

## Intake

- Each person involved in parenting or property Family Dispute Resolution will have a confidential intake appointment with a Family Dispute Resolution Practitioner.
- At this appointment we discuss your specific situation and address any questions or concerns.

## Post Separation Parenting

- For Family Dispute Resolution about parenting matters, each person involved will attend separate information sessions to prepare for mediation and learn more about how to support your children after separation.

## Mediation

- The Family Dispute Resolution Practitioner will facilitate a mediation session.
- The aim of the mediation session is to create a child-focussed parenting arrangement and assist parties to resolve some or all of the issues in dispute.
- The Practitioner is required to remain impartial to all outcomes and is unable to give legal advice.

## Child Consultancy

- Considering the voice of children in Family Dispute Resolution is an option for families when trying to reach the best decisions for their children.
- In FDR, children over 5 years can participate in a safe, child-friendly way. Your Practitioner will discuss this process at intake or at the first mediation session.

## s60l Certificates

- During the process, after a genuine effort has been made to reach a resolution, s60l certificates can be issued at the discretion of the practitioner and are required for applications to court.
- Since 1/9/21 both parenting & property matters are to be discussed at FDR.

## Referrals

- Throughout the process, referrals to other support services may be suggested; such as individual support through Family Law Counselling, Co-parent coaching and family violence support.

## IMPORTANT INFORMATION ABOUT FAMILY DISPUTE RESOLUTION SERVICE

Thank you for attending Centacare’s Family Dispute Resolution (FDR) program. In order for all of our Practitioners to facilitate a neutral negotiation with you and the other party, our roles as Family Dispute Resolution Practitioners are as follows:

- **Must remain neutral and impartial. This means we are not to take sides or support/promote the interests of one client over another.**
- **Not to provide any legal or other advice, but may extend the advisory capacity towards “the child’s best interests”**
- **Unable to manage issues outside of appointments and will avoid individual telephone or email contact with all parties, unless additional information is required.**

The following is a guide for contacting our service:

|  |  |
|--|--|
| To book/confirm/reschedule a mediation and intake appointment, please call:  | <b>Adelaide</b> , 45 Wakefield Street   T 8215 6700<br><b>Mount Gambier</b> , 13 Penola Road   T 8303 6630<br><b>Murray Bridge</b> , Unit 6/2 Sturt Reserve Road   T 8215 6320<br><b>Elizabeth Park</b> , 34 Yorktown Road   T 8412 9570<br><br><b>*IMPORTANT NOTE*</b> Clients are required to confirm their attendance at Intake and FDR sessions <u>at least 24 hours</u> prior to the session. <b>Cancellation fees may apply.</b> |
| Need advice regarding your children or property issues:                      | Please refer to the information links (emailed at apt), the Centacare <a href="#">website</a> or seek legal advice.  |
| Unsure of what documentation to bring to your mediation session:             | Current/Interim/Previous: Court Orders, Intervention Orders or any relevant orders.<br><br>Evidences of Assets and Liabilities (Property Mediation)  |
| If you still need to speak to your mediator:                                 | <b>Please leave a message explaining what your call relates to.</b><br>Our staff will pass a message on to your mediator or Family Advisor.<br>Call backs are at the discretion of the mediator.   |
| If you haven’t heard from the service 4 weeks after your intake appointment: | If the matter is related to children and you wish to follow legal avenues, please call our service and leave a message advising you would like a certificate (s60I) issued and sent to you.  |

***Thank you for helping us maintain our impartiality in providing you with a professional and ethical service.***



## CENTACARE FAMILY DISPUTE RESOLUTION SERVICE

### STATEMENT OF INFORMATION

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#### **1. WHAT IS FAMILY DISPUTE RESOLUTION (FDR) OR FAMILY MEDIATION?**

FDR also known as “Family Mediation” is a voluntary process in which an accredited Family Dispute Resolution Practitioner assists people after separation to discuss and possibly resolve some or all their resulting disputes. The FDR practitioner is independent of all the parties involved in the process and must remain impartial to the outcomes in order to assist both parties to reach their own agreements where possible.

#### **2. HOW CAN FDR HELP MY SITUATION?**

FDR is a practical way of working out problems between separating/separated couples & grandparents on issues covered by the Family Law Act 1975, such as parenting and property issues. The process may give you more control over the outcome and promotes a more respectful end to a relationship rather than an adversarial and conflicted one.

#### **The benefits of going through FDR with the assistance of a FDR Practitioner are:**

- Resolve issues outside Court in a non-adversarial setting;
- Less time and cost effective;
- Assistance to isolate issues in dispute;
- Constructively and respectfully discuss issues;
- Develop and consider options to resolve those issues;
- If appropriate, attempt to agree to one or more of these options; and
- If children are involved - attempt to agree to options that are in the best interests of the child.

