



FAMILY DISPUTE RESOLUTION – PRACTITIONER OBLIGATIONS

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Inclusion on the Family Dispute Resolution Register

All family dispute resolution practitioners, except those persons authorised to provide family dispute resolution by the Family Court of Australia, the Federal Magistrates Court or the Family Court of Western Australia, are required to be registered on the Family Dispute Resolution Register in order to issue family dispute resolution certificates under section 60I of the *Family Law Act 1975*.

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Provide family dispute resolution certificates

(Family Law Act - Section 60I)

From 1 July 2007, a court can not hear an application for an order concerning a child in a new case (that is, a case where there has not been a previous application to the court in relation to the child) unless the person applying to the court files a certificate from a registered family dispute resolution practitioner, or the matter falls within certain exceptions (including cases involving family violence, child abuse or urgency).

It is expected that the requirement will apply to all applications for orders concerning children (other than those that fall within the exceptions) from 1 July 2008.

Types of certificates

A certificate issued by a registered family dispute resolution practitioner will say one of the following:

- that a person has been to family dispute resolution with their ex-partner (or other involved person) and both made a genuine attempt to sort out an agreement
- that a person has been to family dispute resolution with their ex-partner (or other involved person) and one or both did not make a genuine attempt to come to agreement
- that a person attempted to go to family dispute resolution but the other person did not turn up or did not wish to participate
- that in the opinion of the practitioner family dispute resolution would not be appropriate.

When to provide a certificate

(Family Law Regulations (1984) Subregulation 62A (3)(4))

A family dispute resolution practitioner may not issue a certificate to a person after 12 months has elapsed since the date of the last attendance or attempt of that person at family dispute resolution. The family dispute resolution must also have been in relation to the issue or issues that are the subject of the person's intended application to the court.

To ensure that people are properly informed of the potential consequences of not attending family dispute resolution, a family dispute resolution practitioner must not provide a certificate saying that a person failed to attend unless the person or people who have failed to attend have been contacted at least twice. At least one of these contacts must have been made in writing. The contact can be made by the practitioner or a person on behalf of the practitioner.

People must also have been given a reasonable choice of days and times for attendance at family dispute resolution. They must also be told that if they do not attend, the family dispute resolution practitioner may issue a certificate to that effect and that certificate *may* be taken into account by a court when deciding who should pay court costs and whether to order parties to attend family dispute resolution.

Who can provide a certificate?

(Family Law Regulations - Subregulation 62A(5))

The family dispute resolution practitioner must be registered at the time the certificate is issued.

The practitioner who conducted the family dispute resolution must sign the certificate unless they are incapable of signing for example, due to death, loss of registration or an inability to be contacted.

An organisation for which the practitioner has provided family dispute resolution services may issue a certificate on the practitioner's behalf if the practitioner is incapable of signing the certificate.

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Information provision requirements

The Family Law Act and Family Law Regulations require family dispute practitioners to provide information in the following circumstances:

Provide information on family dispute resolution

(Family Law Regulations - Regulation 63)

Family dispute resolution practitioners must ensure that people receive information to enable them to understand the important elements of family dispute resolution. This information must be provided *prior* to commencing family dispute resolution and must include the following information:

- that it is not the role of the family dispute resolution practitioner to give people legal advice (unless the family dispute resolution practitioner is also a legal practitioner)
- the family dispute resolution practitioner's confidentiality and disclosure obligations (Family Law Act s10H)
- the generally inadmissible status of communications made in family dispute resolution (Family Law Act s10J)
- the qualifications the practitioner has in order to be a family dispute resolution practitioner
- the fees (including any hourly rate) charged by the family dispute resolution practitioner in respect of the service
- that family dispute resolution must be attended before applying for an order in relation to a child, unless an exception applies
- that if a person wants to apply to the court for an order in relation to child they will need to obtain a certificate from the family dispute resolution practitioner before applying, unless an exception applies
- that a court may take into account the certificate when deciding whether to make an order referring the parties to family dispute resolution or to award costs against a party
- information about the complaints mechanism that a person who wants to complain about the family dispute resolution services may use.

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Provide information on services that assist reconciliation

Family Law Act – Section 12G)

Family dispute resolution practitioners must give a married person who is considering a divorce, or considering going to court about their children or their finances, information about family counselling and family dispute resolution services available to help with reconciliation.

Information does not need to be given if the family dispute resolution practitioner believes they already have the relevant documents or they believe there is no reasonable possibility of reconciliation.

[Family Relationships Online](http://www.familyrelationships.gov.au) (www.familyrelationships.gov.au) or the Family Relationship Advice Line (1800 050 321) can provide information about family counselling services.

