

Dispute Resolution under the new Family Law Rules



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The overarching purpose enshrined in the FCFCoA Act is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible. ”

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Here to talk you through the new dispute resolution requirements and obligations under the Federal Circuit and Family Court of Australia (Family Law) Rules 2021.



Pre-litigation dispute resolution

A summary of the rules and pre-action procedures for parenting and property matters, before Court proceedings commence.

PRE-ACTION PROCEDURES

Attempting FDR (where safe to do so)

- Parties are expected to make a genuine effort to resolve the dispute through FDR.
- In both parenting and property matters, it is expected that where safe to do so, a person will first invite the other party(ies) to attend family dispute resolution (for parenting matters) or dispute resolution (in financial matters) with an agreed provider.
- Parties are also expected to provide a copy of the pre-action procedures of the FCFCoA to the other party.
- Parties are expected to cooperate for the purpose of agreeing on an FDR provider.

We recommend providing a list of 3 FDR providers to the other party for consideration.

Core Principle 5 CPD; Section 60I FLA;
Schedule 1, Parts 1 and 2, Clause 3;

PRE-ACTION PROCEDURES

Notice of intention and duty of disclosure

- Where FDR or DR has not proceeded; is not recommended; or has not resulted in agreement, parties must provide the other party with a *notice of intention* to start a proceeding.
- This notice sets out the issues in dispute; the orders sought; and should make a genuine offer to resolve the issues.
- The other party must respond to this notice in writing, making a counter-offer where appropriate; outlining the issues in dispute as they see them; and providing their orders sought.
- In the course of exchanging the information above, parties are also expected to exchange all documents relevant to the issues in dispute and outlined in the FLR.

Schedule 1, Parts 1 and 2, Clauses 3 and 4 FLR, Rule 6.05(2) and 6.06(2) FLR, Financial Statement

CERTIFICATES

60I Certificate / Genuine Steps Certificate

- Unless an exemption applies, parties must file a 60I Certificate along with an Initiating Application for parenting orders
- For both parenting and property matters, parties must file a Genuine Steps Certificate (Initiating Application and Response)

Section 60I FLA; 4.2 CPD; Rule 4.01(4) FLR

Court-ordered Dispute Resolution

Arranging a Court-ordered Dispute Resolution event (DR Event)

TIMING

When a DR event will be ordered

- You can expect the Court to order a DR event at the 'First Court Event' (1 to 2 months after filing).
- The DR event will need to happen 'as early as possible and usually no later than 5 months after the date of commencement of a proceeding'.

5.3(c) CPD; 5.26 CPD; Rule 4.05 FLR

COURT-BASED OR EXTERNAL

Will it be Court-based or external DR?

The Court will determine, having regard to the 'means and resources of the parties' if the DR event will be court-based or privately funded.

5.28 CPD; 5.29 CPD; Rule 4.05 FLR

THE DR PROVIDER

How do you choose a provider?

- Neither the Rules nor the CPD identify a process for choosing an external provider.
- We recommend having a list of 3 proposed DR providers (with details of their CV, fees and availability) available at the First Court Event.
- If you wish to nominate either or both of us as a DR provider you can find our CV, fee schedule and 'up to the minute' accurate information about our availability on the 'lawyer's portal' on our websites.

5.3(c) CPD; 5.26 CPD; Rule 4.05 FLR

Preparing for a DR event

Things to consider when preparing for Court-ordered DR event

DISCLOSURE

Timing of disclosure information

Disclosure must be completed at least 14 days before the DR event.

5.37(b) CPD; 5.41(a) CPD

PROVISION OF DOCUMENTS

Providing documents to DR provider

Specified documents must be provided to the Court, or the external DR provider and the other party. This must occur:

- at least 14 days before the DR event for Court-based DR; and
- at least 7 days before the DR event for external DR.

5.37(a) CPD; 5.41(b)&(c) CPD

COSTS

COSTS NOTIFICATION

Prior to the DR event the lawyer for each party must provide specified information about their clients incurred and anticipated costs to:

- their client;
- the Court or DR provider; and
- the other party.

5.38 CPD; 5.42 CPD; Rule 12.06 FLR

After a DR event

What happens following a Court-ordered DR event

CERTIFICATE OF DR

CERTIFICATE OF DISPUTE RESOLUTION

- The DR provider will complete a 'Certificate of Dispute Resolution' after the DR event.
- If the DR event is conducted by an external provider the Applicant is responsible for requesting, filing and serving the certificate.

5.30 CPD; Rule 8.12 FLR

NOTICE

NOTICE TO THE OTHER PARTY

Within 7 days after an external DR event the parties must serve a notice on each other party with specified information.

5.39 CPD

OFFER

Offer of Settlement - property matters only

- Within 28 days after a DR event relating to property proceedings each party must make a genuine offer to settle
- Offer should include a statement to the effect “This offer to settle is made under Division 4.2.2 of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021”.

Rule 4.11 FLR

Additional information

Important things to consider in Court proceedings

COMPLIANCE

COMPLIANCE WITH PROCEDURAL ORDERS

In Court-based DR the Judicial Registrar will assess compliance with previous procedural orders and may make particular orders, including costs orders, in the event of non-compliance.

5.45 CPD; 5.46 CPD

CONFIDENTIALITY

CONFIDENTIALITY OF DR EVENTS

Court ordered DR events are confidential and inadmissible, save for the information to be included in the Certificate of Dispute Resolution (and other general exceptions to confidentiality such as mandatory reporting obligations).

How we can assist...

The FDR and DR options we offer through Keogh Mediation and Listen Talk Resolve

PARENTING MEDIATION

Pre-litigation parenting mediation

- We continue to offer facilitative mediation for clients seeking to resolve parenting matters.
- Includes issuing a formal invitation to the other party to participate in FDR, if requested.
- Includes pre-mediation appointments with each party to assess suitability and prepare for joint meeting.
- includes issuing a 60I certificate if other party declines to attend; if FDR is considered inappropriate (following pre-mediation sessions with both parties); or if matter does not resolve at FDR.
- Matter can be referred back to lawyers for drafting, if agreement is reached.

PROPERTY MEDIATION

Pre-litigation property mediation

- We offer facilitative mediation for clients seeking to resolve property and financial matters.
- Includes pre-mediation appointments with each party (can include lawyers when requested).
- Can involve multiple meetings to work through issues of disclosure/valuation/identifying balance sheet; proposed division of property and superannuation.
- Parties can meet with lawyers following each stage of the mediation process, or lawyers can be involved in mediation where appropriate.
- Matter can be referred back to lawyers for drafting, if agreement is reached.

PARENTING / PROPERTY CONCILIATION

Court-ordered dispute resolution

- We offer conciliation for clients who are referred for court-ordered DR.
- Process includes provision of documents and confidential case outline to the conciliator.
- includes intake appointments with each client and intake conversations with each lawyer.
- Includes lawyers in the joint meeting(s), as appropriate.
- Matter can be referred back to lawyers for drafting and filing of any agreement reached.
- includes provision of Certificate of Dispute Resolution at the conclusion of the process.

For bookings or more information:

<https://keoghmediation.com.au>

<https://listentalkresolve.com.au>

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