



Screening and assessment for Family Dispute Resolution

This Fact Sheet outlines the requirements for family dispute resolution (FDR) practitioners to screen and assess clients prior to undertaking FDR and issuing section 60I certificates under the *Family Law Act 1975* (the Family Law Act). It includes information about:

1. resources
2. determining suitability
3. risk domains
4. intake
5. family violence
6. ongoing screening and assessment
7. supervision

The *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (the Regulations) require FDR practitioners to be satisfied that an assessment has been conducted, and that FDR is appropriate, before FDR starts (see Regulation 25). As well as ensuring a matter is appropriate for FDR, screening and assessment assists family members to have their needs identified and, where safety concerns are identified, ensure that appropriate actions can be taken to protect those who are affected.

More information about a practitioner's obligations relating to the provision of FDR services can be found in the Fact Sheet named: *FDR Practitioner Obligations to Clients* available on the [Information for FDR practitioners](#)' web page.

1. Resources

In 2012, the Australian Attorney-General's Department commissioned the development of the Family Law Detection of Overall Risk Screen (DOORS) Handbook. DOORS is a validated and standardised frontline screening tool and framework that has been developed for family law professionals (including FDR practitioners) to use to identify safety risks for clients across the family law system. The tool and framework is simple, practical and flexible to meet the varying needs of professionals, services and clients. Whilst not mandatory, FDR practitioners may find the DOORS tool useful to use in their current practices.

To purchase a copy of the Family Law DOORS Handbook, visit the Family Law DOORS website at: <http://www.familylawdoors.com.au/>.

The DOORS Handbook complements the AVERT Family Violence Training Package, which was also commissioned by the department. It was developed in 2011 and is a multi-disciplinary training package, which includes an online component that provides professionals working in the family law system with a sound and practical understanding of family violence, its impact and appropriate strategies for responding. More information about AVERT can be found at: <http://www.avertfamilyviolence.com.au/>.

2. Determining suitability

A decision about whether FDR is appropriate is a matter for the professional judgement of the FDR practitioner after considering the list of factors outlined in Regulation 25:

- a history of family violence
- the likely safety of the parties
- the equality of bargaining power among the parties
- the risk that a child may suffer abuse
- the emotional, psychological and physical health of the parties
- any other matter the FDR practitioner considers relevant to the proposed FDR. For example, whether it would be in the best interests of the child to proceed to FDR.

Note: Regulation 29(c) states practitioners must terminate FDR if requested to do so by a party or if the practitioner is no longer satisfied that FDR is appropriate. Even if the behaviours don't make the process unsafe, abuse and intimidation could result in an unfair outcome.

3. Risk domains

There are various domains of risk-to-safety posed by clients, and to those associated with them (usually the partner or ex-partner), which can include:

- domestic and family violence and violence towards others
- child abuse or abduction, and
- self-harm.

Early screening questions include:

- do you have any reason to be concerned for your own safety or the safety of your children?
- do you have any other worries about the well-being of your children at the moment?
- do you have any reason to be concerned for the safety of anyone else?

While screening for the presence of violence may help identify cases where there are safety issues, a single screening process cannot be relied upon to fully identify a history of, and potential for, violence and abuse because victims:

- may not perceive the abuse they have lived with as violence
- may not feel comfortable reporting their experiences because of shame or embarrassment
- may underestimate the severity of the situation
- fear they won't be believed or that their children may be removed from their care, or
- are too afraid to disclose violence for fear of reprisal from their ex-partner.

For more information about risk domains see the Family Law DOORS Handbook.

4. Intake for FDR

FDR practitioners need to be aware that there are various indicators associated with domestic and family violence, child abuse and abduction, and self-harm. For more information about risk indicators see the Family Law DOORS Handbook. To maximise safety, comprehensive screening and assessment at the intake stage will determine whether a joint session is:

- considered a suitable process
- considered suitable, but only if it is conducted with special conditions attached to the process, and to which both clients are willing to agree to and cooperate with, or
- not considered a suitable and/or safe process.

Even where a client's situation is not suitable for a joint session at the present time, they may be able to participate at a later time. It may be that a referral to another organisation is more appropriate at the current time, for example to a counselling service.

5. Family violence and FDR

Some clients who have been victims of violence may feel there are benefits to participating in family dispute resolution rather than going to court. Where there has been a history of violence, family dispute resolution must be conducted in a way that is fair and provides for safety (before, during and after the sessions).