It is also important that you are aware that Family Dispute Resolution is not a long-term support service and, in some cases, we may refer you to other services including Family Law Counselling or Co-Parenting Coaching. This is particularly where any new issues arise during the mediation which indicate another service would be more appropriate.

### **3. WHEN IS FDR APPROPRIATE?**

FDR will work best when both parties are willing to reach a mutually satisfactory agreement and are able to negotiate on a reasonably equal footing. However, this may not always be the case, particularly if a dispute involves threats of violence that renders one party unable to negotiate freely because of these threats.

**FDR will be assessed by the FDRP when the following situations may make it difficult or “not appropriate” to proceed:**

- alcohol or drug abuse, psychiatric illness or mental instability
- power imbalances
- overwhelming emotions concerning the separation
- a history of broken agreements
- the use of FDR as a delaying tactic
- violent and threatening behaviour
- child abuse
- for any other reason that the practitioner deems FDR is inappropriate.

*If any of the above issues are relevant to your case, please discuss this with the FDR practitioner. Please note that we will do our best to accommodate your needs regarding appointment dates, times and locations. However, where a mediation appointment cannot be booked because both parties are ultimately unable to agree on when/where that can occur, then this does **not** fall within the definition of ‘not appropriate’. See also Point 4 below.*

**\*PLEASE NOTE\* THAT UNACCEPTABLE, AGGRESSIVE OR VIOLENT BEHAVIOUR TO EACH OTHER, THE PRACTITIONER OR OTHER STAFF IS “NOT APPROPRIATE” FOR MEDIATION AND YOUR APPOINTMENT MAY BE TERMINATED IF THIS IS UNABLE TO BE RESOLVED.**

### **4. DO I HAVE TO ATTEND FDR?**

From 1 July 2006 changes to the Family Law Act (FLA) 1975 require those people who wish to make an application to the Court for a parenting order, to attempt to resolve the dispute in FDR first. Additionally, from 1 September 2021 the requirement is now on parents and couples to show they have made a genuine effort to resolve the issues in relation to children’s care and the financial sharing and to identify what is still in dispute before being granted a hearing or trial.

For parenting matters, the Court will require a certificate (called a S60I Certificate) or a letter confirming attendance from a registered FDR practitioner confirming the outcome of your attendance. S60I Certificates are only valid for 12 months from the date of your last attendance at FDR. According to the FLA, mediation commences at the point both parties are discussing the issues. ***S60I Certificates are not applicable to property matters.***

If you are being issued a S60I Certificate, it is the practitioner's decision as to which of the following points apply in your situation.

#### **4.1 WHAT THE S60I CERTIFICATE MAY SAY:**

##### **(a) One party to the dispute did not attend at family dispute resolution**

This means that both parties were invited to attend the joint session for family dispute resolution but one party refused or failed to attend. This meant the family dispute resolution could not go ahead.

##### **(b) The practitioner decided the case was "not appropriate" for family dispute resolution**

Practitioners must not deliver family dispute resolution if they believe it would be inappropriate under the Family Law Regulations 2008 subregulation 25(2), which includes:

- a history or ongoing of family violence among the parties;
- a risk of child abuse; the safety of parties;
- The emotional, psychological or physical health of the parties or the ability of people to negotiate freely;
- When a practitioner believes a matter is inappropriate, family dispute resolution will not take place.

##### **(c) All parties attended and made a genuine effort to resolve the dispute**

This means all parties made a genuine effort during the dispute resolution process but were unable to resolve the dispute.

*It is the FDR practitioner's discretion if a person has made a genuine effort based on the individual circumstances. A practitioner may take into account, each person's willingness to join in discussions and make compromises. E.g. If no agreements were reached, it is not necessarily because you did not make a genuine effort as there are many reasons why people have different views about an issue.*

##### **(d) All parties attended but one or both did not make a genuine effort to resolve the dispute**

See (c) above for information about genuine effort.

##### **(e) The family dispute resolution started but part way through the practitioner decided it was not appropriate to continue.**

See (b) above for examples of situations where it might not be appropriate to conduct family dispute resolution.

## 4.2 EXCEPTIONS TO ATTEND FAMILY DISPUTE RESOLUTION (FDR):

In some circumstances, there are exceptions for parties not to attend mediation. You should seek legal advice as to whether an exception applies in your case, as it is not the practitioner's decision if you would qualify for an exception.

