

Family Dispute Resolution

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Family dispute resolution (FDR), which is also known as family mediation, is a facilitated process that helps separated parents, carers and their families to communicate with each other and reach agreement about issues relating to their separation. This can include parenting arrangements, child support, financial arrangements and property settlement.

The Family Law Act defines FDR as “a process in which a Family Dispute Resolution Practitioner (FDRP) helps people affected or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other” (Section 10F Family Law Act 1975 (C’t)).

The law requires separating families who have a dispute about children to make a genuine effort to try to come to an agreement through FDR before filing an application for Parenting Orders in court. There are some exceptions to this requirement, which are explained later.

Where cases are suitable for FDR, a meeting of the people (or parties) in dispute, who are often the parents or carers, is facilitated by an independent third party FDRP. The parties have the opportunity to express their point of view and issues of concern.

The FDRP facilitates discussion of the ideas and the development of acceptable solutions and agreements. However, decisions made during FDR are not legally binding.

One of the key benefits of FDR is that the parties have the opportunity to make their own decisions and have input into parenting and financial arrangements that will suit their children and them. The process provides a forum where the parties participate by:

- listening to each other’s point of view
- identifying issues which need to be resolved
- sharing of relevant information
- developing workable solutions and agreements.

The FDRP facilitates the:

- meaningful participation of parties
- exploration of ideas and options
- testing of possible solutions
- development of durable and sustainable decisions and agreements in writing.

It’s important to know that FDRPs are impartial and do not take sides.

FDR is also not like counselling. It concentrates on future focused problem solving, and resolving specific issues and disputes.

FDR for Parenting Matters

When FDR involves parenting matters, FDRPs can help people explore family issues in a child-focused way that keeps their children’s best interests at the forefront. Topics in a parenting agreement relate to parenting after separation. Common topics include:

- time arrangements for children
- how parents communicate about children
- how parents make decisions about children
- agreements about sport or other activities
- agreements about travel or holidays
- decisions about school, medical or health or religion
- financial support of children.

FDR for Property Matters

For disputes about property matters, FDRPs can help parties negotiate their financial decision considering their interests. A property agreement details how property will be divided.

The FDR Process

1. Intake and assessment

The FDR process begins when one or both parties contact a service that provides FDR.

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The first step in the process involves the FDRP meeting separately with the people involved in the dispute for an intake appointment, to ensure that each person has the capacity to negotiate and that all parties feel and are safe to participate in FDR.

Where one party only has initiated FDR, the FDR service contacts and invites the second party to participate in FDR. In this case, the invited party needs to respond to the service that has contacted them. They can do so by attending the intake appointment, making another time, or they can consult a lawyer about a potential exemption from the process, as detailed above, and inform the service of this.

During the initial individual appointments, the FDRP will explain the FDR process and ask each party questions to find out what they want to resolve, how communication has been between the adults, what the children's needs are, and identify any other issues that could affect a person's ability to safely participate in FDR. For example, they will ask questions about mental health, substance use and family violence.

2. Decision to proceed

Following the individual intake appointments, the FDRP decides whether FDR is suitable, and if it is, how to provide it in a way that everyone feels safe and comfortable. For example, they consider whether it will work best for all parties to be together in one room or to have separate rooms for each party, whether to have one or two FDRPs present, whether to use an interpreter, and whether to offer an FDR service by telephone.

The FDRP may also discuss additional models of FDR, including:

- **Lawyer assisted FDR.** This usually involves both parties being represented by a lawyer during FDR.
- **FDR with a support worker or other support person present during sessions.** This must be negotiated with the FDRP in advance and generally needs to be agreed to by the other party.
- **Child inclusive practice.** This involves a trained child consultant providing feedback on how the children are experiencing the separation/parenting arrangements (for parenting matters only).

For parenting matters, if the FDRP decides not to proceed with FDR, they can issue a certificate that parents are required to have before proceeding with any further legal action, such as going to court. There are a number of different certificates that can be issued, depending on the circumstances.

In property matters, the FDRP will also decide whether or not to proceed with FDR. Certificates do not need to be issued before proceeding with legal action for property matters.

At this stage, the FDRP may also provide one or both parties with referrals to other agencies, such as counselling, family violence or other specific services.

3. The process

FDR is a structured process that involves the following steps:

- Introduction – establishing the process.

- Identification of the issues.
- Negotiation and brainstorming options.
- Review of options and making decisions/agreements.
- Implementation of agreements and review.

4. Outcomes

The outcomes of FDR can include the following.

- Providing a forum to clarify parties' views and interests.
- Agreements, including:
 - 'In principle' agreements about future arrangements for the children/property as decided by parties in the FDR session. This agreement is not legally binding, but relies on the good will of the parties to adhere to it.
 - Parenting plans are parenting agreements that have been documented, dated and signed by both parents. Parenting plans can include mechanisms to change arrangements and resolve disagreements. They can also be renegotiated in the future when children's needs change. If a parenting dispute



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About Relationships Australia Victoria (RAV)

RAV is a valued provider of specialist family and relationship services. A community-based, not-for-profit organisation with no religious affiliations, our services are for all members of the community, regardless of their religion, age, gender, sexual orientation, lifestyle choice, cultural background or economic circumstances.

Visit www.rav.org.au or call 1300 364 277 for more information on our programs, locations and how to access our services.



Exemptions to FDR

The Family Law Act 1975 lists the exceptions to the requirement to attempt FDR before making an application for a Parenting Order. Some of the main exceptions are as follows:

- Where a person is applying for procedural orders, interim orders or Consent Orders.
- Where the matter is urgent.
- If the court has reasonable grounds to believe that:
 - family violence or child abuse has occurred, or
 - there is a risk of violence or child abuse if there was to be a delay.
- Where it is not practical for the person to participate in FDR, for example, incapacity, physical remoteness or some other reason.
- Where a person has contravened and shown a serious disregard for a court order made in the last 12 months.

A person in these situations can apply to a lawyer for an exemption to FDR and then apply directly to the Family Court for a Parenting Order.

More information

Relationships Australia Victoria (RAV) provides FDR, including child inclusive FDR, and FDR for property matters. RAV also facilitates professional development training for FDRPs. Visit www.rav.org.au/FDR.



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proceeds to the Family Court, a judge will look at the most recent parenting plan. Parents or carers can take any agreements or plans to a lawyer to have them made into Consent Orders (also called Parenting Orders) that can be lodged with the Family Court. These orders are legally enforceable.

- Where disputes involve property or financial matters, the parties can reach an agreement on how their property should be divided between them. This type of agreement can be formalised by applying for Consent Orders in court.
- No agreement. Sometimes parties do not agree on all issues, or even any issues.
- If there is no agreement on parenting matters, the FDRP may issue a certificate, to enable parties to seek legal advice about their options.

Preparing for FDR

It is helpful if all parties involved in the FDR process can:

- Plan what issues are important to them.
- Listen to the other party.
- Prepare - think about options, ideas and goals.
- Use respectful communication.
- Commit to resolution and following through on decisions.
- Be focused on the future. For example, consider how things can be different.
- Focus on the children's wellbeing and safety as a priority (in parenting matters).