



# Family Dispute Resolution

## Information Brochure



An Australian Government Initiative

Provided in Central Queensland by

**CentacareCQ**

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# Family Dispute Resolution

**Family Dispute Resolution (FDR) is a process in which a family dispute resolution practitioner (FDRP), independent of the parties, helps them to resolve some or all of their disputes arising from separation or divorce. This Fact Sheet outlines the information that must be provided to the parties of Family Dispute Resolution prior to commencing the process.**

## **The FDRP has confidentiality and disclosure obligations**

Everything you say in front of an FDR practitioner is confidential. There are some exceptions, such as:

- a)** protecting a child from the risk of physical or psychological harm
- b)** preventing or lessening a serious and imminent threat to the life or health of a person
- c)** reporting the commission, or preventing the likely commission, of an offence involving violence or a threat of violence to a person
- d)** preventing or lessening a serious and imminent threat to the property of a person
- e)** reporting the commission, or preventing the likely commission, of an offence involving intentional damage to the property of a person or a threat of damage to property
- f)** assisting an independent children's lawyer to properly represent a child's interests to prevent a threat to someone's life or health or the commission of a crime.

In addition, an FDR practitioner may 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 who is under 18, if parents' consent to the disclosure. If agreement cannot be reached, the matter may be referred to the court for decision.

An FDR practitioner may also make disclosures in order to provide information for research relevant to families, as long as the information provided does not constitute 'personal information' as defined in section 6 of the Privacy Act 1988. 'Personal information' is information, or an opinion, from which an individual's identity is apparent, or can reasonably be ascertained.

## **That evidence of anything said or any admission made in FDR is not admissible in court**

Communications made in Family Dispute Resolution are not admissible in any court or proceedings, in any jurisdiction. Additionally, a communication made when a professional consultation is being carried out, on referral from an FDR practitioner, is also inadmissible in any court or proceedings in any jurisdiction.

In order to ensure that professionals to whom FDR practitioners make referrals are aware of the inadmissible status of communications made to them, FDR practitioners are required to inform relevant professionals of this when making a referral.

An admission or disclosure that indicates that a child under 18 has been abused, or is at risk of abuse, may be admitted as evidence unless there is sufficient evidence of the admission or disclosure available to the court from other sources.

## Our FDR process

Before you can engage in a joint mediation process with the other party, you will have to attend the following sessions:

### 1. Individual Appointment (termed Intake and Assessment Appointment)

Under the Regulations, an assessment of the parties involved in the dispute must be undertaken, to determine whether FDR is appropriate, prior to an FDR practitioner providing a joint Family Dispute Resolution (FDR) Session.

This appointment (generally of one hour 15 minutes duration) provides the opportunity for you and the Advisor to discuss your family situation and what matters you may want to bring to your joint Family Dispute Resolution (FDR) Session.

**The Practitioner is required by the Family Law Act to consider factors which may impact on the ability of a person to negotiate freely in the dispute. These factors include:**

- History of family violence
- Safety of both parties in participating
- Risk that a child has or may suffer abuse
- Equality of bargaining power
- Emotional, psychological and physical health
- Any other matter that is deemed relevant by the Practitioner to preclude FDR

If, after considering these matters, the FDR practitioner is not satisfied that FDR is appropriate, the FDR practitioner must not provide FDR.

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### 2. Pre Mediation Child Focus Appointment

This appointment (generally of one hour duration) is where the Practitioner will explain the Family Law Act 1975 as it relates to Family Dispute Resolution and the Best Interests of Children.

The Practitioner will also assist you to understand the potential impact of post separation conflict on children.

Where appropriate, the Practitioner can assist with referrals in order to support you and your children where conflict continues to impact post separation.

The Practitioner also provides guidance to parents on Parenting Plans and what may be included in them.

### 3. Joint Session (FDR)(Mediation)

The joint session is generally of three hours duration. Before commencing your joint session you will be asked to sign and date the **Agreement to Family Dispute Resolution**.

You will have been sent a copy of this with your first appointment confirmation letter. Please take time to read this Agreement as it explains the requirements of the Family Law Act, the process of FDR and the role of the Family Dispute Resolution Practitioner (FDRP).

You may bring your lawyer or a support person to your joint session. Support people provide 'silent support' - this means they do not play an active role in the mediation and must not participate in any discussions or negotiations about the issues being mediated or other issues that arise during the process.

You can talk to your support person about the issues being discussed when you are outside the conference room at scheduled breaks.

**Please note**, attendance of your Lawyer or Support Person is at the **discretion** of the Centre and should be discussed with your Practitioner at your Individual Appointment.

If everyone involved in the mediation doesn't agree, your support person will not be allowed in the mediation room. They will be able to wait outside in reception and give you support during breaks in the mediation process.

Breaks are scheduled as needed by the family dispute resolution practitioner or as requested by those involved in the process

You may need at some stage during your joint session to **take a break or to speak privately** with the FDRP. The FDRP can arrange this at your request and then will offer the same opportunity to the other party to the dispute.