### Some examples of these exceptions are:

- Where you are applying for procedural orders, interim orders or consent orders
- Where the matter is urgent
- Refusing to return or removing a child interstate without consent
- 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 were to be a delay

*If you use the exception relating to family violence or child abuse, you will need to obtain information about your options and about services that can help you, from a family counsellor, family dispute resolution practitioner or by calling the **Family Relationship Advice Line on 1800 050 321**. You do not have to obtain this information if the Court has reason to believe there is a current risk of violence or child abuse.*

- *Where it is not practical for you to attend FDR (for distance reasons or if you are physically unable to attend).*
- *Where a person has contravened and shown a serious disregard for a Court Order made in the last 12 months.*

For further information about Exceptions see [www.aq.gov.au](http://www.aq.gov.au).

### S60I - Frequently Asked Questions (FAQ)

- Parties invited to participate by the other person will be required to respond to the invitations indicating their willingness to attend or not within 3-4 weeks of receiving the first invitation otherwise a certificate may be issued to the other person on request.
- Certificates will not be issued until all processes and procedures have been followed and parties have made a genuine effort to resolve the dispute, those not willing to attempt to resolve the dispute may be issued a non-genuine effort certificate.
- Where an agreement breaks down, the parties are required to return to FDR to discuss the difficulties that have occurred. A certificate may not be issued without another session being attended and both parties making a genuine attempt to try to resolve the issues further.
- Certificates are always issued at the discretion of the practitioner and they should not be issued where parties come to an agreement in relation to the issues in dispute.
- All types of S60I certificates have a validity of (1) one year and parties must return to FDR and attempt mediation before a new one can be issued.
- If mediation is deemed appropriate by the practitioner and there is appointment availability but there is unreasonable delay to the process, then under FLA the other party would be eligible for a certificate if requested.

- For any other questions, please seek legal advice or speak with your practitioner during your intake session.

## 5. WHAT HAPPENS IN FDR?

### **STEP 1 – Your Intake Appointment:**

All clients are asked to attend an individual, one-hour confidential intake appointment either in person or over the phone with a FDR practitioner.

- A support person may be present at the discretion of the practitioner and is only there to provide emotional support. They are unable to participate in the conversations during the intake appointment and must complete and sign a support person confidentiality agreement.
- **Children cannot attend at this appointment or at the FDR appointment.**
- Registration forms sent must be completed and returned as a requirement of our funding bodies and directive practice from the Attorney General's department.

### **During this appointment the practitioner will explain and discuss about:**

- The process of FDR and the role of the FDR practitioner.
- Confidentiality requirements and exceptions.
- The fees charged (*See Fee Schedule*).
- Information about parenting plans, parenting courses and other services available to help you if you wish to discuss parenting issues.
- Information about property mediation and requirements of "Full disclosure" and "Fair & Equitable division," if you wish to discuss property issues
- Other information regarding Family Law, but not specific legal advice.
- Answer any further questions and assess whether FDR is appropriate in the circumstances.
- Particulars about a complaints mechanism you can use should you wish to complain about the services offered to you.
- Both parties are required to have separate intake appointments before FDR.

### **STEP 2 – Inviting the Other Party (What will happen next?):**

At your request, a letter can be sent to the other party inviting them to book an intake appointment with your FDR practitioner.

- If there is no response from the other party to our letter, we will automatically send a second letter.
- The other party then has 3-4 weeks from the date of the initial invitation to respond and advise their willingness to attend by booking an appointment or advise they do not wish to participate.
- If you have not heard from us within 3-4 weeks of your appointment, please call us to see if we have had a response from the other party. You will either be told:
  - **Yes** – they have made an appointment (although we cannot give you the date/time).

Or

- **No** – we have not had a response from the other party, or they tell us they do not wish to take part in FDR.
  - You can request a Section 60I Certificate (parenting matters only) confirming you have attempted family dispute resolution.
  - You can request a letter of attendance (property issues) confirming you have attempted family dispute resolution.

**\*Please be aware s60I certificates are not issued for property matters and you should seek legal advice\***

### **STEP 3 – Post-separation Information session (parenting only)**

Prior to the FDR appointment, both parents are strongly encouraged to complete the “*Supporting Children after Separation*” program if the issues in dispute are about children.

*You will not be in the same group as the other parent of your children; however, you can choose to bring your current partner if applicable.*

#### **The Information Session will:**

- Help you to understand what the important considerations are for your children.
- Help you to support your children through parental separation.
- Prepare you to get the best outcome from mediation for your children.

