



Protocol for the provision of legal assistance in Family Relationship Centres (2017)

A central role of Family Relationship Centres (FRCs) is to provide information, advice and dispute resolution services to help people reach agreement on parenting arrangements without going to court. To enable this, it is important that parents are aware of the broader family law system and their rights and responsibilities under the *Family Law Act 1975* (the Family Law Act).

Since June 2009, legal professionals have been able to provide a range of legal assistance to clients at FRCs, including during Family Dispute Resolution (FDR). This has enabled legal support to be available to families at key times when they are resolving their disputes, and has facilitated a more integrated and collaborative family law system, whilst ensuring that the best interests of the child remain the primary focus of FDR.

This Protocol was updated in 2017 to enable legal practitioners to continue to act for a client in litigation in circumstances where FDR has not been successful.

Objectives

This Protocol has been prepared to assist FRCs and practising legal professionals with the provision of legal information and advice to FRC clients. The Protocol should be adopted by individuals involved in the provision of legal assistance in FRCs, and is in addition to the standard professional duties and obligations required of legal professionals, FDR practitioners, and other FRC staff.

The purpose of providing legal assistance in FRCs is to:

- assist clients to better understand their legal obligations and responsibilities; and advise them in resolving their own disputes where possible
- increase the FRCs' flexibility in how they provide services to separated or separating clients
- increase the likelihood that clients will be able to utilise legal assistance in FRCs in a timely and non-adversarial way, and
- help maximise client safety, as clients go through separation and divorce.

Clients include separating or separated parents and significant family members, such as grandparents. Under the Family Law Act, all relevant professionals are required to help clients focus on, and reach agreements, that are in the best interests of the child/ren.

Scope and definition of legal assistance that can be provided in FRCs

Legal assistance may be provided by practising legal professionals, including private lawyers¹ and lawyers from, or retained by, legal assistance services (such as Community Legal Centres or Legal Aid Commissions).

Legal assistance may be provided in the FRC at any stage during a client's involvement with the FRC² and may include:

- legal information sessions for clients or staff on an individual or group basis
- individual legal advice sessions to help clients identify and understand key legal issues affecting their situation
- legal information about various types of dispute resolution processes
- referral of clients to other legal services
- formalising parenting agreements
- legal support and/or the provision of legal advice during all or part of a FDR session, and
- assisting with, or providing advice on, court applications where exceptions to FDR apply, or where certificates have been issued when FDR has not occurred or has been unsuccessful.

Each FRC may operate within a different framework, and legal practitioners will need to operate within the guidelines of the particular FRC.

FRCs must not set entry conditions on private lawyers that lead to unnecessary additional costs being passed on to clients.

Role of FRCs

In relation to the provision of legal assistance in an FRC, Centre staff will:

- conduct screening and assessment processes to monitor clients' needs throughout their engagement with the FRC
- work to ensure the safety of all participants at the FRC, including clients, legal professionals and staff of the Centre
- ensure the appropriate and timely involvement of legal professionals in the provision of legal assistance to clients

¹ Private lawyers – for the purpose of this Protocol, “private lawyers” are those who are retained by a client to appear for fee or reward, and also include private practitioners who are retained by an FRC, Community Legal Centre or Legal Aid Commission for the purpose of providing legal assistance under this Protocol. Private lawyers providing pro bono legal assistance services to an FRC are also included in this definition.

² (See *Operational Framework for Family Relationship Centres: Guidelines for Referral to Legal Advice by Staff in Family Relationship Centres* for examples of when legal assistance may be needed).

- work collaboratively and in partnership with legal professionals to ensure that the clients' needs are met, and
- ensure that all professionals working in the FRC understand their obligations under section 63DA of the Family Law Act.

Role of Legal Professionals

In providing legal assistance in FRCs, legal professionals will:

- assist clients in a non-adversarial and child-focussed way to reach resolution without litigation where appropriate, while prioritising the best interests of the child
- ensure appropriate client confidentiality
- undertake conflict of interest checks prior to the provision of advice and/or assistance
- assist clients to develop realistic expectations about FDR and outcomes, particularly where clients are focused on court/legal processes to enforce perceived legal entitlements
- advise clients of the risks and costs involved in court processes
- assist clients to identify areas of agreement, potential agreement and disagreement
- work with the FRC staff (including FDR practitioners) to meet the clients' needs in an appropriate and timely way
- as may be agreed between the legal practitioner and their client, assist the client to draw up documents (such as consent orders), and
- ensure that any information obtained during the FDR process is not misused in any subsequent litigation

When supporting their clients in an FDR process conducted at an FRC, legal professionals agree to work collaboratively with FRC staff and FDR practitioners in a non-adversarial process to negotiate a fair resolution without litigation, where possible and appropriate. In doing this, lawyers agree to work with FDR practitioners to ensure and maintain the integrity of the FDR process including the requirements of honesty, disclosure and genuine effort.

