



Compulsory family dispute resolution information (Module A)

- Introduction
- Exceptions
- Attending family dispute resolution - including certificates
- How to find a family dispute resolution provider



Introduction – terminology

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

- (a) 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 disputes with each other, and
- (b) in which the practitioner is independent of all of the parties involved in the process.

[s10F *Family Law Act 1975*]



Key change to parenting disputes

- Attend fdr prior to applying for parenting order
- Applies to **new** parenting cases from
1 July 2007
- Expected to apply to **all** parenting cases from
1 July 2008
- Unless exception applies, must file a certificate from a **registered** fdr practitioner



Key points

- Fdr is an opportunity not an obstacle
- Exceptions:
 - Court's, not fdr practitioner's assessment
 - Do **not** require fdr certificates
 - People can still choose to attend fdr
- Certificates
 - Requirements apply to fdr providers in issuing certificates
- Fdr (and certificates) can be provided by **any** registered provider
 - not just Family Relationship Centres



Exceptions

- People are not required to attend family dispute resolution if:
 - applying for consent orders
 - responding to an application – would have already attended fdr
 - the matter is urgent



Case Study 1 – Threatened abduction

- Samantha and Darren - separated six months ago
- Have parenting plan setting out arrangements for Tabitha, who is 3 years old
- Samantha advises that she is planning to leave the country with Tabitha



Case Study 1 – Threatened abduction

- Not required to attend fdr
- Urgency exception
- Court may order Samantha and Darren to attend fdr once urgent issues have been addressed

[section 13C *Family Law Act 1975*]



Exceptions (cont.)

- People are not required to attend fdr if:
 - 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** in applying to the court.



Case study 2 – Family violence

- Penny and Paul – married couple, recently separated
- One child – Sam, 4 years old
- Repeated threats towards Sam (directed at Penny)



Case study 2 – Family violence

- Three possible directions:
 - Penny could go to court and claim family violence or child abuse exception
 - If Penny wants to use fdr or does not want to claim exception
 - Fdr practitioner could assess that fdr not appropriate
 - Refer Penny to fdr tailored to cases involving violence?
- If claims family violence exception, may be required to get information on options and services

[section 60J *Family Law Act 1975*]



Exceptions (cont.)

- People are not required to attend family dispute resolution if:
 - there has been a contravention and serious disregard for a court order made in last 12 months, or
 - they are unable to participate effectively.



Case study 3 – Remote area

- Henry and June – 3 children under 5 years old
- June and children live in metro city
- Henry lives in a remote Indigenous community in the remote region
- Henry comes to the city once every six months
- Have been unable to agree on arrangements for the children



Case study 3 – Remote area options

- Find registered telephone fdr provider by:
 - Searching on Family Relationships Online
www.familyrelationships.gov.au
 - Calling Family Relationship Advice Line
1800 050 321
- Attend fdr in person
- Claim ‘inability to participate effectively’ exception



Exceptions

- Applicant not *required* to claim exception – may still attend fdr
- Applicant will need to demonstrate to **court** that exception applies



Going to family dispute resolution

- Court **must not** hear parenting order **unless** certificate filed **with application**
- Attend fdr with a *registered* fdr practitioner



Going to family dispute resolution

- Certificate available from **any** registered fdr provider
- Do **not** need to go to Family Relationship Centre for fdr



Case study 4 – Extended family

- 2 year old Elroy - lives with grandparents, George and Jane
- Elroy's mother Judy is a heroin addict.
- Elroy has never met his father, Simon, who had disappeared
- Judy now living with Adam and wants Elroy to live with her
- Simon is now back on the scene and want to see Elroy
- George and Jane seek help



Case study 4 – Extended family

- Requirement applies to **any** person who wishes to apply for an order under Part VII of the Family Law Act – **not** just parents
- Certificate will need to state who was involved in the fdr process
- Fdr must be in relation to the issues that the court application would deal with



Going to family dispute resolution

- When fdr resolves issues:
 - no written record required
 - can have informal written agreement or parenting plan
[definition at section 63C *Family Law Act 1975*]
 - can apply to court for consent order



Family dispute resolution certificates

- If requirement applies, the case **cannot proceed** unless a **certificate** from a **registered** fdr practitioner is filed with application
- ‘Section 60I certificate’



Family dispute resolution certificates

1. Made genuine effort
2. Did not make genuine effort
3. Failed, or refused, to attend
4. Fdr not appropriate



Family dispute resolution certificates

- Electronic version of certificate at:
www.ag.gov.au/fdrproviders
- **Must** include registration number
- Only first name required
- 12 month limit on issuing and filing certificates



Case study 5 – unregistered mediator

- Phillip and Elizabeth – recently separated
- Children – Charles and Anne
- Visit mediator, Diana
- Diana is **not** currently a registered fdr practitioner



Case study 5 – unregistered mediator

- People can choose to see anyone to help make arrangements for children
- **But**, need to see **registered** fdr practitioner prior to applying to court
- May issue certificate for fdr conducted **prior** to registration
- **But**, must be **registered** at time **provide** certificate
- Process must have been ‘family dispute resolution’ as defined in the Act.