**At completion, a participation certificate will be issued and it can be used as proof if you are required to attend a course advised by the Court.**

*\*NOTE\* we strongly recommend you complete this program as the additional information that will assist you in the mediation process.*

### **STEP 4 – Your FDR (Mediation) Session:**

Once the FDR practitioner has seen the other party, (*for parenting: both parties had attended the parenting education program*) and assessed as appropriate, a FDR session with both parties involved can then be arranged.

- FDR sessions are generally conducted by one (1) FDR practitioner.
- On occasion we will use a co-mediation model, whereby two (2) practitioners may attend your session to ensure best practice and for professional development purposes.
- On average, 1-3 FDR sessions are available and each session is scheduled for 2 hours.
- An expectation that the 1<sup>st</sup> FDR session will occur within 1-3 months of the initial party’s first contact, depending on the response time of the other party and subject to the availability of appointments.
- At the practitioner’s discretion, or where safety is a concern especially in high conflict situations, the practitioner(s) may offer “Shuttle” FDR, where clients have no direct contact and are in separate rooms for the entire FDR process.

- Support Persons – are only able to be present at FDR appointments with prior notice and discussion with the practitioner and at their discretion. In general, support persons will ONLY be there for emotional support and cannot participate in ANY parenting or property discussions.

During an FDR session:

- Parties will be asked to treat each other and the practitioner(s) respectfully during FDR sessions and ground rules will be explained before FDR commences.
- Parties will be asked to provide proposals/agendas separately and given time to explain their goals regarding their children and/or property.
- On occasion the practitioner(s) may see clients separately in order to assist negotiations. You may also request to speak to the practitioner in a separate room.
  - Matters discussed in separate session will not be disclosed in joint sessions unless the parties agree, or the individual party decides to do so.
- The FDRP will assist with the conversations and manage the process but will remain impartial to the outcomes. At times when in separate rooms the FDRP is “transferring” the information from one party to another and is in effect the messenger and not advising or giving their own opinions.

**\*NOTE\* WE EXPECT PARTIES INVOLVED WILL BEHAVE IN A RESPECTFUL MANNER TO EACH OTHER AND ALL STAFF. AGGRESSIVE AND/OR ABUSIVE BEHAVIOUR TOWARDS EACH OTHER, YOUR PRACTITIONER OR ANY OTHER STAFF MEMBER WILL RESULT IN YOUR SESSION BEING TERMINATED.**

## 6. WHAT IS AN FDR AGREEMENT?

After FDR upon request, we can provide you with a ‘Parenting Outcomes’ document which will be posted or emailed to you. This is a one-page summary of the parenting outcomes of that session where no agreement has been reached about the children’s care. *\*Note\* this document is not an agreement.*

- If Agreement is reached and upon request, the practitioner will type up all agreements reached during the FDR process in a Parenting Plan or In Principle Property Agreement. \*NOTE\* Fees may apply.
  - Upon payment, the completed Parenting Plan or In Principle Property Agreement will be sent out to both parties.
  - Agreements may not be forwarded to either party if there are outstanding fees. *(See section 10)*
  - Centacare cannot facilitate the signing of any agreements made and do not keep signed copies on file.

A Parenting Plan is a written agreement that sets out parenting arrangements for children. The plan is discussed in terms of the children’s needs and agreed jointly among parties without needing to go to court.

- Unless a court orders otherwise, you and the other party can agree to change a parenting order by entering into a parenting plan.

### **Effects of Parenting Plan and Property Agreements**

A Parenting Plan or In Principle Property Agreement is not a legally enforceable agreement and is entered into in good faith. However:

- Under the Family Law Act 1975 – Section 63C (1) if a document is in writing, was made between parents of a child, signed and dated by both and was made free from any threat, duress or coercion, **it may be recognised by the Court and can be seen as legally significant.**
- If, after reaching agreement, one of you does not follow through with what has been agreed, your practitioner cannot enforce the terms of the agreement. You may then be required or choose to return to mediation for further discussions. *Section 60I Certificate do not apply in this circumstance – see section 4*

### **How can I get a Parenting/Court Order?**

If you want to make your Parenting Plan or In Principle Property Agreement legally binding you must consult a lawyer who will advise you of the best option.

- You can take steps to make your Parenting Plan or In Principle Property Agreement agreed in FDR or between yourselves legally binding by having it drawn up by a lawyer then registered as Consent Orders.
- In relation to a Property Agreement, we strongly recommend you see your lawyer about having it made legally binding to ensure you have legally separated your financial ties to protect you both.

