

Preparing for Family Dispute Resolution

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Factsheet



This fact sheet summarises the Ask LOIS webinar on this topic presented on 17 October 2019 by Jessica Hannam, Solicitor, Women's Legal Service NSW
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This factsheet will cover the following:

- [What happens at the FDR session](#)
- [Parenting Plans vs Consent Orders](#)
- [What is a section 60I certificate and how to obtain one](#)
- [The intersection between FDR and ADVO's](#)
- [Changing parenting orders](#)

What happens at Family Dispute Resolution?

Types of Family Dispute Resolution (FDR)

Joint FDR

The parties are in the same room, usually sitting around in a circle or at a desk opposite each other.

Shuttle FDR

Shuttle FDR usually occurs where there has been family violence between the parties, and/or one party feels intimidated by the other party and does not feel comfortable negotiating directly with the other party in a face-to-face setting. In this setting the Family Dispute Resolution Practitioners (FDRPs) will talk to one party first, usually the party who initiated the FDR, obtain their proposals and then go to the other party to discuss and obtain that party's proposals.

Telephone FDR:

The session takes place with one or more parties participating over the phone. Less common, except where the client is in a rural or remote service and a lawyer is assisting via telephone from a distance.

Legally Assisted FDR

A solicitor is present to assist the client. The solicitor does not argue on behalf of the client, such as in court or other negotiations, but is there to support and assist the client reach an agreement. WLS has a partnership with Blacktown and Penrith Family Relationship Centres where, at the discretion of the FDRP we are invited to assist client's in their FDR sessions. Other community legal centers have reciprocal arrangements with other FRC's around the state, Legal Aid NSW also offers grants of legal aid for FDR and a solicitor will be present. There are also private mediators who can set up and facilitate a FDR session.

The role of the FDRP

There are several key features to the role of the FDRP:

- They are impartial, they do not (and cannot) take sides;
- They are there to facilitate negotiations between parties, in a child focused way;
- They cannot force parties to agree;
- They cannot give parties any legal advice.
- They can draft parenting plans if an agreement is reached
- They can also issue s60I certificates.

Types of Agreements

There is a range of possible outcomes from FDR:

- Verbal agreement
- Parenting plan (signed and dated)
- Consent orders (filed with the court, becomes binding, in place until a child turns 18)
- No agreement reached

Clients should consider what they wish to raise at FDR, what they want to achieve, what their "bottom line" is – i.e. what they will and will not accept. They should obtain legal advice beforehand, and should not feel pressured to enter into an agreement.

What is a s60I certificate and how to obtain one

Section 60I certificates allow a party to file in court for orders if FDR failed to result in an agreement and they would like formal orders in place for the care arrangement of their child/ren. They are valid for 12 months from the date of issue by the FDRP.

There are 5 types of s60I certificates:

1. The person did not attend FDR due to the refusal or failure of the other person or people to attend;
2. The person did not attend FDR because the practitioner did not consider it would be appropriate to conduct FDR;
3. The people attended FDR, conducted by the practitioner, and all people made a genuine effort to resolve the issue or issues in dispute;
4. The people attended FDR, conducted by the practitioner, but one or more of them did not make a genuine effort to resolve the issue or issues in dispute;
5. The people began FDR, but part way through the practitioner decided it was not appropriate to continue.

**Certificate by family dispute resolution practitioner –
section 60I of the Family Law Act 1975 (Cth)
Dispute about matters that may be dealt with under
Part VII of the Act between**

_____ (parties)
in relation to _____
_____ (issues in dispute)
I, _____, (**Name of family dispute resolution practitioner)
state (select only one of the following paragraphs):

(a) _____ (party or parties) did not attend family dispute resolution with me and the other party or parties to the proceedings but that person's failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend.

(b) _____ (party or parties) did not attend family dispute resolution with me and the other party or parties to the proceedings because I consider, having regard to the matters mentioned in subregulation 25 (2), that it would not be appropriate to conduct the proposed family dispute resolution.

(c) _____ (parties) attended family dispute resolution with me and all attendees made a genuine effort to resolve the issue or issues in dispute.

(d) _____ (party or parties) attended family dispute resolution with me and the other party or parties to the proceedings but _____ (party or parties) did not make a genuine effort to resolve the issue or issues in dispute.

(e) _____ (party or parties) began attending family dispute resolution with me and the other party or parties to the proceedings but I consider, having regard to the matters mentioned in subregulation 25 (2), that it would not be appropriate to continue the family dispute resolution.

_____ (*Name of family dispute resolution practitioner)
_____ (**Signature of family dispute resolution practitioner)
_____ (Registration number)
_____ (Organisation, if applicable)
_____ (Date of certificate)
_____ (Date of last attempted attendance at family dispute resolution (for (a) or (b)))
OR
_____ (Date of last attendance at family Dispute resolution (for (c), (d) or (e)))

*The family dispute resolution practitioner has the discretion to give, or not to give, his or her surname.

**The family dispute resolution practitioner has the discretion to sign, or not to sign, the certificate.

Figure 1 Example of Section 60I Certificate

The intersection between FDR and ADVOs

There are a range of factors to consider regarding entering into FDR when there is an ADVO in place.

The first is whether FDR is appropriate at all if there is a history and context of violence. An FDRP may issue a s60I certificate allowing your client to go to court without attending FDR if the FDRP considers FDR would not be appropriate because of domestic violence (see type 2 of s60I certificates).

Even if there is a history of violence, your client may wish to go to FDR, and it may be in her interests to do so. Shuttle FDR can be arranged so your client feels safe, and it may be also necessary to have a legally assisted FDR.

An ADVO may prevent the parties from participating in FDR, and it may not. It will depend upon the specific orders that are included in the ADVO.

Order 2 and order 6 are most likely to be relevant. They read as follows:

Orders about contact

2. You must not approach the protected person or contact them in any way, unless the contact is through a lawyer.

This means that you can't approach the protected person or contact them by phone, text message, email, writing, through a third party, or in any other way, except through your lawyer. This means that you can't try and find the protected person by any method including online, by phone or asking anyone.

Orders about family law and parenting

6. You must not approach the protected person or contact them in any way, unless the contact is:
- through a lawyer, or
 - to attend accredited or court-approved counselling, mediation and/or conciliation, or
 - as ordered by this or another court about contact with child/ren, or
 - as agreed in writing between you and the parent(s) about contact with child/ren.
- or
- as agreed in writing between you and the parent(s) and the person with parental responsibility for the child/ren about contact with the child/ren.

This means that you can't approach or contact the protected person by phone, text message, email, writing, through a third party, or in any other way, except through your lawyer,

or to go to court approved counselling or mediation or conciliation or as ordered by a court or as agreed with the other parent. Order 6E is an alternative to order 6D where there is an agreement in writing with another person who has parental responsibility for the children, such as a grandparent.

Shuttle or telephone mediation may be necessary for FDR to take place without an ADVO breach.

Ensure that adequate safety plans are put in place e.g. parties arriving and leaving at different times, shuttle mediation, etc.

Changing Parenting orders

If the existing orders are more than 12 months old then the parties have to go back to FDR to change them.

If an agreement is reached at FDR, a parenting plan can be drafted which can "sit on top of" existing parenting orders and have the effect of amending the orders to reflect the new agreement **or** new consent orders can be drafted and filed with the court.

If no agreement can be reached at FDR then a s60I certificate will be issued, the party wishing to change the orders must file in court and will need to show that there is a "substantial and significant change in circumstances" that warrants the court making new orders.