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Provide information in cases involving family violence or child abuse

(Family Law Act – Section 60J)

A person does not need to attend family dispute resolution before making an application to the court about a child in a number of circumstances including where there has been family violence, child abuse or a risk of family violence or child abuse.

Where these circumstances exist the court must be satisfied that the person making the application has received information from a family counsellor or a family dispute resolution practitioner about services and options (including alternatives to court action) available.

Practitioners who are asked to provide this information can find relevant resources on [Family Relationships Online](http://www.familyrelationships.gov.au) (www.familyrelationships.gov.au) or by contacting the Family Relationship Advice Line on 1800 050 321.

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Provide information about parenting plans

What is a parenting plan?

(Family Law Act – Sections 63DA(1)-(3) and 63C(2))

A parenting plan is an agreement that sets out parenting arrangements for children. A parenting plan covers the day-to-day responsibilities of each parent, the practical considerations of a child's daily life, as well as how parents will agree and consult on important, long-term issues, such as which schools children will attend.

A parenting plan, in itself, is not a legally enforceable agreement, and is different from a parenting order, which is made by a court. **Parties to a parenting plan can ask the court to make 'consent orders' in the terms of that plan. The court will only make a consent order if it is satisfied that the terms of the plan are in the best interests of the child. Once made, consent orders are legally binding — they have the same effect as any other order made by a court.**

If parents go to court at any time, the court will be required to consider the terms of the most recent parenting plan when making a parenting order in relation to a child, if it is in the best interests of the

child to do so. In order to be recognised by the court, a parenting plan must be in writing, dated and signed by both parents. It must be made free from any threat, duress or coercion.

In addition, when considering the best interests of a child, the court will also consider the extent to which both parents have complied with their obligations in relation to the child, which may include the terms of a parenting plan.

Provision of information on parenting plans

The type of information a practitioner is obliged to provide will depend if they are advising people generally about arrangements for children after separation or providing specific advice in connection with the making of a parenting plan.

If the practitioner is advising generally about parental responsibility following the breakdown of a relationship, they should advise that:

- a) they could consider entering into a parenting plan, and
- b) about services that are available to provide assistance to develop a plan.

When advising people about the making of a parenting plan, practitioners must inform people:

- a) that where it is in the best interests of a child, and reasonably practicable, they could consider as an option an arrangement where they **equally share the time** spent with the child (*note: a court will only consider equal shared time or substantial and significant time if there is equal shared parental responsibility. A court will not presume there is equal shared parental responsibility where there is family violence or child abuse*)
- b) that if an equal time arrangement is not appropriate, they could consider whether an arrangement where the child spends **substantial and significant time** with each person would be in the best interests of the child and reasonably practicable.

‘Substantial and significant time’ is defined in the Family Law Act. People considering this should ensure that the focus is not just on the amount of time that each parent spends with the child but also on the type of time that is spent. The definition encourages people to ensure that there is a mix of holidays, weekends and other days and that both parents are able to participate in the child’s daily routine and in events that are significant to the child (like sporting events, birthdays and concerts). It also ensures that the child is able to participate in events significant to the parent such as Mothers’ or Fathers’ day, extended family weddings or christenings and birthdays.

Practitioners must only inform people that they could consider the options of the child spending equal time, or substantial and significant time, with each person. It does not require the adviser to provide advice as to whether such arrangements are practicable or in the best interests of the child. However, the adviser may provide such advice if that is appropriate.

- c) that decisions made in developing parenting plans should be made in the best interests of the child
- d) of the matters that may be dealt with in a parenting plan
- e) that the terms of the parenting plan may alter a previously made court order about the child (in exceptional circumstances the court may order that this can not occur).

f) that it is desirable to include in a parenting plan information about how parties will consult and resolve disputes about the plan and the process to be used for changing the plan.

g) about the programs that are available to help people who experience difficulties in complying with parenting plans.

The information relating to parenting plans that practitioners are required to provide can be provided in written form such as brochures. You can download information from **Family Relationships Online** which can be used to meet the information provision requirements.

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Confidentiality

(Family Law Act – Section 10H)

Family dispute resolution practitioners must not disclose a communication made in family dispute resolution unless the disclosure is required or authorised under the Act.

A family dispute resolution practitioner **must** disclose a communication made in family dispute resolution if he or she reasonably believes that the disclosure is necessary for the purpose of complying with a law of the Commonwealth, a State or a Territory (eg to comply with legislation requiring mandatory disclosure of suspected child abuse).