## **7. CAN MY CHILDREN HAVE A VOICE IN FDR?**

With the consent of both parents/guardians and children, children may participate in a child consultation session aimed at giving the child a voice in a safe way via a consultant in the FDR process. *(Please refer to our information sheet on child inclusive FDR for further information)*

With respect to disputes about children, the *Family Law Act* provides the following:

- **The best interests of children:** If disputes involve children, then Family Law requires that the best interests of the child are the paramount consideration in any decision that affects them (Section 60CA *Family Law Act 1975 as amended*).
  - **The 2023 Amendment to the *Family Law Act 1975*** now considers the best interests of children to be about what arrangements would promote the safety of the child and each person who has care of them; any views expressed by the child; the developmental, psychological, emotional and cultural needs of the child; the capacity of each person with parental responsibility of the child to provide for their developmental, psychological, emotional and cultural needs; the benefit to the child of being able to have a relationship with their parents, and other people who are significant to them, where it is safe to do so; and anything else that is relevant to the particular circumstances of the child.

- **Parental responsibility:** Under the 1995 changes to the *Family Law Act*, both parents of a child had shared parental responsibility for that child. Since the 2023 changes this presumption has been removed and parents are now encouraged to discuss and manage how to make decisions jointly and separately for their children around major issues and for all care arrangements to be relevant to the needs of the children. There has never been a provision for equal shared time but there is even more encouragement to consider the best care arrangements for each child according to their needs. However, when the court is considering making a parenting order, an application for shared responsibility can apply.

## 8. WHAT IS A FDR PRACTITIONER?

### What is a 'registered' Family Dispute Resolution Provider/Practitioner (FDRP) and why should I use one?

Under the Family Law Act, mediators are now known as Family Dispute Resolution Practitioners (FDRP). A registered FDRP is an organisation/individual who has met the required standards of training, experience and suitability for inclusion on the Family Dispute Resolution Register and attained accreditation. *(See registered practitioners list for further details)*

Only a registered FDRP can issue a valid S60I Certificate if you are unable to resolve your dispute in family dispute resolution if you decide to go to court. *(See section 4)*

#### 8.1 ROLE OF THE FDR PRACTITIONERS:

- Facilitate discussion between the clients about the issues relevant to the dispute;
- Assist them to reach their own agreements;
- Remain impartial, not take sides and not to support or promote the interest of one or the other;
- Disclose any interest or bias;
- Not advise the parties what to do in relation to the issues in dispute;
- Not to give legal advice; *(See section 9)*
- Keep conversations about children's care child-focussed and in their best interests.

#### 8.2 CONFLICT OF INTEREST:

If at any stage the FDR practitioner becomes aware that they have:

- Previously acted in a professional capacity (other than as a family dispute resolution practitioner);
- Previously had any commercial dealing or;
- Is a relative, personal friend or acquaintance

In relation to either party, then the FDR practitioner must disclose and the parties may then decide whether the practitioner will continue with the session, or whether a new practitioner should be appointed.

## 9. IS THE SERVICE CONFIDENTIAL?

Centacare Family Dispute Resolution Service is a confidential service. Pursuant to Section 10H of the *Family Law Act*, (as amended) all Centacare FDR practitioners have signed a Family Dispute Resolution Practitioner's Oath which states that the practitioner will not disclose communications or admissions made in FDR unless this is necessary to properly discharge their function as a FDR practitioner.

Under section 10J of the *Family Law Act 1975 (as amended by the Family Law Amendment, Shared Parental Responsibility) Act 2006*, evidence of anything said, or an admission made in FDR is in general not admissible:

- (a) in any court (whether exercising federal jurisdiction or not); or
- (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of the parties, to hear evidence.

This subsection does not apply to the following:

- (a) an admission by an adult that indicates that a child has been abused or is at risk of abuse;
- (b) a disclosure by a child that indicates that the child has been abused or is at risk of abuse;

unless, in the opinion of the court, there is sufficient evidence of the admission or disclosure available to the court from other sources.

In addition a FDR practitioner may disclose information:

- To enable practitioners to discharge properly their functions as a FDR practitioner (this includes disclosing information for the purposes of supervision).
- If a child is separately represented under the *Family Law Act*, FDR practitioners may disclose information to assist the legal representative to represent the child appropriately.

The FDR practitioner also has discretion to supply non identifying information for the purposes of research into family issues or when files are audited from time to time to ensure that administrative processes and file management comply with confidentiality requirements.

Exchanging requested information outside of the agency will only occur when a signed 'provision of information' authority has been completed and provided. A form for this purpose is available from the FDR practitioner on request.

## 10. LEGAL REPRESENTATION AND LEGAL ADVICE:

Centacare's Family Dispute Resolution Service strongly recommends that people individually seek independent legal advice before commencing FDR. You have a right to consult your own solicitor or any other professional advisor at any stage of the FDR process and FDR practitioners will encourage you to do so.

