



FREQUENTLY ASKED QUESTIONS - FAMILY DISPUTE RESOLUTION CERTIFICATES

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Practice Issues

Is a pro forma certificate available?

Yes, a copy of the certificate can be downloaded from the Attorney-General’s website. See the ‘Information for Family Dispute Resolution Practitioners’ or ‘Frequently Asked Questions and Resources’ web pages for a link to the certificate.

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What types of certificates can a family dispute resolution practitioner issue?

A family dispute resolution practitioner can issue one of four types of certificates. The certificate should state that either:

- the person did not attend family dispute resolution due to the refusal or failure of the other party or parties to attend
- the person did not attend family dispute resolution because the practitioner did not consider it would be appropriate to conduct family dispute resolution
- the parties attended family dispute resolution, conducted by the practitioner, and all parties made a genuine effort to resolve the issue or issues in dispute, or
- the parties attended family dispute resolution, conducted by the practitioner, but one or more of them did not make a genuine effort to resolve the issue or issues in dispute.

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Does a family dispute resolution practitioner have to issue a certificate?

No. There is no need to issue a certificate at the end of a family dispute resolution process unless someone asks for one. Certificates can be issued up to 12 months after the family dispute resolution process has concluded.

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Can a registered family dispute resolution practitioner issue a certificate to people on the recommendation of an unregistered practitioner who has conducted mediation with the people involved in the dispute?

No. The registered family dispute resolution practitioner still needs to take the people involved through the family dispute resolution process before issuing a certificate.

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Who should a family dispute practitioner issue a certificate to?

There is no requirement in the Family Law Act to issue a certificate to everyone involved in the family dispute resolution process. A copy of a ‘failure/refusal to attend’ certificate can also be given to the person who did not attend, or the practitioner could write to them and to them know a certificate has been issued.

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If only one person asks for a certificate should a family dispute resolution practitioner give all people involved in the family dispute resolution process a certificate?

This is a decision for the individual family dispute resolution practitioner. It would be good practice to provide the certificate to all people involved in the family dispute resolution process. However, there is no requirement in the Family Law Act to give a certificate to everyone.

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What is the timeframe for issuing a certificate?

A family dispute resolution practitioner cannot give a certificate to a person if more than 12 months has elapsed since the person last attended, or attempted to attend, family dispute resolution about the issue or issues to be covered by the court application (subregulation 62A(3) of the Family Law Regulations).

Similarly, a person can only file a certificate that a practitioner has issued within 12 months of the last family dispute resolution or attempted family dispute resolution (subregulation 62A(1) of the Family Law Regulations).

These time limits recognise that the issues in dispute, and/or the attitudes of the people involved, will usually change over time and this may warrant another attempt at family dispute resolution.

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Should the certificates a family dispute practitioner provides to parties be photocopies or originals? Should a practitioner keep an original certificate on file?

It is up to the family dispute resolution practitioner to decide whether to provide original or photocopied certificates to people. Practitioners can choose to give everyone involved an original certificate. They can also choose whether to keep an original certificate or a photocopy in their file.

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What type of certificate should a family dispute resolution practitioner issue if the family dispute resolution process commences and part way through the practitioner decides that it is not appropriate to continue?

The Attorney-General's Department is aware of this concern and is looking at the issue. In the meantime family dispute resolution practitioners will need to issue the certificate they believe is most appropriate.

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Where does a family dispute resolution practitioner record on the certificate the reasons why that type of certificate has been issued? Do practitioners need to provide reasons? What if the practitioner wants to?

Certificates serve the sole purpose of allowing people to file an application in court. There is currently no ability to record comments on the certificate. Practitioners are not required to provide the court with any information about why they have issued a particular certificate.

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If a person requests a certificate and the family dispute resolution practitioner who conducted the family dispute resolution no longer works for the organisation, what steps does the organisation need to take to find the practitioner?

If the organisation knows of a way to contact the family dispute resolution practitioner, an attempt should be made to locate them so they can sign the certificate. However, there are no obligations in the Family Law Act or Family Law Regulations for an organisation to undertake onerous searches to find a practitioner who has left the organisation.

If there is no easy way to find the practitioner, the certificate should be signed by the organisation on the practitioner's behalf. The Regulations list the inability to contact a practitioner as an example of where it is appropriate for another member of the organisation to sign the certificate.

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What will the court do if there are multiple certificates attached to a file?

There may be circumstances where both people involved in a dispute obtain a refusal/ failure to attend certificates against each other from different family dispute resolution practitioners.

In this situation the court will need to consider the individual circumstances and may decide to order the people involved to attend family dispute resolution before the application is heard. The court could also decide to hear the matter without people attending family dispute resolution.

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Refusal or failure of party to attend

If a certificate is issued to person A due to person B's refusal to attend family dispute resolution, and person B then initiates family dispute resolution and person A refuses to attend, can a second 'failure to attend' certificate be issued?

Yes. Multiple certificates may be issued in relation to one dispute.

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If a person does not respond to an invitation to attend family dispute resolution and the family dispute resolution practitioner is unsure if the contact details they have been given are correct, what should the practitioner do?

If the family dispute resolution practitioner has complied with the requirements of Regulation 62A(4) by attempting to contact the person twice and at least one of those contacts was in writing, the practitioner is able to issue a ‘failure to attend’ certificate. The Family Law Act does not require practitioners to undertake onerous searches to find a person. Practitioners are not required to ask a process server to find a person.

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What should a family dispute resolution practitioner do if a person responds to an invitation to attend family dispute resolution, but uses delaying tactics to avoid attending? How long should the practitioner wait before issuing a certificate saying that person failed to attend?

