware that although another party may not be able to use what you said at the ADR conference in court, it does not stop them from making further inquiries as a result of what you have said or done at the conference.



Further information

It is important that you understand the meaning of confidentiality and the effect of disclosing information. Even if you do not have a lawyer, you should obtain legal advice about the effect of and consequences of disclosing information.

Places where you can get legal advice include:

- **Legal Aid** (www.legalaid.nsw.gov.au) provide legal advice and help at court.
Ph: 1800 551 589
- **Aboriginal Legal Service** (www.alsnswact.org.au) provide legal advice and help at court to Aboriginal and Torres Strait Islander people.
Ph: 1800 733 233
- **LawAccess** (www.lawaccess.nsw.gov.au) is a free government telephone service that provides legal information, advice and referrals for people who have a legal problem in NSW.
Ph: 1300 888 529
- Search the **Law Society database** (www.lawsociety.com.au) for legal firms and solicitors in your area.

The Children's Court of New South Wales
www.childrenscourt.justice.nsw.gov.au

Translating and Interpreter Service

For an interpreter ring 131 450.

For alternative brochure formats

(audio tape, electronic or Braille versions) contact diversityservices@agd.nsw.gov.au or ph: 02 8688 7507 or TTY: 02 8688 7733.

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