Lawyers are not able to be present at any session during mediation, unless previously discussed and agreed with your practitioner through our Lawyer Inclusive FDR service.

The FDR practitioners will not offer legal advice in relation to parenting or property matters. If a practitioner is a lawyer, the practitioner will not act as a legal representative at any stage.

## **11. FEES FOR SERVICE** *(See Schedule of Fees for FDR Services)*

Centacare Family Dispute Service is funded by the Department of Social Services and are consistent with our funding requirements, fees are determined according to client income.

*\*NOTE\* Special rates and Concession are applicable in these income brackets: Centrelink Pensioner Concession Card & Health Benefits card. Commonwealth Seniors' Card. Receipt of Youth Allowance, Austudy, Abstudy benefit, holder of any other card issued by Centrelink or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions*

Where fees are payable:

- You will have been advised of the amount payable at your Intake appointment prior to your joint session
- Your practitioner will assist you on the day to finalise the payments at the reception area prior to your mediation appointment *(or after your 1<sup>st</sup> intake appointment)*.
- *\*NOTE\** If either or both of you are unable to pay prior to commencement, then the session will need to be rescheduled.
- Please talk to your practitioner if you have any concerns around payment of fees.
- Cancellation fees will be charged for appointments not attended, without 24 hours prior notice.

It is a requirement that all outstanding fees are paid, as we may be unable to book further appointments, provide Parenting Plans or Property Agreements until all fees are up to date.

## **12. SUMMARY – HOW CAN THIS SERVICE HELP ME?**

**We can –**

- Facilitate productive and future focussed conversations
- Provide the opportunity to hear research and evidence-based information about separation for children and how you can support them in the best way possible.
- Assist you in negotiating a child-focussed parenting plan and/or in principle property agreement
- Prepare parenting plans and/or in principle property agreements
- Provide legal information (as opposed to legal advice)
- Work in the best interests of your children
- Provide child focussed information

- Make appropriate referrals including referrals to counselling for children
- Offer child inclusive mediation at the discretion of the mediator and child consultant.

**We can't –**

- Facilitate information sharing between clients or offer advice outside of appointments
- Enforce parenting plans, property agreements or attendance at appointments
- Make decisions for you or tell you what to do or give legal advice
- Facilitate changeover for of children
- Provide any information regarding other people involved in the mediation
- Discuss your case with third parties without your written authority
- Include children in the mediation process except through formal referral to a child inclusive process
- Provide crisis information.
- Facilitate the signing of any agreements from mediation.
- Alter or amend agreements outside of appointments unless already agreed in session and recorded incorrectly.

**USEFUL WEBSITES:**

Family Relationships Advice:

<http://www.familyrelationships.gov.au/>

[www.relationships.org.au](http://www.relationships.org.au)

Parenting:

[www.parenting.sa.gov.au](http://www.parenting.sa.gov.au)

[www.raisingchildren.net.au](http://www.raisingchildren.net.au)

[www.familylawsection.org.au](http://www.familylawsection.org.au)

**As Centacare does not have a child-minding facility, please do not bring children to your appointments unless specifically for Child Inclusive Mediation child interviews.**

## Family Dispute Resolution (Mediation) Service

### Registered Practitioners

|                 |  |
|-----------------|--|
| <b>Andy</b>     | Masters in Mediation and Conflict Resolution (UniSA); Bachelor of Psychology (Canada); Certificate IV Training and Assessment (ACG); National Accredited Mediator (NMAS).  |
| <b>Ceri</b>     | Masters in Mediation and Conflict Resolution (UniSA); Bachelor of Psychology (UniSA); Diploma of Counselling & Group Work (Aust Inst Social Relations); Diploma of Community Services (Counselling) (Australian Institute of Social Relations). Registered Nurse.  |
| <b>Caroline</b> | Graduate Diploma in Family Dispute Resolution (Mediation Institute)  |
| <b>Ella</b>     | Graduate Diploma in Family Dispute Resolution (Australian Institute of Social Relations); Certificate IV Community Services (Information and Referral) (Australian Institute of Social Relations); Bachelor of Science in Agricultural Engineering (Azad University).  |
| <b>Gordon</b>   | Graduate Diploma in Family Dispute Resolution (College of Law); Bachelor of Laws (University of Adelaide); Bachelor of Commerce – Accounting (University of Adelaide); National Accredited Mediator (NMAS).  |
| <b>Hannah</b>   | Certificate IV in Child, Youth and Family Intervention; Accredited Mental Health First Aider   |
| <b>Rebecca</b>  | Graduate Diploma in Family Dispute Resolution (Australian Institute of Social Relations); Graduate Diploma of Management (National Institute of Science); Bachelor of Psychology (UniSA); Diploma in Youth Work (Tabor College); Diploma of Mental Health (ETEA); Certificate V in Training and Assessment (TAFE SA); National Accredited Mediator (NMAS). |

## **AGREEMENT TO ATTEND FAMILY DISPUTE RESOLUTION (Mediation)**

### **1. THE PROCESS**

Family Dispute Resolution (FDR) is a voluntary process by which parties in dispute, endeavour to negotiate a solution to their respective needs with the assistance of a Family Dispute Resolution Practitioner (FDRP).