The following practices will assist clients to disclose domestic or family violence (Based on research undertaken by Keys Young (1996). *Research/Evaluation of Family Mediation Practice and the Issue of Violence*. Canberra: Commonwealth Attorney-General's Department):

- being asked specific questions about abuse or violence
- being asked about non-physical types of abuse, harassment or attempts at intimidation
- being asked about abuse or other concerns face-to-face — not just through filling out a form
- being interviewed separately from the ex-partner at intake or pre-family dispute resolution
- being given an explanation as to why talking about abuse or its impact is important in the context of family dispute resolution
- being informed of the importance of disclosure to ensure appropriate support is provided during the family dispute resolution session, and
- having the family dispute resolution practitioner demonstrate understanding of the client's specific concerns.

An FDR practitioner should adopt a systematic approach to responding to the needs of parents and children where safety concerns are identified during the FDR process. Screening and assessment should be linked to the provision of safety plans in the event that risk is identified. Such safety planning may include referrals to other relevant services. Such services may include specialised family violence support services; legal services for advice, for example, about personal protection orders and options for addressing parenting arrangements; therapeutic support services for affected parents and children; and men's behaviour change programs. Referrals may also be made in relation to other support needs, such as housing, mental health and/or substance misuse.

Definition of family violence and the impact on assessing suitability

Under section 4AB of the Family Law Act, '*family violence*' means 'violence, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.'

It is a requirement under the Regulations for FDR practitioners to conduct a comprehensive screening and assessment process to determine suitability of parties for FDR. The factors to consider include whether there has been a history of family violence among the parties, the likely safety of the parties and a risk that a child may suffer child abuse. Screening and assessment is continuous throughout the FDR process.

The definition is significant when FDR practitioners are screening and assessing whether it is appropriate for a client to participate in or continue participating in FDR. There may be cases where individuals who had previously been assessed as suitable, may now be assessed as unsuitable for FDR. This will depend on the individual circumstances of each case.

In the assessment of suitability of FDR, an FDR practitioner also considers other relevant factors under the Regulations, including equality of bargaining power among the parties, the emotional, psychological and physical health of the parties and any other matter that the FDR practitioner considers relevant to the proposed FDR.

The definition of family violence includes causing a child to suffer psychological harm, including the child being exposed to family violence. FDR practitioners need to be aware of this, particularly for mandatory reporting purposes of child abuse.

Exemptions from FDR due to family violence

People who have experienced or are at risk of family violence continue to be able to seek an exception to the FDR requirements under the Family Law Act and apply directly to court, and do not need to attempt FDR and have a section 60I certificate issued.

The court needs to consider claims for the exception against the definitions for family violence and abuse.

If a person thinks the exception applies the process for applying to the court remains the same. FDR practitioners should advise people to tell court staff if they are relying on an exception. The court staff will advise what form is required.

6. Ongoing screening and assessment

Screening and assessment should be an ongoing process throughout the client contact. In addition to screening and assessment at the intake stage, it should continue to be done, if not formally, then 'in the background' at each point of contact with the client. This is because there is the possibility that circumstances might have changed so that the type, or level or risk or need, may have altered.

It is not necessary for the FDR practitioner to see any written or other evidence before making a decision that FDR is inappropriate because of family violence. A practitioner must rely on their professional judgement.

If an FDR practitioner believes that FDR is inappropriate because of allegations of family violence, they are able to issue people with a certificate stating that it would not be appropriate to conduct FDR. It does not matter that family violence is also an exception to the requirement to attend FDR.

When family violence is identified after FDR has commenced

An FDR practitioner can issue a section 60I certificate to cover the situation where it becomes apparent during the course of the FDR that it would be inappropriate to continue. For example, where a history of violence impacts on a person's ability to negotiate is not picked up during the intake process but becomes apparent during FDR, the practitioner may decide to stop the process and issue a certificate.

On the certificate, the FDR practitioner is only required to indicate that FDR is inappropriate. Practitioners are not required to provide any reason why it is inappropriate. Communications to FDR practitioners are not admissible in court proceedings, except in cases of child abuse where the court cannot obtain the information through other sources.

7. Supervision

Anyone conducting screening and assessment should receive regular professional supervision to ensure they are working in a way which accords with good practice, and to address other practice issues. The supervision should be:

- provided by a suitably qualified and experienced supervisor
- conducted individually or, where appropriate, in a supervisor-facilitated group, or, where specialists or professionals are suitably experienced, in a peer group, and
- based on individual needs for supervision.