Case study 6 – property dispute

- Tony and Cherie
- One child – Nicky
- Agreed property arrangements 6 months ago
- Issue has arisen re Nicky



Case study 6 – property dispute

- Was the previous process fdr?
- Were arrangements for Nicky discussed?
- Only applications for orders relating to **children**
- If orders sought in relation to **both** property and children's matters **will** need to attend fdr



Family dispute resolution certificates

- Type of certificate may be taken into account by court in:
 - referring parties to fdr
 - determining costs
- Fdr practitioner must provide information on consequences of different certificates
[para 63(h) *Family Law Regulations 1984*]



Family dispute resolution certificates

- Must **not** issue certificate for failure to attend unless:
 - person has been **contacted** at least **twice**
 - at least **one** contact in **writing**
 - provided with **choice** of days and times for attendance
 - **must** be informed that certificate may be taken into account by court
 - court may refer parties to fdr and/or award costs



Proposed change to requirement

- Provision requires *2 contacts*, **not** 2 failures to attend.
- Required contact will **not** need to be made by fdr practitioner personally
- Fdr practitioner will need to be **satisfied** that requirement satisfied before issuing ‘non-attendance’ certificate



Case study 7 – inability to contact

- Fred and Wilma – separated 12 months
- One child – 3 year old Betty
- Wilma's whereabouts unknown
- Barney – registered fdr practitioner



Case study 7 – inability to contact

- Cannot make required contact, ∴
- Cannot issue ‘non-attendance’ certificate
- Apply to court – claim ‘inability to participate effectively’ exception
- Court will decide whether exception applies



Family dispute resolution certificates

- Certificate indicating that fdr would be inappropriate
- Consider:
 - history of violence
 - safety
 - equality of bargaining power
 - risk of child abuse
 - health of parties

[subregulation 62(2) *Family Law Regulations 1984*]



Case study 8 – Family violence

- Sam and Kerry – married 15 years
- 13 year old Simon
- Sam physically violent 10 years ago
- Ken – registered fdr practitioner



Case study 8 – Family violence

- Three possible directions:
 - go to court and claim family violence or child abuse exception
 - Fdr practitioner could consider whether to issue certificate stating that fdr not appropriate
 - could attend fdr tailored to cases involving violence
- If claims family violence exception, must get information on options and services
[section 60J *Family Law Act 1975*]



Genuine effort

- Should be given **ordinary** meaning
- **Don't** rely on interpretation of other legislation
[eg *Migration Act 1958*, *Native Title Act 1993*]
- **Not equivalent to** 'good faith'
- **Real attempt** to resolve issues
- **Not** superficial, token or false effort
- Matter for the fdr practitioner's **professional opinion**



Genuine effort

- Does **not**
 - require people to **agree**
 - require people to spend a **minimum number** of hours or sessions at fdr
 - equal **‘good faith’**
 - require fdr practitioner to **‘tick off’** objective **‘indicators’**



Genuine effort

- **Does:**
 - require fdr practitioners to use **professional judgment**
 - take **subjective** matters into consideration



Case study 9 – genuine effort

- George and Laura
- Children – Jenna and Barbara
- Both George and Laura refuse to budge from their positions



Case study 9 – genuine effort

- Is failure to negotiate **reasonable or unreasonable?**
- Fdr practitioner to use his/her **professional judgment**
- **Relevant subjective matters** to be taken into account
- Fdr practitioner is **not** required to continue the session for a **minimum time** (eg 3 hours) or schedule another session.
- What is appropriate depends on the **circumstances** of the case.



Family Dispute Resolution Register

- Register will allow:
 - people to find registered fdr practitioners
 - courts to check certificates
 - the Attorney-General's Department to check qualifications and exclude unsuitable people



Family Dispute Resolution Register

- Eligible if:
 - fdr practitioner
 - not prohibited from working with children
 - complied with laws for employment of people working with children
 - access to complaints process
 - no convictions for violent or sex-related offence.



Family Dispute Resolution Register

- Address and contact details
- Services provided – family separation, child inclusive practice, legally assisted negotiation, etc
- For who – families & children, extended families, etc.
- How – face to face, telephone, online, etc
- Opening hours
- Proximity to public transport
- Cost



Family Dispute Resolution Register

- Family Relationship Advice Line
1800 050 321



‘Silent’ registrations

- Family law court registry
- Practitioner Registration Unit at:

1800 025 255

or

fdrregistration@ag.gov.au



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