When children are involved it is important to understand the FDR process assists families and parents to reach a resolution that is safe and in the best interest of their children.

### **2. CONFIDENTIALITY**

The parties agree under Section 10H of the Family Law Act 1975 that all information and statements made at FDR are confidential and will not be disclosed to a third party or used in any court proceedings. Any electronic recording of any Intake or Family Dispute Resolution session/s is strictly prohibited.

All FDRPs and Child Consultants must work within the Family Law Act 1975 – Section 10J, where communications made in FDR are not able to be disclosed and are inadmissible in court unless:

- a) Practitioners are compelled by law to disclose;
- b) Specifically authorised and consented by the parties; or
- c) When illegal or exceptional circumstances exist.

### **3. ROLE OF FAMILY DISPUTE RESOLUTION PRACTITIONER**

The Family Dispute Resolution Practitioner (FDRP) remains neutral throughout the process of mediation and is impartial to any outcomes made in the attempt to resolve the dispute by:

- Isolating issues in the dispute and helping parties explore possible outcomes;
- Formulating written agreements; and
- Acting in the 'best interests of the child.'

The FDR Practitioner may meet with the parties jointly or separately, and during the process of FDR the Practitioners do **not**:

- Give legal or other profession advice to any party;
- Impose an outcome on any party; or
- Make any decisions for any party.

All FDR Practitioners operating in Centacare have recognised qualifications and are accredited to provide FDR.

### **4. CONFLICT OF INTEREST**

If the Family Dispute Resolution Practitioner discovers prior or during the family dispute resolution sessions that the practitioner:

- Has acted previously in a professional capacity (otherwise than as a Family Dispute Resolution Practitioner, a family counsellor or an arbitrator); or
- Has had a previous commercial dealings; or
- Is a personal acquaintance.

This will be disclosed to the parties and a decision made whether or not the Family Dispute Resolution will continue or a new practitioner should be appointed to the case.

### **5. FULL AND FRANK DISCLOSURE**

All parties attending Family Dispute Resolution will make full disclosure of all information that is relevant to the dispute.

### **6. MUTUAL RESPECT**

Each party agrees to take part in Family Dispute Resolution in 'good faith', and will be given the opportunity to speak and to be heard. Each party agrees to be open to discussing and resolving the issues in a respectful manner.

**7. WHEN IS FAMILY DISPUTE RESOLUTION NOT APPROPRIATE**

Under The Family Law Regulations 2008 subregulation 25(2), the practitioner may consider that it is inappropriate to continue with Family Dispute Resolution, particularly if disclosures of spousal or child abuse and violence are made, or if one party is unable to negotiate freely due to intimidation during the process.

**8. SECTION 60I CERTIFICATE**

Under the Family Law Act 1975, the FDR Practitioner can issue a s60i certificate, which allows parties to file an application in Court and does **not** serve any evidentiary purpose. Courts **may** award costs against a party on the basis of failure to attend or make a genuine effort at FDR.

FDR practitioners can issue a certificate if:

- a) The person **did not attend** FDR due to the refusal or failure of the other person or people to attend;
- b) The person **did not attend** FDR because the practitioner **did not consider it would be appropriate** to conduct FDR;
- c) The **parties attended FDR**, conducted by the practitioner, and all people made a **genuine effort** to resolve the issue or issues in dispute;
- d) The **parties attended FDR**, conducted by the practitioner, but one or more of them **did not make a genuine effort** to resolve the issue or issues in dispute;
- e) The **parties began FDR**, but part way through the practitioner decided it was **not appropriate to continue**.

**9. PARENTING PLAN/WRITTEN AGREEMENTS**

It is important to note that any written agreements reached in Family Dispute Resolution are not legally binding, but are made in 'good faith' regarding the issues in dispute.

During parenting matters, if you wish to create a **Parenting Plan**, under the Family Law Act 1975 - Section 63C(1) provides that if a document is in writing, was made between the parents of a child, signed and dated and was made free from any threat, duress or coercion, **it may be recognised by the Court**.