Role of Family Dispute Resolution Practitioners

The need for legal assistance in the FDR process should be considered on a case-by-case basis by the FDR practitioner. A screening and assessment will be conducted to identify 'risk' factors including physical and/or emotional violence, financial abuse, substance/alcohol misuse, the needs and capacity of a client, cultural issues and the appropriateness of participation in FDR. The assessment will also consider the need for legal assistance.

If the need for legal assistance is identified, the client will be directly referred for legal advice, or if legal participation in FDR is recommended, liaison with the legal practitioner/s should commence to establish the parameters of their participation. This should be regularly reviewed throughout the client's involvement with the FRC.

Where screening and assessment has identified that a legally assisted FDR is not appropriate, the FDR practitioner is responsible for making the final decision on how, or if, the FDR process will take place at the FRC.

Where one client is eligible for assistance through a Legal Aid Commission and wishes to undertake FDR, the clients should be referred to the Commission in the first instance. Commissions and FRCs should work together to ascertain how best those referrals should take place.

It is preferable that all participants are legally supported during FDR processes in FRC premises. However, it may be possible to proceed where only one client has legal support and the non-represented client has had a real opportunity to obtain legal advice or representation but has not; consents to the arrangement; and the FDR practitioner assesses that it is appropriate to proceed with FDR. However, where a party does not consent to the arrangement, it is up to the FDR practitioner to determine whether it is appropriate to proceed to FDR without legal support for both parties, or whether there are other options for the parties involved.

In conducting FDR, FDR practitioners will:

- ensure their obligations under section 63DA of the Family Law Act are met before commencing FDR sessions
- assess the appropriateness of the type of dispute resolution to be provided in consultation with the clients and their legal advisers and, where clients are from Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse backgrounds, consider cultural issues in determining the nature of dispute resolution to be provided
- ensure that all attendees understand the FDR process and confidentiality and admissibility requirements of FDR practitioners and legal professionals under sections 10H and 10J of the Family Law Act
- ensure that all attendees understand the role of FDR practitioners and legal professionals in the FDR process
- ensure FDR sessions are conducted in an impartial, cooperative way that is non-adversarial, child-focussed, and addresses real or perceived power differences between the participants
- assist clients in a non-adversarial and child-focussed way to reach resolution without litigation where appropriate, while prioritising the best interests of the child
- suspend or terminate sessions if they become adversarial, if power differences arise and cannot be addressed or if wider legal issues, outside family law, arise during the process and negatively impact on the FDR process

- ensure that all participants have appropriate legal support and advice during FDR sessions if the process is to be conducted with lawyers present
- ensure clients are able to freely articulate and negotiate their issues within FDR sessions, and
- determine the type of section 60I certificate to be issued (if any).

Collaborative Dispute Resolution

Collaborative dispute resolution in an FRC will be characterised by the following features:

- an interests-based negotiation approach to the resolution of family disputes where the participants and their (private) lawyers have signed a 'statement of good faith' that the dispute shall be resolved without the commencement of litigation or the threat of litigation. In the event that the matter is not resolved, the participants' lawyers and their firms may act for their client in any subsequent litigation
- a recognition by lawyers that litigation may be an option of last resort and of all the options available to separating or separated families can be a costly way, both financially and emotionally, to resolve disputes
- a recognition by lawyers that advice provided to clients setting out the different options for resolving a dispute should be directed towards a fair process and just outcomes for the clients and in certain cases the process will be of equal importance to the outcome
- the paramount importance of promoting and encouraging a communication model for the clients which is constructive, having regard to long-term family relationships and most importantly, in the best interests of the children
- the narrowing of the issues in dispute founded upon interest-based negotiation and the effective and timely resolution of the dispute, and
- ensuring that costs are not unreasonably incurred by clients.

In working collaboratively with FDR practitioners at an FRC, legal professionals will:

- undertake conflict of interest checks prior to the FDR process taking place
- ensure that all matters discussed with clients are confidential and privileged
- recognise that the FDR practitioner is responsible for managing FDR processes within FRCs, and
- participate in proceedings conducted by the FDR practitioner in a non-adversarial way that is child-focussed and contributes to addressing any power differences between the participants engaging in FDR.