



Exceptions to Family Dispute Resolution

This Fact Sheet outlines general information about the exceptions to undertaking family dispute resolution (FDR) under Section 60I(9) of the *Family Law Act 1975* (the Family Law Act). It includes information about:

1. the types of exceptions
2. the role of the FDR practitioner
3. claiming an exception
4. court requirements

If FDR practitioners require legal information about exceptions, they should contact the Family Relationship Advice Line on 1800 050 321 and ask to speak with a legal adviser. You can find information about screening and assessment in a separate Fact Sheet named: *Screening and assessment for Family Dispute Resolution* available on the [Information for Family Dispute Resolution practitioners](#)' web page.

1. Types of exceptions

Section 60I(9) of the Family Law Act lists the exceptions to the requirement to attempt FDR before making an application for a Part VII order. Some of the main exceptions are as follows:

- where a person is applying for procedural orders, interim orders or consent orders
- where the matter is urgent
- if the court has reasonable grounds to believe that:
 - family violence or child abuse has occurred, or
 - there is a risk of violence or child abuse if there was to be a delay
- where it is not practical for the person to participate in FDR, for example, incapacity, physical remoteness or some other reason
- where a person has contravened and shown a serious disregard for a court order made in the last 12 months.

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, not an FDR practitioner to decide if one of these exceptions applies.

2. The role of the FDR practitioner in relation to exceptions

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

If the practitioner believes that it is not appropriate to conduct FDR, they can provide a certificate to that effect. FDR practitioners can issue section 60I certificates even if an exception might apply.

If an exception applies, people can make an application to court for an order in relation to a child without attending FDR. However, at least one person may still wish to attend FDR. Whether or not an exception applies is not a matter for the practitioner to decide.

3. Claiming exceptions

The person making the application to court applies for the exception. If an application is 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.

People can still attend FDR and can ask the practitioner to provide them with a section 60I certificate. If the practitioner believes that FDR is not appropriate they can issue a certificate to that effect.

A person may claim an exception at the time of making the application for a parenting order. When 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 FDR and have a certificate.

4. Court requirements where an exception is claimed

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

If the court does not accept that an exception applies, it may make an order for people to attend FDR before the application is accepted or heard.

People do not need to attend FDR 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 'serious disregard' is. This will be a matter for the presiding judicial officer to determine. It is not a matter for the FDR practitioner to decide.