Section 64D(1) states **Parenting Orders** in relation to a child is taken to include a provision that the Order is subject to a Parenting Plan that is (a) entered in subsequently by the child's parents and (b) agreed to, in writing, by any person (other than the child) to whom the Parenting Order applies.

Written agreements are not required to finalise the process, but if **you do not wish to create or sign a Parenting Plan** made in the FDR process, we would recommend you seek independent legal advice regarding the outcomes of the process.

**10. RIGHT TO TERMINATE**

As the Family Dispute Resolution process is **voluntary**, any party may end the session at any time. Likewise, the FDR Practitioner may, at any time, end the session due to:

- The opinion that either of the parties is unable to represent their own point of view; or
- The view that the practitioner will be unable to assist the parties in resolving their dispute.

**I/We acknowledge that I/we have read and understood the above policies and procedures in its entirety and agree to proceed with Family Dispute Resolution. I/We also acknowledge that I/we have received this document at least 24 hours prior to the commencement of the Family Dispute Resolution facilitated by a Family Dispute Resolution Practitioner.**

Party: \_\_\_\_\_ Sign: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Party: \_\_\_\_\_ Sign: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Mediator: \_\_\_\_\_ Sign: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

## FDR – OUTCOME OPTIONS

At Centacare we pride ourselves on our professionalism and providing you with typed documentation is considered best practice. The practitioner remains impartial to the final parenting decisions but will assist with the conversations and support both parties to focus on the needs of their children. The options for recording parenting outcomes are as follows:

### Parenting:

- a basic **verbal agreement**, with no documentation.
- a copy of **whiteboard notes** made during your session.
- Intermediate outcomes for parents, but not a full care agreement, can be typed up as a **Session Outcome document**.
- An **Interim Agreement** about children’s care for between sessions or for the duration of a trial period.
- A complete **Parenting Plan**, of agreements made for your children which can be signed and dated by both parents to show legal significance. This documentation can be submitted to court for consent orders to be issued through either lawyers or through self-representation or the Amica app on the Family Court Website.
  - A Parenting Agreement does not have to be made legally binding, as it will still be recognised by the Court as a Parenting Plan if you have both signed and dated it.
  - Parenting plans should be flexible enough to adjust to your children’s changing needs and suit the current circumstances but clear enough to keep children out of conflict situations.

**Please note that parenting agreements cannot be altered or amended outside of the FDR appointment unless for incorrect spelling. If you wish to amend or alter your plan you will be required to return to FDR and discuss it together or manage this between yourselves external to the FDR process.**

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**Property: As guided by the Family Law Act**

**We recommend you have legal advice prior to your FDR appointment to ensure you are fully informed about your own personal situation. The accumulation of assets and liabilities falls under different time frames:**

- what each party brought to the relationship;
- what has been accumulated during the relationship; and
- what has been accumulated or disbursed shortly after separation and prior to the settlement of the finances.

Preparation includes obtaining legal advice, obtaining appraisals and valuations, providing & sharing all documentary evidence (refer to Information Links/Pack), seeking advice about your borrowing capacity and considering what a realistic proposal might be based on the independent legal advice obtained.

**Step 1** Preparation & First FDR session (Financial Questionnaire and first session)

- Is about identifying, collating, and uploading the information necessary to get a clear picture of the relationship and the asset and liability pool, this is referred to as **“Discovery”** in the legal system. This is to be supported by documentary evidence that is tabled with full and frank disclosure of all information.

**Step 2:** FDR session (Proposal sharing during session)

- Further opportunity to clarify the pool and values if not complete. During FDR consider how each of your assets, liabilities and superannuation items will be treated at settlement. Consider how your asset pool might be divided to achieve a fair and equitable settlement. Think about how each item will be shared/divided and overall percentage split from the independent legal advice previously obtained. A document containing the asset pool and/or proposals may be provided for consideration and or to seek legal advice.

**Step 3:** (After complete agreement)

- Once agreement has been reached, a detailed **In Principle Property Agreement or Heads of Agreement**, can be provided. This document describes your asset pool (including liabilities and superannuation) and financial resources accumulated prior, during and shortly after the relationship, and your agreement on how they will be divided.
- We strongly recommend that you have your agreement at FDR made legally binding to protect you both from any future claims on your assets or responsibility for debts incurred after separation.

**We require you to be fully prepared for your first property mediation by disclosing all the necessary information so that we may capture an accurate and complete picture of the asset pool. You have the opportunity to upload any relevant documents at the time of completing your online financial questionnaire. The more prepared the less sessions will be required.**