



FEDERAL CIRCUIT
AND FAMILY COURT
OF AUSTRALIA

Compulsory pre-filing Family Dispute Resolution – court procedures and requirements

This fact sheet is for people who need information on the procedures and requirements for compulsory Family Dispute Resolution prior to the commencement of family law proceedings.



FDR (Family Dispute Resolution) is a form of mediation facilitated by an independent, and registered Family Dispute Resolution Practitioner (FDRP).

FDR is a practical way for separating families to try to resolve any disagreements and make arrangements for the future without going to court. If you reach agreement with the assistance of an FDRP you can enter into a parenting plan or file an Application for Consent Orders so that the agreement is made in to binding court orders. If you are unable to reach agreement you can request that the FDRP issue a certificate referred to below.

Procedures

Except in limited circumstances, the *Family Law Act 1975 (Cth)* (the Act) requires you to obtain a certificate from a registered FDRP before you file an application for an order in relation to a child under Part VII of the Act. Part VII of the Act covers applications for several different types of orders relating to children. The most common are applications for parenting orders; that is, an application asking a court to make orders about which parent a child lives, or spends time, or communicates with.

When do I need to provide a certificate?

If your application is for a parenting order, then you must file a certificate with your application to the Court. This requirement applies even if you have pre-existing orders in relation to the child that is the subject of the current application. However, in certain circumstances the Court may grant you an exemption from the requirement to file a certificate. Refer to ***What are the exceptions to providing a certificate?*** on page 2.

When don't I need to provide a certificate?

You do not have to provide a certificate if you are seeking:

- interlocutory orders only (generally these are orders to operate until your case has a final hearing) unless you are applying for these orders at the same time as filing an [Initiating Application \(Family Law\)](#)
- property settlement or financial orders only, even if you have children
- consent orders
- Hague Abduction Convention orders
- child support, or
- an amended application (relating to a child that is the subject of the current application).

The certificates, known as section 60I certificates, can be issued only on the basis that:

- 1 one party refused to attend the FDR
- 2 the FDRP was of the view the matter was not appropriate to conduct FDR
- 3 both parties attended and made a genuine effort to resolve the dispute
- 4 both parties attended but one did not make a genuine effort, or
- 5 FDR began but the FDRP determined it was not appropriate to continue.

What are the exceptions to providing a certificate?

Under section 60I(9) of the Family Law Act, you can seek an exemption from providing a certificate in the following circumstances:

- if your matter is urgent
- if the Court is satisfied that there are reasonable grounds to believe that:
 - there has been child abuse and/or family violence by a party
 - there is a risk of family violence by a party, and/or
 - there is a risk of child abuse if there were to be a delay in applying to the Court
- where a party is unable to participate effectively in FDR (for example, due to an incapacity to do so or physical remoteness from a FDR provider)
- if your application relates to an alleged contravention of an existing order that was made within the last 12 months, and there are reasonable grounds to believe that the person who has allegedly contravened the order has behaved in a way that shows a serious disregard for his or her obligations under that order.

To apply for an exemption for any of the reasons above, you must either:

- prepare and file an [Affidavit - Non-Filing of Family Dispute Resolution Certificate](#) or,
- if you are filing an [Initiating Application \(Family Law\)](#) seeking interlocutory orders at the same time, you can include the same information in the affidavit that you must file with this application.

[The Affidavit - Non-Filing of Family Dispute Resolution Certificate](#) is available on the Court's website at www.fcfcoa.gov.au.

Family violence or child abuse exemption

If you seek to apply for an exemption relating to family violence or child abuse, you may need to obtain information from a family counsellor or FDRP about the services and options (including alternatives to court action) available to you in circumstances of abuse or violence. You can get this information by calling the Family Relationship Advice Line on **1800 050 321** or by talking to a family counsellor or FDRP.

This does not mean that you must attend family dispute resolution or make endeavours to do so. All that you are required to do is obtain information about services and options that are available.

You must provide written acknowledgment of receiving the information. You can do this by completing the form [Acknowledgment - Information from a Family Counsellor or Family Dispute Resolution Practitioner](#). This form is available on the Court's website at www.fcfcoa.gov.au. If you are filing an [Initiating Application \(Family Law\)](#) seeking interlocutory orders, you may instead include this information in the affidavit filed in support of your application.

Obtaining the information is not required where, in addition to the grounds listed above, the Court is satisfied there are reasonable grounds to believe that:

- there would be a risk of abuse of a child if there were a delay in applying for the order, or
- there is a risk of family violence by one of the parties to the proceedings.

What happens if I don't file a certificate or an affidavit applying for an exemption?

A certificate is required when you file your application unless the matter falls within one of the exceptions outlined above, in which case you must file an affidavit. If these requirements are not met, the Court cannot accept your application and the case cannot progress.

Legal advice

You should seek legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court. You can seek legal advice from a legal aid office, community legal centre or private law firm. Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

Personal safety

If you have any concerns about your safety while attending court, please call **1300 352 000** before your court appointment or hearing. Options for your safety at court will be discussed and arrangements put in place. By law, people must inform a court if there is an existing or pending family violence order involving themselves or their children. More detail is available in the brochure [*Do you have fears for your safety when attending court?*](#) available on the Court's website www.fcftoa.gov.au.

Need more information?

For more information about compulsory FDR (or to find a FDR service provider in your local area) call the Family Relationships Advice Line on **1800 050 321** or go to www.familyrelationships.gov.au.

For more information about filing an application with the Court:

- go to www.fcftoa.gov.au
- live chat on the website
- call the National Enquiry Centre on **1300 352 000**.

 Live Chat