When to issue a certificate saying that a person failed or refused to attend is a matter for the professional judgement of the family dispute resolution practitioner. There may be genuine reasons why a person is unable to attend at a number of sessions. However, if a practitioner has reason to believe that a person is using delaying tactics, they are able to issue a certificate so long as the practitioner has complied with the requirements of Regulation 62A(4).

This means that practitioners (or someone acting for them), must attempt to contact the party who has failed to attend at least twice, with one contact in writing. Practitioners are also required to offer a reasonable choice of days and times for attendance at family dispute resolution. It would also be good practice for a practitioner to tell people they are considering issuing this type of certificate.

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Person B won’t pay the fee charged by the family dispute resolution practitioner chosen by person A. This means they must wait several months before they can get an appointment at a Family Relationships Centre. Can the family dispute resolution practitioner issue person A with a certificate saying person B failed or refused to attend?

In this situation person B has not refused to attend family dispute resolution and it would be inappropriate for a practitioner to issue a certificate to this effect. The people involved will be able to participate in family dispute resolution even if the process takes longer.

People must attend family dispute resolution unless one of the exceptions applies. One of the exceptions is if the matter is urgent.

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Should a family dispute resolution practitioner issue a certificate if there is no way to contact a person involved in the dispute?

There is no certificate to cover this situation. If there are no contact details for a person and the others involved in the dispute have no idea of how to find them, they can make an application to the court relying on the exception that one or more of the parties to the proceeding is unable to participate effectively.

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Not appropriate to conduct family dispute resolution

When is it inappropriate for a family dispute resolution practitioner to conduct family dispute resolution?

Before providing family dispute resolution a practitioner must be satisfied that there has been an assessment of those involved in the dispute and that family dispute resolution is appropriate.

This assessment must be undertaken before every family dispute resolution, not just family dispute resolution that may be the subject of a certificate under section 60I of the Family Law Act.

In determining whether family dispute resolution is appropriate, the practitioner must consider if parties can negotiate freely. A person's ability to negotiate may be affected by:

- a history of family violence among the parties
- the likely safety of the parties
- the equality of bargaining power among the parties
- the risk that a child may suffer abuse
- the emotional, psychological and physical health of the parties, and
- any other matter that the family dispute resolution practitioner considers relevant to the proposed family dispute resolution.

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Does a family dispute resolution practitioner need to speak with all people involved with the proposed family dispute resolution before making a decision that the matter is not appropriate?

No. This is a matter for the professional judgement of the practitioner.

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Should a family dispute resolution practitioner issue a ‘not appropriate’ certificate if the practitioner believes family dispute resolution is not appropriate at the moment, but may be appropriate in the future after the people involved attend counselling etc?

If a practitioner does not believe it is appropriate to conduct family dispute resolution when it is requested, the practitioner should issue a ‘not appropriate’ certificate if they are asked for a certificate. It does not matter if the practitioner believes that it may become appropriate at some point in the future.

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What should a family dispute resolution practitioner do when people request a certificate in the following circumstances? Parties attend family dispute resolution in relation to issue ‘A’ and resolve their dispute. Some time later issue ‘B’ occurs and one person refuses to attend further family dispute resolution.

Practitioners could consider issuing a certificate in relation to issue ‘A’ stating that people attended and made a genuine effort to resolve the dispute. A further certificate could be issued in relation to issue ‘B’ stating that one person failed or refused to attend. It is possible to issue multiple certificates to the same people.

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Genuine effort

How does a family dispute resolution practitioner assess if a person has made a ‘genuine effort’ to resolve the issue or issues in dispute?

The Attorney-General’s Department has received legal advice that ‘genuine effort’ should be given its ordinary meaning in the context of Part VII of the Family Law Act which deals with children.

A genuine effort involves a real, honest exertion or attempt. It must be more than a superficial or token effort, or one that is false, or is pretence. The effort must be one that is realistically directed at resolving the issues that are the subject of the application for a court order.

The question about whether a genuine effort has been made to resolve issues in a particular case will depend on the circumstances of the case. It is a matter for the professional judgement of the family dispute resolution practitioner. Both objective matters (such as a refusal to engage in discussion) and subjective matters arising from the circumstances of the case (for example, the health of the people involved) may be relevant to the opinion of the practitioner.

Whether the issue in dispute is resolved or not, it will not necessarily be because one or more people did not make a genuine effort. There may be valid reasons why peoples have differing views on an issue.

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Should a ‘non-genuine effort’ certificate be issued if people attend but refuse to change their views on the dispute?

It is a matter for the professional judgement of the family dispute resolution practitioner. Both people may have valid personal reasons why they have refused to change their views. The failure to resolve a dispute does not necessarily mean they have not made a genuine effort.

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What happens if a person is not happy with the type of certificate issued? Can people legally challenge a family dispute resolution practitioner’s decision to issue a certificate stating that a person/people did not make a genuine effort?

If people are unhappy with the certificate issued, they can choose to attend further family dispute resolution with a different provider. They can also make an application to court to resolve their dispute.

While all registered family dispute resolution practitioners are required to have a complaints mechanism in place, parties are not able to legally challenge a practitioner’s decision to issue a ‘non-genuine effort’ certificate. This is the practical effect of communications in family dispute resolution being inadmissible in court.

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What are the possible consequences for the people involved in the dispute if a ‘non-genuine effort’ certificate is issued by a family dispute resolution practitioner?

If a ‘non-genuine effort’ certificate is issued, the court may order people to attend family dispute resolution before hearing the application.

The court may also take into account that a ‘non-genuine effort’ certificate has been issued when deciding if a costs order should be made against a person.

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