A family dispute resolution practitioner **may** disclose a communication made in family dispute resolution if he or she reasonably believes that the disclosure is necessary for the purpose of:

- a) protecting a child from the risk of physical or psychological harm
- b) preventing or lessening a serious and imminent threat to the life or health of a person
- c) reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person
- d) preventing or lessening a serious and imminent threat to the property of a person
- e) reporting the commission, or preventing the likely commission, of an offence involving intentional damage to the property of a person or a threat of damage to property
- f) assisting an independent children's lawyer to properly represent a child's interests.

In addition, a family dispute resolution practitioner **may** disclose a communication, with the consent of the party who made the disclosure where that person is an adult, or, where the disclosure was made by a child who is under 18, if parents consent to the disclosure. If agreement cannot be reached, the matter may be referred to the court for decision.

A family dispute resolution practitioner **may** also make disclosures in order to provide information for research relevant to families, as long as the information provided does not constitute 'personal information' as defined in section 6 of the *Privacy Act 1988*. 'Personal information' is information, or an opinion, from which an individual's identity is apparent, or can reasonably be ascertained.

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Admissibility

(Family Law Act – Section 10J)

Communications made in family dispute resolution are not admissible in any court or proceedings, in any jurisdiction.

Additionally, a communication made when a professional consultation is being carried out, on referral from a family dispute resolution practitioner, is also inadmissible in any court or proceedings in any jurisdiction.

In order to ensure that professionals to whom family dispute resolution practitioners make referrals are aware of the inadmissible status of communications made to them, family dispute resolution practitioners are required to inform relevant professionals of this when making a referral.

An admission or disclosure that indicates that a child under 18 has been abused, or is at risk of abuse, may be admitted as evidence unless there is sufficient evidence of the admission or disclosure available to the court from other sources.

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Requirements for providing family dispute resolution

Assessment of family dispute resolution suitability

(Family Law Regulations – Regulation 62)

An assessment of the parties to the dispute must be undertaken, to determine whether family dispute resolution is appropriate, prior to a family dispute resolution practitioner providing family dispute resolution.

The family dispute resolution practitioner must be satisfied that this assessment has considered whether the ability of a person to negotiate freely in the dispute is affected by:

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

If, after considering these matters, the family dispute resolution practitioner is not satisfied that family dispute resolution is appropriate, the family dispute resolution practitioner must not provide family dispute resolution.

Obligations of family dispute resolution practitioners

(Family Law Regulations – Regulation 64)

When providing family dispute resolution services a practitioner must:

- ensure that, as far as possible, the family dispute resolution process is suited to the need of the people involved (eg by ensuring the suitability of the family dispute resolution venue, the layout of the family dispute resolution room and the times at which family dispute resolution is held)
- ensure that family dispute resolution is only provided in accordance with all the regulatory requirements (such as the requirement to assess whether family dispute resolution is appropriate prior to conducting the family dispute resolution)
- ensure that any record of the family dispute resolution is stored securely
- terminate the family dispute resolution if required to do so by a person, or if the practitioner is no longer satisfied that family dispute resolution is appropriate
- not provide legal advice to any of the parties unless the practitioner is also a legal practitioner, or the advice is about procedural matters
- not use any information acquired from a family dispute resolution for personal gain or to the detriment of any person.

Avoidance of conflicts of interest

(Family Law Regulations – Regulation 65)

A family dispute resolution practitioner will have a conflict of interest if the practitioner:

- has previously acted in a professional capacity for one or more of the people involved in the dispute (other than as a family dispute resolution practitioner, a family counsellor or arbitrator)
- has had a previous commercial dealing with one or more of the people involved in the dispute, or
- is a personal acquaintance of one or more of the people involved in the dispute

In these situations the practitioner may only provide family dispute resolution services if:

- each person involved in the family dispute resolution process agrees
- the previous professional dealing (if any) does not relate to any issue in the dispute, and
- the previous commercial dealing or acquaintance (if any) is not of a kind that could reasonably be expected to influence the family dispute resolution practitioner in the provision of family dispute resolution services.

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Ongoing professional development requirements

Registered family dispute resolution practitioners must undertake at least 24 hours of education, training or professional development in family dispute resolution in every two year period from the date of registration. The requisite 24 hours may include *supervised family dispute resolution*.

See the [Glossary](#) for an explanation of supervised family dispute resolution and other terms.

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Ongoing registration administrative requirements

Registration as a family dispute resolution provider is subject to the following conditions:

- a) compliance with any request for information by the Secretary of the Attorney-General's Department
- b) notification to the Secretary about any change to a registered family dispute resolution provider's name or contact details within 28 days of the change
- c) notification, within 7 days of the occurrence of the event, to the Secretary about any matter that may affect a registered family dispute resolution provider's eligibility to continue to be registered. (See [Registration](#))

The Secretary may, by notice in writing, add, vary or revoke a condition of registration.

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