Sometimes there may be two FDRPs present at your joint session. If this occurs, the FDRP will explain the reasons for this to you.

Remember fees may be charged if your session exceeds the Free Hours funded under the Family Relationship Centre fees guidelines. If you require more information about fees, talk to your Practitioner or refer to the Fees Schedule sent to you with your Confirmation of Appointment letter.

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### 4. Other Sessions

In some instances, the advisor or practitioner may require you to attend additional sessions to assist with the assessment and or to assist you with your preparation for mediation.



## **Family Dispute Practitioners**

A Family dispute resolution (FDR) practitioner is an independent person who helps people affected by separation or divorce to resolve their parenting disputes.

It is not the role of the FDR practitioner to give people legal advice (unless the FDR practitioner is also a legal practitioner).

Our FDR practitioners meet the accreditation standards in the Family Law (Family Dispute Resolution Practitioners) Regulations 2008, which includes having been assessed as competent in units that involve screening and assessing families for family violence and child abuse.

This department of the Attorneys General manages the accreditation of FDR practitioners in Australia.

## **Parenting Plans**

### **(Family Law Act 1975 – Sections 63DA(1)-(3) and 63C(2))**

A parenting plan is an agreement that sets out parenting arrangements for children.

A parenting plan covers the day-to-day responsibilities of each parent, the practical considerations of a child's daily life, as well as how parents will agree and consult on important, long-term issues, such as which schools children will attend.

A parenting plan is not a legally enforceable agreement, and is different from a parenting order, which is made by a court. Parties to a parenting plan can ask the court to make 'consent orders' in the terms of that plan.

The court will only make a consent order if it is satisfied that the terms of the plan are in the best interests of the child. Once made, consent orders are legally binding — they have the same effect as any other order made by a court.

If parents go to court at any time, the court will be required to consider the terms of the most recent parenting plan when making a parenting order in relation to a child, if it is in the best interests of the child to do so. In order to be recognised by the court, a parenting plan must be in writing, dated and signed by both parents. It must be made free from any threat, duress or coercion.

In addition, when considering the best interests of a child, the court will also consider the extent to which both parents have complied with their obligations in relation to the child, which may include the terms of a parenting plan.



## Equal shared parental responsibility

Parents have duties and responsibilities in relation to their children. Courts must apply the presumption that it is in the best interests of the child for the parents to have Equal Shared Parental Responsibility for the Child (section 61DA Family Law Act) unless it can be argued the presumption doesn't apply.

**Equal shared parental responsibility is the ability to make major long-term decisions about a child and includes making decisions about the child's:**

- education
- religious and cultural upbringing
- health
- name
- living arrangements.

It doesn't include day-to-day decisions about the children's care, such as what the children eat or wear.



## Substantial and Significant Time

The Family Law Act/Family Court Act directs that the Court must consider that each parent should spend equal or substantial and significant time with the child.

**Subject to certain other matters, if a parenting order provides that a child's parents are to have equal shared parental responsibility for the child, the court must:**

- a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and
- b) consider whether the child spending equal time with each of the parents is reasonably practicable; and
- c) if it is, consider making an order to provide for the child to spend equal time with each of the parents.  
(Section 65DAA(1) FLA)

Under section 65DAA(3) of the Family Law Act, a child will be taken to spend substantial and significant time with a parent only if:

The time the child spends with the parent includes both:

- days that fall on weekends and holidays; and
- days that do not fall on weekends or holidays; and

The time the child spends with the parent allows the parent to be involved in:

- the child's daily routine; and
- occasions and events that are of particular significance to the child; and
- the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent. *(Continued >)*

Decisions made in developing parenting plans should be made in the best interests of the child.

The terms of the parenting plan may alter a previously made court order about the child

It is desirable to include in a parenting plan information about how parents will consult and resolve disputes about the plan and the process to be used for changing the plan.

Practical considerations

**When deciding whether an arrangement is practical, the court will look at:**

- how equal or substantial and significant time will affect the children
- how far apart the parties live
- each parent's ability to:
  - ◆ share care and communicate with one another
  - ◆ resolve difficulties in relation to the proposed arrangements
  - ◆ make sure that the arrangement works in the best interests of the children, on an ongoing basis
- any other consideration the court thinks relevant.

## **Section 60 I certificate**

Before you can make an application to the court for a parenting order, or to change an existing parenting order, you need to try family dispute resolution. The intention of attending mediation should be focused on reaching an outcome that is in the best interests of the child and so far as possible, convenient and appropriate for parents and other family members such as grandparents.

Whilst agreements are often reached through mediation, sometimes, they are not. If an agreement is not reached, a Section 60i Certificate is issued by the FDR Practitioner indicating the reason the parties were unable to reach an agreement.

