

# Essential information on Family Dispute Resolution



The *Family Law Act 1975* (Cth) and regulations require Family Dispute Resolution Practitioners (FDRPs) to ensure that you receive information to enable you to understand important elements of Family Dispute Resolution (FDR).

Please read the following information prior to commencing FDR and seek any clarifications necessary.

## The role of the FDRP

The role of the FDRP is to help parties in dispute to come to points of agreement on parenting and/or property matters and other associated issues that may be in dispute. Where there are children involved, the FDRP is required by law to ensure all parties in FDR focus on the best interests of the children.

The role of the FDRP is not to give legal advice. The FDRP is independent and impartial. The FDRP does not make decisions for parties. The FDRP however may at times encourage exploration of options to help the parties reach best outcomes. The FDRP will help parties communicate respectfully in a safe and comfortable environment.

The FDRP will assist parties to:

- identify and clarify the issues in dispute.
- develop and consider possible options to resolve those issues.
- explore the practicality and acceptability of option.
- help develop solutions that are in the best interests of the children.

## Conflict of interest

The FDRP is required to declare any real or potential conflict of interest.

## Suitability for FDR

FDR may not be suitable for all parties. The FDRP will conduct an assessment to determine whether it is appropriate for FDR to proceed and will inform the parties if a decision is made not to proceed.

## Information on services that assist reconciliation FLA section 12C

If you are married and considering separation and divorce and are considering going to court to enter proceedings about your children or finances, the FDRP may provide you with information about counselling or other services available to help with reconciliation.

## Participation in FDR

FDR is a voluntary process, however before filing an application in the Federal Circuit and Family Court of Australia for an order in relation to a child, parties are required, with some exceptions, to attend FDR and to make a genuine effort to resolve any dispute relating to children. Exceptions may include, for example, an urgent application to the court, family violence, child abuse or an inability to contact one party.

## Full and frank disclosure

Parties to a family law dispute have a legal obligation to provide to each party all information relevant to an issue in the case in a timely manner. This includes disclosing all information and documents that a party controls or can obtain.

The parties to FDR agree they will fully disclose to each other, all information which is relevant to matters discussed as part of the FDR process. Failure to disclose information may result in any agreement reached in FDR being put aside.

## Good faith

The parties agree they will engage in FDR activities in good faith, undertaking to work together as well as they are able in a genuine effort to resolve the issues that may be in dispute.

## Status quo

Parties agree that all arrangements in place regarding issues to be discussed in FDR will remain in place until the parties agree to change, following discussion.

## Termination of FDR

The FDRP or either party has the right to terminate FDR at any time.

## Section 60I Certificate

An application to court requires a Section 60I Certificate from a registered FDRP.

The court may take into account the Section 60I Certificate when deciding whether or not to make an order referring the parties to FDR or to award costs against the person.

The Section 60I Certificate shows the outcome to the attempted FDR process. The FDRP will fill in the parties' details having assessed the most suitable category on the certificate.

The reasons for the issuing of the Section 60I Certificate include:

- one party did not attend family dispute resolution due to the refusal, or the failure of the other party or parties to attend.
- the practitioner decided the situation was not appropriate for family dispute resolution.
- all parties attended and made a genuine effort to resolve the dispute.
- all parties attended but one or more did not make a genuine effort to resolve the dispute.
- the family dispute resolution started but part way through the practitioner decided it was not appropriate to continue.

## Best interests of the child

In accordance with the *Family Law Act 1975 (Cth)*, if a dispute involves children the best interests of the children is the paramount consideration.

## Involvement of children in the FDR process

By agreement and if appropriate, children may be interviewed by a child specialist FDRP or other suitably trained professional.

At the suggestion of the FDRP and with the agreement of both parties, the child's views can be included in the FDR process.

It is important to consider the views of children and how any agreements reached in FDR may impact on the children. For example, the FDRP may consider the impact of parental conflict on children and/or relevant aspects of child development.

## Mandatory reporting Family Law Act 1975 (Cth) section 67ZA

In cases of child abuse the FDRP has a mandatory reporting obligation where the FDRP has reasonable grounds for suspecting a child has been abused or at risk of abuse.

## Parenting plan

If parents wish to develop a parenting plan the FDRP can assist in the preparation. Parenting plans are not legally enforceable; however, the parenting plan may be used as the basis for Consent Orders to be lodged at the Federal Circuit and Family Court of Australia and may be considered as part of any legal or court proceedings including proceedings brought in relation to existing Parenting Orders.

## Confidentiality and inadmissibility Family Law Act 1975 (Cth) section 10H and 10J

The FDRP's confidentiality and disclosure obligations include that a FDRP must not disclose any communication in FDR unless the disclosure is required or authorised under the *Family Law Act 1975 (Cth)*. The FDRP is required to disclose a communication in Family Dispute Resolution if it is reasonably believed that it is necessary to disclose in compliance with a law of the Commonwealth or states.

The FDRP will not maintain confidentiality if it is reasonably believed that disclosure is necessary for:

- protecting a child from risk of harm
- preventing serious and imminent threats against persons or property
- reporting or preventing crimes or threats of violence to a person or damage to property.
- assisting an independent children's lawyer to represent a child.

The FDRP may also disclose a communication, with the consent of the person who made the disclosure where that person is an adult or where the disclosure was made by a child under 18 years, if the parents of the child consent to the disclosure.

## Confidentiality agreement by parties and support persons

The parties agree to participate in FDR as a confidential process. Discussions within FDR are 'without prejudice'. This means anything said, or any offer or admission made in FDR cannot be used in any court or legally authorised proceeding, in any jurisdiction.

Additionally, a communication made when a professional consultation is being carried out, on referral from a FDRP, is inadmissible in any court or proceedings in any jurisdiction.

## Legal advice

Parties are encouraged to seek legal advice at any stage in the FDR process and the FDRP may recommend parties seek legal advice.

## Support persons

With prior agreement of both parties and the FDRP, support persons may attend FDR. Support persons do not speak or participate in the process. Support persons are required to sign a confidentiality agreement.

## Complaints process

A complaints process is available at the Resolution Institute. If you wish to make a complaint about the FDR service provided by the FDRP, the Resolution Institute can be contacted as follows:

Email [infoaus@resolution.institute](mailto:infoaus@resolution.institute)

Phone 02 9251 3366 or 1800 651 650

Website [www.resolution.institute](http://www.resolution.institute)

## Johnson Family Law and Mediation - Contact us

For more information about the FDRP process or to organise FDR please contact us:

Email [fiona@johnsonfamilylaw.com.au](mailto:fiona@johnsonfamilylaw.com.au)

Phone 0401 689 903

### Your Mediator - Fiona Johnson

Fiona is an accredited Family Dispute Resolution Practitioner (FDRP) with the Commonwealth Attorney-General's Department. Fiona has an extensive background as a family lawyer and is the principal of Johnson Family Law and Mediation.

### Fiona's Qualifications

- Graduate Diploma in Family Dispute Resolution Practice from College of Law
- Master of Applied Law (Family Law)
- Specialist Accreditation (Family Law)