

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.



The Family Law Act 1975 (Cth) (the Act) requires that you make a genuine effort to resolve disputes about children, such as where a child will live, who they will spend time with and communicate with, and other arrangements for their care, through Family Dispute Resolution (FDR). Unless an exception applies, this must be done before an application is made to the court for court orders.

FDR 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 plan for the future without going to court. If you reach agreement with the assistance of an FDRP you can enter a parenting plan, or file an *Application for Consent Orders* so that the agreement is a binding court order. If you are unable to reach agreement you can request that the FDRP issue a certificate referred to below.

Procedures

Except in limited circumstances, you must attempt FDR before you can file an application for parenting orders. If you attempt FDR but either cannot reach agreement, or the FDRP decides that it is not appropriate for you to attend FDR, they will issue you with a certificate. The certificate, known as a section 60I certificate, is proof that you have attempted FDR and is valid for 12 months. The Certificate can only be issued when:

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

When do I need to file a certificate with the Court?

If you want the Court to make parenting orders, then you must file a valid section 60I certificate with your application for parenting orders, or you must ask for an exemption.

An exemption allows you to start court proceedings without needing to attempt FDR. You cannot start court proceedings in relation to parenting without either having a 60I certificate, or an exemption from FDR.

This requirement applies even if you have pre-existing orders in relation to the child that is the subject of the current application.

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

- Interim 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)*
- financial or property orders only, even if you have children
- an Application for Consent Orders
- Hague Abduction Convention orders
- child support, or
- an amended application (relating to a child that is the subject of the current application).

Am I eligible for an exemption?

You can seek an exemption from providing a certificate if:

- your matter is urgent, or
- 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
- one or both parties are unable to participate effectively in FDR (for example, due to an incapacity to do so or physical remoteness from an FDR provider), or
- if your application relates to an alleged contravention of an existing parenting order that is less than 12 months old, 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 their 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](#) explaining the exemption you seek or,
- if you are filing an *Initiating Application (Family Law)* seeking interlocutory orders at the same time, you can explain the exemption you seek 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.fcfsa.gov.au.

What happens if I am refused an exemption?

If you seek an exemption from participating in FDR, and a Registrar decides that you are not eligible for an exemption, your application for parenting orders will be rejected for filing. If you sought orders in relation to financial or property at the same time, then you will have to refile your application seeking only financial or property orders. You will need to comply with the 60I requirements before you can seek parenting orders.

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 attempt 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.fcfsa.gov.au. If you are filing an *Initiating Application (Family Law)* seeking interim 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 providing evidence for the exemption. 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. The law says you must tell the Court if there is an existing or pending family violence order involving you or your 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.fcfcoa.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.fcfcoa.gov.au
- live chat on the website
- call the National Enquiry Centre on **1300 352 000**.

Live Chat