



**Australian Government**  
**Attorney-General's Department**

**Civil Justice Division**

**FREQUENTLY ASKED QUESTIONS – FAMILY DISPUTE RESOLUTION AND  
EXCEPTIONS**

- When can a person apply to court without attending family dispute resolution?
- What does a court require when a person is claiming an exception?
- Who can claim an exception?
- If a person (or more than one person) claims that an exception applies and the court disagrees what will happen?
- What should a family dispute resolution practitioner do if they believe an exception applies?
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**When can a person apply to court without attending family dispute resolution?**

If a person wants to apply to the court for a parenting order (and they have not applied before 1 July 2007) they will either need to obtain a certificate from a registered family dispute resolution provider before making the application or claim an exception at the time of making the application. The exceptions are listed under Section 60I (9) of the *Family Law Act 1975*. It is expected that this will apply to all applications for parenting orders from 1 July 2008.

If claiming an exception, people should tell the court staff at the time of making an application. The court staff will advise what supporting material is required. It is possible for a person to claim an exception even if they have been to family dispute resolution and have a certificate.

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### **What does a court require when a person is claiming an exception?**

Practitioners should advise people to tell court staff if they are relying on an exception. The court staff will advise what form is required.

On 1 March 2008, the Federal Magistrates Court of Australia adopted the same processes as the Family Court of Australia for the filing of applications for an order in relation to a child. This means that a certificate will be required at the point of filing unless an exception has been granted by a Registrar.

Registrars will be available to determine requests for exceptions as they currently do for the Family Court of Australia, rather than by a Federal Magistrate on the first court date.

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### **Who can claim an exception?**

The person making the application applies for the exception. If it is an application made jointly for consent orders, then people can jointly claim the exception. It is not necessary for a person filing a response to an application to claim an exception.

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### **If a person (or more than one person) claims that an exception applies and the court disagrees what will happen?**

If the court does not accept that an exception applies, they may make an order for parties to attend family dispute resolution before the application is accepted or heard.

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### **What should a family dispute resolution practitioner do if they believe an exception applies?**

Family dispute resolution practitioners are not required to decide if an exception applies or not. Practitioner can advise the people involved in the dispute that there are exceptions to the requirement to attend family dispute resolution and tell them what those exceptions are. A practitioner can also tell people which exception they believe may be relevant to the circumstances.

There is however, no requirement for a practitioner to provide this information. If the practitioner believes that it is not appropriate to conduct family dispute resolution, they can provide a certificate to that effect. Practitioners can issue certificates even if an exception applies.

A family dispute resolution practitioner must not provide legal advice to any of the people involved unless the practitioner is also a legal practitioner, or the advice is about procedural matters. Practitioners should make this clear and advise those involved to contact a lawyer for more information on whether the exception might apply.

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### **If an exception to the requirement to attend family dispute resolution applies, can people still attend family dispute resolution?**

Yes. People can still attend family dispute resolution and can ask the practitioner to provide them with a certificate. If the family dispute resolution practitioner believes that family dispute resolution is not appropriate they can issue a certificate to that effect.

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### **What is the difference between an exception and a certificate stating that it would not be appropriate to conduct family dispute resolution?**

If an exception applies people can make an application to court for an order in relation to a child without attending family dispute resolution. However, at least one person may still wish to attend family dispute resolution. Whether or not an exception applies is not a matter for the practitioner to decide. If the practitioner believes that it is not appropriate to conduct family dispute resolution the practitioner can issue a certificate to this effect. It does not matter that an exception may also apply.

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### **If person A refuses to allow person B time with their child, is this enough to satisfy an exception?**

This is not a matter for the practitioner to decide. The people involved should be advised to consider obtaining independent legal advice about whether or not an exception applies. It may be that an exception applies because the matter is urgent or because person A has shown a ‘serious disregard’ for a court order.

The Family Law Act does not define what an ‘urgent’ matter is or what ‘serious disregard is’. It will be a matter for the presiding judicial officer to decide if one of these exceptions applies.

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**Do people need to attend family dispute resolution before making an application to court where someone is not acting in accordance with a parenting order?**

People do not need to attend family dispute resolution before making an application to court if the application is made in relation to the contravention of a parenting order. For this exception to apply the court must be satisfied that the person who has contravened the order has shown a serious disregard for their obligations under the order. The Family Law Act does not define what a 'serious disregard' is. This will be a matter for the presiding judicial officer to determine. It is not a matter for the practitioner to decide.

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