



# What is Family Dispute Resolution?

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Family Dispute Resolution (FDR) is a type of [mediation](#). It can be used by separated couples to resolve parenting and/or property disputes. In this article we will explore the types of FDR available to parties (both before and after court proceedings have commenced), the FDR process and commonly asked questions.

An FDR conference (**conference**) is run by an FDR practitioner (**practitioner**) who will guide negotiations and facilitate discussions between the parties. The practitioner is an independent third person. They are not able to provide the parties with legal advice and cannot make legally binding decisions. The practitioner can, however, help to identify issues in dispute and assist the parties to explore ways in which to resolve these issues. This often involves thinking outside of the box.

## Types of FDR

There is [an expectation for separated couples to make a genuine effort to resolve parenting and/or property matters prior to issuing court proceedings](#). This includes a requirement for the parties to attend FDR.

## FDR before court proceedings have commenced

### Government funded FDR

These services can be accessed via local Family Relationship Centres, Community Organisations (such as Relationships Australia and Better Places Australia) and Victoria Legal Aid. To [find your local FDR Service click here](#).

Government funded FDR services are available free of charge or for a nominal fee. Unfortunately, due to the number of people accessing these services there can often be long wait lists (often months).

## Privately funded FDR

If there are urgent issues to be addressed and if it is financially viable for the parties to do so, they may opt for privately funded FDR.

The cost of a privately funded FDR will be dependent on the practitioner engaged and can be shared between the parties. A privately funded FDR can usually be organised within a few weeks.

If FDR is not appropriate or is unsuccessful, a section 60I certificate will be issued. This certificate allows a party to make an application to the Federal Circuit and Family Court. Parties will generally require a section 60I certificate before court proceedings can be issued.

The court encourages the use of FDR even after court proceedings have been issued and may make an order for parties to attend a further FDR Conference.

## FDR – after court proceedings have commenced

- For [parenting matters](#), this is called an FDR Conference. To assist the parties to narrow down or resolve the issues in dispute, the court will often organise a [Child Impact Report](#) prior to any conference.
- For [property matters](#), this is called a [Conciliation Conference](#). To assist the parties to narrow down or resolve the issues in dispute, the court may make orders for the parties to exchange [financial disclosure documents](#) and/or obtain [formal valuations](#) in respect of certain assets prior to any Conciliation Conference.

Due to the limited resources available in the Federal Circuit and Family Court of Australia, where parties have the financial capacity to pay for a privately funded mediation, the court may make orders for the parties to attend a privately funded mediation as opposed to a Conciliation Conference.

## The process for family dispute resolution (FRD)

FDR is usually a two-part process.

### Part 1: Intake

The FDR practitioner will meet with both parties independently (usually via telephone or video conference) to introduce themselves, explain the FDR process and to ascertain the parties' respective positions and what they are seeking to achieve from the process.

Prior to a conference, parties may be required to complete a [Confidential Case Outline document](#).

At the intake session, the practitioner will also be assessing whether FDR is appropriate considering factors such as:

- [family violence](#) and the safety of each party;
- any risks to children;
- equality of bargaining power; and
- the mental health of the parties.

## Part 2: the FDR conference

The FDR conference itself can be conducted in two ways. The parties may opt for a shuttle conference (parties are in separate rooms/virtual rooms and do not have direct contact with each other) or a joint conference (parties are in the same room/virtual room and engage in direct discussions). The FDR practitioner will determine the appropriate method taking into account the parties' wishes.

During the conference the practitioner will facilitate settlement discussions between the parties and will work towards reaching a final parenting and/or property settlement agreement. If an agreement can be reached, the practitioner will assist the parties to take steps towards formalising the agreement reached.

It is important to note that everything said to a practitioner during a conference is confidential. The rationale being that parties will be more open to exchanging genuine offers to settle and/or moving from their respective positions if they can be confident that any compromises cannot be used against them in the future. There are exceptions to this rule, including but not limited to, prevention of a threat to a person's life or health and/or the commission of a crime.

## Commonly asked questions about Family Dispute Resolution

### Can I access FDR remotely?

Yes, most FDR providers offer conferences via electronic means including telephone and video conference.

### Can my lawyer attend FDR?

Lawyers are generally not permitted or encouraged to participate in Government funded FDR. They may be permitted to be present to provide you with advice, however parties should check

with the relevant FDR provider.

Lawyer assisted FDR is more common for privately funded FDR and/or after court proceedings have commenced. It is recommended in the latter.

## Can children be included in the FDR process?

Yes, if children are old enough and/or mature enough to express their views it is possible for them to be involved in the FDR process. This is called child inclusive FDR.

In a child inclusive FDR, the child/children will meet with the practitioner and express their views by talking, drawing and/or participating in activities. The children's views can be fed back to the parents to assist with decision making. This can help to ensure that any final parenting agreement reached takes the child's needs/wants into account.

## What happens if FDR is successful?

If FDR is successful, parties should seek assistance from a family law lawyer to formalise the agreement reached. For parenting agreements this can be by way of a [Parenting Plan or an Application for Consent Orders](#) and for property matters this can be by way of an [Application for Consent Orders or a Financial Agreement](#).

## What happens if FDR is unsuccessful?

If FDR is unsuccessful, the practitioner will issue a section 60I certificate meaning that parties can issue court proceedings in the Federal Circuit and Family Court of Australia.

Parties should seek advice from a family law lawyer to determine whether court proceedings are necessary or whether there are alternative options available. Lawyer assisted negotiations may assist where parties were able to narrow down the issues in dispute during the conference but were not able to reach a final agreement.

## Get help from a family lawyer

Whether you are considering FDR, have a conference scheduled or have already participated in a conference, we can provide advice and assistance. Please contact us to schedule a free initial consultation.

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*This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*