

What is Family Dispute Resolution (FDR)?

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Family Dispute Resolution (colloquially known as “FDR”) is a type of mediation available to parties to attempt to resolve family law disputes without going to court. It is defined at Section 10F of the *Family Law Act 1975* (Cth) (“the Act”).

Family dispute resolution is a process (other than a judicial process):

> in which a ***family dispute resolution practitioner*** helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their dispute with each other; and
>
> in which the practitioner is independent of all parties involved in the process.

Simply put, FDR is mediation in which an FDR practitioner aims to assist Mums and Dads in either narrowing the issues in dispute or (hopefully) reaching a final agreement.

FDR is confidential, which means that should final agreement not be reached, parties cannot rely on discussions had during FDR in future court proceedings.

Is FDR compulsory in family law proceedings?

Before you can make an application to the court (seeking orders, other than by consent) in respect of parenting matters, you must have attempted FDR and must have obtained what is referred to as a ‘Section 60I certificate’.

A Section 60I Certificate can be issued in a number of circumstances. Whilst the court does not pay huge attention to why the Certificate was issued, it is important that you know that the FDR practitioner has to give a reason (marked on the back of the

certificate) as to why the certificate was issued.

The 5 reasons the FDR practitioner will issue a certificate

Someone did not attend FDR; or

The practitioner considered that FDR was not appropriate when he or she reviewed the matter (for example, gross allegations of family violence, huge power imbalance between the parties); or

The parties attended FDR, and a genuine effort was made to resolve the matter, but unfortunately, no agreement was reached; or

The parties attended, but there was not a genuine effort to resolve the matter; or

Both parties attended, but the practitioner decided that mediation should not continue and cancelled the mediation.

Simply put, before you can make an application to the court, you must have made a genuine effort to resolve the dispute through FDR.

When is a Section 60I Certificate not required?

Where the parties are applying for parenting orders to be made by consent.

or

Where the court is satisfied that there are reasonable grounds to believe that:

there has beenabuseof thechildby one of the parties to theproceedings; or

there would be a risk ofabuseof thechildif there were to be a delay in applying for the order; or

- there has beenfamily violenceby one of the parties to theproceedings; or

there is a risk offamily violenceby one of the parties to theproceedings; or

or

All the following conditions are satisfied:

the application ismadein relation to a particular issue;

a parenting order has beenmadein relation to that issue within the period of 12 months before the application ismade;

the application ismadein relation to a contravention of the order by a person; and

thecourtis satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order.

or

The application ismadein circumstances of urgency.

or

One or more of the parties to theproceedingsis unable to participate effectively inFDR;whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason.

Why do I need to go to FDR?

Historically, the family law system has always had an emphasis on alternative dispute resolution (i.e. the resolution of disputes outside of the court system). It’s quicker, a path of least conflict and generally a more cost-effective way to resolve a dispute with the other parent.

Any path that avoids a child being placed in a position of parents having extenuating conflict, is an alternate path worth pursuing.

The widespread reforms of the Family Law System in 2006 included changes to the Act in respect of dispute resolution. The aim is to:

facilitate access tofamily counselling:

to help married couples considering separation ordivorceto reconcile; and

to help people adjust to separation ordivorce; and

to help people adjust tocourtorders underthis Act; and

encourage people to use dispute resolution mechanisms (other than judicial ones) to resolve matters in which acourtorder might otherwise bemadeunderthis Act, provided the mechanisms are appropriate in the circumstances and proper procedures are followed; and

give thecourtthe power to require parties toproceedingsunderthis Actto make use ofcourtor non-court-based family services appropriate to the needs of the parties.

At the time, the changes to the legislation regarding dispute resolution were described by the Attorney General as designed to:

> ‘*keep families out of the courts and deliver practical co-operative outcomes for separating families*’.

Advantages of FDR

Things are sometimes better worked out between the parties themselves as it allows the parties to take into account their daily routines and other intricate information that the court is not a party to.

Because FDR is less adversarial, it can assist in fostering the parties’ co-parenting relationship because FDR creates an environment that doesn’t engender an adversarial system. If parties have children, it is likely they will need to interact with one another for the rest of their lives (or for a substantial amount of time into the future). It is very unlikely that separated parents will have no contact with one another.

FDR can be more efficient. Unfortunately, the nature of litigation in the Family Court is that it is slow, there are delays and it can be very time-consuming.

FDR can be less costly than protracted litigation in the Family Court.

Do I need a lawyer for FDR?

Ultimately this depends on how confident you are in reaching an agreement and negotiating with the other person.

Some of our clients feel reassured by having someone there to guide them through the process. Some people would prefer to do it on their own and then consult a lawyer if FDR fails.

We always recommend that you seek some legal advice before attending FDR. Even if to draft a template ‘Heads of Agreement’ so you are ready to address all matters (rather than only those discussed) at the end of the day. This will also help you to ensure you address issues you may not have previously thought of.

The process is exhausting. If you have a strategy in place before it gets underway, this can always assist.

At Meillon & Bright, we are experienced in both assisting clients prepare for FDR and also attending with them.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.