

Family dispute resolution in parenting matters

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What is family dispute resolution?

Family dispute resolution is a confidential process that occurs outside of court and is a means to attempt resolving parenting disputes without court intervention.

Who can undertake family dispute resolution?

A Family Dispute Resolution Practitioner can conduct family dispute resolution counselling. A Family Dispute Resolution Practitioner is a person who is:

- accredited under the Accreditation Rules;
- authorised to act as a Family Dispute Resolution Practitioner on behalf of an organisation designated by the Minister; or
- authorised by the Family Law Courts as a Family Dispute Resolution Practitioner.

It is important to ensure the person appointed as your Family Dispute Resolution Practitioner has the qualification necessary to undertake Family Dispute Resolution and issue the requisite certificate in the event an agreement is not reached.

The requirement to attend family dispute resolution in parenting matters

In parenting matters, the parties must attend family dispute resolution and make a genuine attempt to settle any dispute prior to commencing parenting proceedings in the Family Law Courts, unless an exemption applies such as abuse, risk of abuse or family violence.

In the event of abuse, risk of abuse or family violence a party must swear and file an affidavit - non-filing of family dispute resolution certificate, when commencing parenting proceedings.

Private v government family dispute resolution

Family dispute resolution can be undertaken through government organisations, such as Family Relationship Centres (such as Relationships Australia, Legal Aid Commission or other community-based family law services) or privately with an accredited Family Dispute Resolution Practitioner.

Generally speaking, the waiting time for a family dispute resolution appointment with a government organisation will be greater than a private Family Dispute Resolution Practitioner.

Costs of family dispute resolution

In relation to government organisations offering family dispute resolution, a small fee may be applicable based on each party's income and capacity to pay.

In relation to private family dispute resolution, the Family Dispute Resolution Practitioner will generally charge an hourly or fixed rate, with each party equally contributing to the cost of Family Dispute Resolution Practitioner's fees.

What happens if one party refuses to participate in family dispute resolution?

Generally speaking, when a party contacts a Family Dispute Resolution Practitioner or organisation, the other parent/carer is invited to attend family dispute resolution counselling. If the Family Dispute Resolution Practitioner does not hear from the other parent/carer, a further invitation is extended to that parent/carer with a notation that states should they fail to respond or not participate in the family dispute resolution process, the Family Dispute Resolution Practitioner will issue a section 60I certificate.

Should one parent/carer fail to respond or refuse to participate in family dispute resolution, the Family Dispute Resolution Practitioner can issue a section 60I certificate allowing the parent who wished to engage in the family dispute resolution process to commence parenting proceedings in the Family Law courts.

Attendance at family dispute resolution

Family dispute resolution can be undertaken jointly or by way of shuttle negotiations, whereby the Family Dispute Resolution Practitioner talks to each parent individually and removes the need for both parties to be in the same room.

Any communications, disclosure or admissions made during the family dispute resolution process are strictly confidential unless otherwise agreed or if the communications, disclosure or admissions made relates to the abuse or risk of abuse of a child under the age of 18.

Documenting agreement reached at family dispute resolution

Should an agreement be reached at family dispute resolution regarding parenting arrangements, the Family Dispute Resolution Practitioner or your lawyer can draft a parenting plan reflecting the agreement reached.

A parenting plan is a formal, written agreement setting out the parenting arrangements that have been agreed to and is signed and dated by both parties.

A parenting plan is NOT a court order and cannot be enforced should one parent fail to adhere to the terms. The parenting plan is not confidential and the court WILL have regard to the terms of the parenting plan should either parent commence parenting proceedings.

In the event no agreement is reached, the Family Dispute Resolution Practitioner will issue a section 60I certificate to the following effect:

1. One party refused or failed to attend family dispute resolution
2. One party did not attend the family dispute resolution process as the Family Dispute Resolution Practitioner did not consider it appropriate to continue with the family dispute resolution process having regard to the legislation
3. Both parties attended family dispute resolution and made a genuine attempt to resolve the issues
4. Both parties attended family dispute resolution, but one party did not make a genuine effort to resolve the issues
5. A party/s commenced the family dispute resolution process, however, the Family Dispute Resolution Practitioner did not consider it appropriate to continue with the family dispute resolution process having regard to the legislation.

Once a section 60I certificate has been issued by the Family Dispute Resolution Practitioner, the party/s named on the certificate will be able to commence parenting proceedings in the Family Law Court within one year of the parties' last attendance at family dispute resolution.

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