



Australian Government
Attorney-General's Department

Civil Justice Division

**FREQUENTLY ASKED QUESTIONS - DELIVERING FAMILY DISPUTE
RESOLUTION SERVICES**

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- If a family dispute resolution practitioner draws up a parenting plan should the practitioner record their registration number and name on the plan?

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Why has family dispute resolution been introduced?

The requirement to attend family dispute resolution before applying to the court for an order in relation to a child has been introduced to encourage families to resolve disputes about children's matters outside the court system. Court action can be costly and lead to entrenched conflict which can affect people's ability to parent cooperatively into the future.

Dealing with family relationship issues in a non-adversarial environment gives families an opportunity to come up with solutions that recognise their children's right to have a meaningful relationship with both parents.

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When is family dispute resolution to be conducted?

If a person wants to apply to the court for an order relating to a child (a 'parenting order') and they did not apply before 1 July 2007 they must first attempt family dispute resolution, unless an exception applies. This is covered in Part VII of the *Family Law Act 1975*.

It is expected that from 1 July 2008 this requirement will apply to all applications about a child.

People are not required to attend family dispute resolution in circumstances where it may not be appropriate, for example where there has been family violence or child abuse. For more information about the circumstances in which people do not need to attempt family dispute resolution see the download on exceptions.

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Are there any exceptions to the requirement to attend family dispute resolution?

A summary of the exceptions to the requirement to attend family dispute resolution is below. Section 60I (9) of the *Family Law Act 1975* (the Act) lists the exceptions.

People are not required to attend family dispute resolution before applying to the court if:

- they are applying for consent orders
- they are responding to an application
- where the matter is urgent
- if the court is satisfied that there are reasonable grounds to believe that:
 - there has been family violence or child abuse by a party
 - there is a risk of violence by a party, or
 - there is a risk of child abuse if there were to be a delay

- where a party is unable to participate effectively (for example, they are too far from a family dispute resolution provider or because of an incapacity of some kind), or
- a person has contravened and shown serious disregard for an order made in the last 12 months

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What is a registered family dispute resolution provider?

A registered family dispute resolution provider is an individual or organisation who has met the required standards of training, experience and suitability for inclusion on the Family Dispute Resolution Register.

The Attorney-General's Department has established the **Family Dispute Resolution Register** to provide online information, to the public and courts, about the individuals and organisations who meet the requirements under the Family Law Act to provide family dispute resolution.

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Do all family dispute resolution providers need to be on the Family Dispute Resolution Register?

All family dispute resolution providers, except for practitioners providing family dispute resolution on behalf of a court, need to be included on the Family Dispute Resolution Register to be able to issue valid family dispute resolution certificates for their clients to take to court.

For more information see the Attorney-General's website on 'How to become a Registered and Accredited FDR Practitioner'. Individuals can download a Registration Package from this site if they wish to apply to be a family dispute resolution practitioner.

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Do people need to attend family dispute resolution where there has been family violence or child abuse?

In cases involving family violence or child abuse, a client may apply directly to the court for a parenting order without first attempting family dispute resolution. It does not matter when the violence or child abuse occurred.

Before a court will hear an application they must be satisfied that people have obtained information about the services and options (including alternatives to court action), available to them in circumstances of abuse or violence. This does not apply where there is a risk of child abuse or

family violence. This information can be obtained from family counsellors or family dispute resolution practitioners.

People are not required to obtain this information where there is a risk of family violence or child abuse if the matter is delayed in getting to court.

Under the Family Law Regulations, before proceeding with family dispute resolution, a family dispute resolution practitioner must be satisfied that an assessment has been made about whether each party's ability to negotiate freely in family dispute resolution is affected by violence or other factors.

If a matter is assessed as inappropriate, the practitioner may provide a certificate to this effect. The client may also be referred directly to court if they meet one of the exceptions under the Family Law Act.

For information on screening and assessing cases involving family violence, see the 'Screening & Assessment Framework' page on the Attorney-General's Department's website.

See also 'Family Violence' or 'Frequently Asked Questions' on the Attorney-General's Department's website for more information.

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When does family dispute resolution start? Is it at the time of intake or at some later point?

The Attorney-General's Department is seeking further legal advice on this and will advise practitioners as soon as possible.

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As a private family dispute resolution practitioner, is there a general complaints system run by the Attorney-General's Department that I can use to support my practice and meet the registration requirements?

The Attorney-General's Department does not operate a complaints system. Practitioners are required to provide information about which complaints mechanism parties will have access to at the time of making an application to be registered.

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How do members of the public find out about a family dispute resolution practitioner's complaints mechanism?

Family dispute resolution practitioners are required to give each party information about their complaints mechanism before family dispute resolution begins (sub-regulation 63(1)(i) of the Family Law Regulations).

Examples of complaints mechanisms are:

- internal complaints mechanism established by an organisation of which the family dispute resolution applicant is an affiliate or employee or on whose behalf the family dispute resolution applicant provides services
- complaints mechanism established by a professional association of which the family dispute resolution applicant is a member
- complaints procedures of statutory bodies established by the Commonwealth, a State or Territory.

For practitioners in private practice, the complaints mechanism is usually through a professional association of which the practitioner is a member eg LEADR or the AFMA.

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Will children ever be able or required to be involved in a family dispute resolution session?

It is possible for children to be included in some forms of family dispute resolution. This will be determined on a case by case basis in accordance with the age and capacity of the child. It will also depend on the circumstances of the individual dispute. This form of family dispute resolution can only occur if a family dispute resolution practitioner is available who has the appropriate skill and training.

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What should practitioners do if the people involved in the dispute approach different family dispute resolution practitioners and refuse to attend family dispute resolution at the other location?

This is a matter for the professional judgement of the family dispute resolution practitioner. The Attorney-General's Department is aware that practitioners have been able to find ways for family dispute resolution to go ahead in some circumstances. For example, both practitioners may be involved in aspects of the process, or one practitioner may co-ordinate the process and the other provide assistance only if required.

Ultimately, if the parties cannot agree on how to conduct the family dispute resolution, practitioners can consider issuing a certificate stating that the other party 'refused to attend'. It may be that both practitioners issue a certificate to this effect.

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If a family dispute resolution practitioner draws up a parenting plan should the practitioner record their registration number and name on the plan?

There is no legal requirement for a family dispute resolution practitioner to record their name or registration on a parenting plan.

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