**There are five types of section 60I certificates that can be issued, these are:**

- you did not attend because the other party refused or failed to attend;
- you did not attend because the practitioner (mediator) considered that your circumstances were not appropriate for Family Dispute Resolution;
- you did not attend and the parties did not make a genuine effort to resolve the issues; or
- you did attend and the other party (or you) did not make a genuine effort to resolve issues.
- you and the other party started the mediation process, but the practitioner considered that it would not be appropriate to continue

Courts may award costs against a party or refer the parties back to family dispute resolution on the basis of failure to attend or not making a genuine effort. (*Continued >*)



## Exemptions from filing Section 60I Certificate

To apply to a family law court for a Parenting Order you need to have a Section 60I Certificate issued by an FDR practitioner, unless where one or more of the following exceptions apply:

- you are applying for Consent Orders
- you are responding to an application
- the matter is urgent
- there has been, or there is a risk of, family violence or child abuse
- a party is unable to participate effectively (eg: due to incapacity), or
- a person had contravened and shown a serious disregard to a court order made in the last 12 months.

The requirement to participate in FDR applies to new applications, and applications seeking changes to an existing Parenting Order.

Certificates can only be given by FDR practitioners accredited under the Family Law (Family Dispute Resolution Practitioners) Regulations 2008.

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## Conflict of Interest

**Under the Regulations, an FDR practitioner will have a conflict of interest if the practitioner:**

- has previously acted in a professional capacity for one or more of the parties involved in the dispute (other than as an FDR practitioner, a family counsellor or arbitrator)
- has had a previous commercial dealing with one or more of the parties involved in the dispute, or
- is a personal acquaintance of one or more of the people involved in the dispute.

In these situations the practitioner may only provide FDR services if:

- each person involved in the FDR process agrees
- the previous professional dealing (if any) does not relate to any issue in the dispute, and
- the previous commercial dealing or acquaintance (if any) is not of a kind that could reasonably be expected to influence the FDR practitioner in the provision of FDR services



# Fees Policy

**We will provide all services that fall within the following categories free of charge:**

- Information and referral
- Public family relationship seminars and
- Individual help

We provide one hour of joint dispute resolution sessions free of charge (conditions apply) and may charge fees after this depending on your circumstances (see below).

Fees are charged per activity, per client. We will charge clients earning \$50,000 gross annual income, \$30 per hour for the second and third hours of dispute resolution. If further joint sessions are required, we will charge clients in accordance with our Centre's fees policy. We will discuss fees with you prior to attending joint dispute resolution sessions.

**You will not have to pay a fee for the second and third hours of dispute resolution if:**

- You earn less than \$50,000 gross annual income
- You have been granted legal aid for the parenting issue being dealt with at the centre
- You are the holder of:
  - ◆ A health care / benefit card
  - ◆ A pensioner concession card or a Commonwealth seniors health card or
  - ◆ The holder of any other card issued by Centrelink or the Department of Veterans Affairs that certifies entitlement to Commonwealth health concessions.
- You are an inmate of a prison or otherwise lawfully detained in a public institution
- You are a child under the age of 18 years
- You are in receipt of a youth allowance, an Austudy payment or ABSTUDY benefits, or

We believe that payment would cause financial hardship to you.

Where interpreters are needed, up to four hours of joint dispute resolution for parent and/or property matters is provided free of charge in recognition of the fact that more time will be needed in such cases.

For the fifth and sixth hour of dispute resolution, Centres will charge clients with a gross annual income of \$50,000 or more \$30 per hour (children and/or property matters), clients whose gross annual income is less than \$50,000 or who receive Commonwealth health and social security benefits will not be charged a fee.

Centres may also charge fees in accordance with the fees policy where further dispute resolution sessions are required (seven or more hours).

# **Feedback & Complaints**

## *Client Services Information*

### **Stage 1 - Raise an Issue**

If you feel comfortable to do so, raise your concerns directly with the staff member and allow them the opportunity to resolve the issue. If you do not feel this method is appropriate, you may speak to another staff member or relevant manager.

### **Stage 2 - Formal Complaints**

You can lodge a formal complaint with the relevant manager in person, by phone or in writing. A record of your complaint is kept in a secure and confidential file. The relevant manager will work with you to resolve the complaint as quickly and fairly as possible.

### **Stage 3 - If Not Satisfied**

If you are not happy with the response to your complaint, (informal or formal) you can contact the General Manager Health and Wellbeing or Program Manager.

If you are still not satisfied you can contact the:

**Diocesan Director:**

Mail: **PO Box 819, Rockhampton Q 4700**

Phone: **1300 523 985**

There are also external bodies who can help find a resolution.





**CentacareCQ operates the Family Relationship Centre (FRC)  
in Rockhampton, Mackay, Gladstone, Emerald and Yeppoon.**

The centres also provide support to families in the other areas via outreach as required.  
Funded by the Australian Government, the FRC offers information, education,  
support and referral to families at all stages of their lives.

The staff promote healthy family relationships, helps to prevent conflict,  
encourages agreement rather than litigation and promotes the right for  
children to have meaningful relationships with both parents.



## Find us at:

**Rockhampton**  
16 Bolsover Street

**Mackay**  
58 Sydney Street

**Gladstone**  
38 Herbert Street

**Emerald**  
141 Egerton Street

**Yeppoon**  
5/15 James Street

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