

# Insights into FDR

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# Mediation

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Mediation is used for almost all disputes, because it is so flexible. From workplace conflict, to estate disputes and including family law disputes.

There are many mediation models, and numerous hybrid models have developed over time, each with distinct objectives and approaches.

Examples include:

- Settlement
- Evaluative
- Therapeutic/Transformative
- Facilitative

# What is Family Dispute Resolution? (FDR)

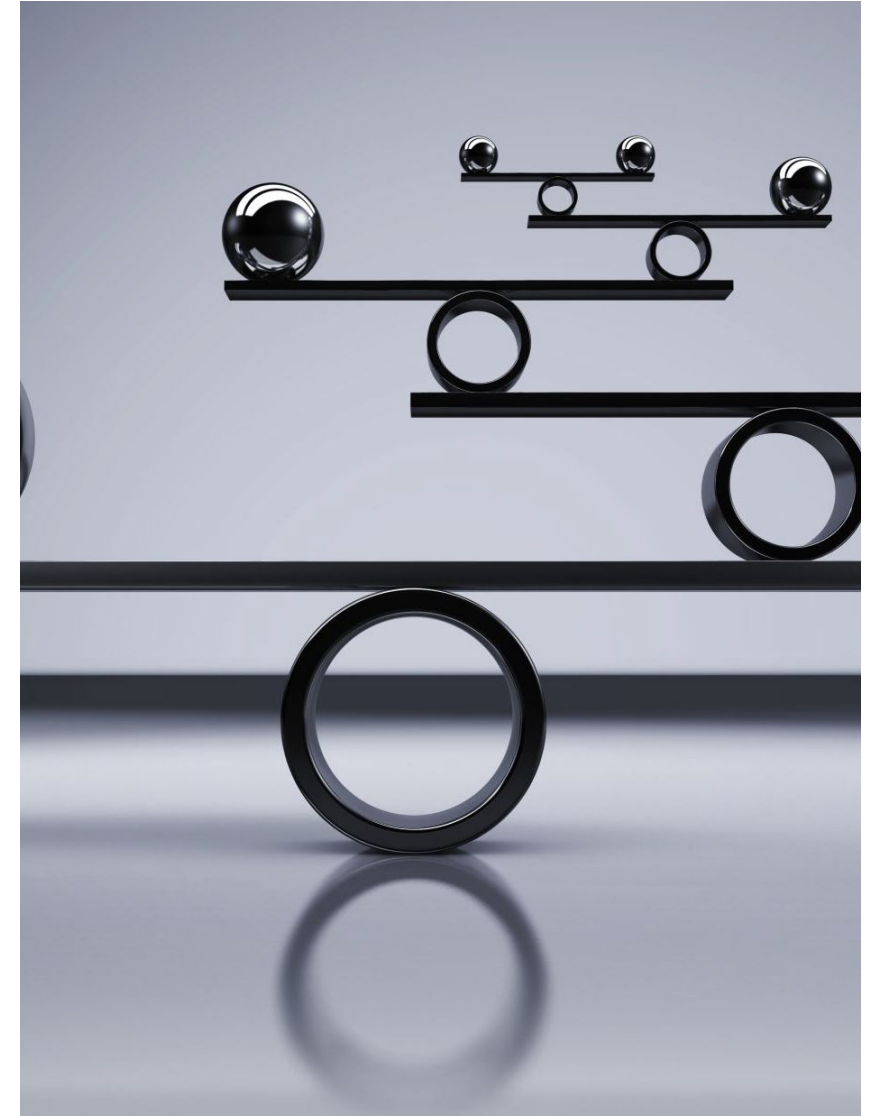
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For Families affected by separation to negotiate parenting arrangements and/or property division

A Section 60I Certificate from an FDR practitioner is needed before a parenting application can be filed in the FCFCOA, unless an exemption applies.

## Role of FDR Practitioners:

- Facilitate mediation without making decisions or providing advice.
- Encourage discussion to uncover interests and negotiate agreements.





# Family Dispute Resolution within the Family Law Act

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**FDR is governed by Family Law Act and Family Law (Family Dispute Resolutions Practitioners) Regulations.**

**Family Law Act s10F:**

**Family Dispute Resolution is a process (other than a judicial process):**

**(a) in which a family dispute resolution practitioner:**

**(i) helps people affected, or likely to be affected, by separation or divorce to resolve some or all of their disputes with each other; or**

**(ii) helps persons who may apply for a parenting order under section 65C to resolve some or all of their disputes with each other relating to the care of children; and**

**(b) in which the practitioner is independent of all of the parties involved in the process.**

**FDRP Regulations 2008 set out Accreditation process so how do we come accredited the obligations in conditions of accreditation, suspension and cancellation AND importantly the assessment process for suitability for FDR.**

# Obligations of Family Dispute Resolution Practitioner's

## Regulation 29

- must ensure that, as far as possible, the family dispute resolution process is suited to the needs of the parties involved
- must ensure any record of the family dispute resolution is stored securely to prevent unauthorised access to it
- must terminate the family dispute resolution if requested to do so by a party; or if they are no longer satisfied that family dispute resolution is appropriate
- must not provide legal advice to any of the parties, unless also a legal representative but may provide procedural information
- must not use any information acquired from a family dispute resolution for personal gain; or to the detriment of any person.

## Regulation 30:

- avoidance of conflicts of interest





# Obligations of Family Dispute Resolution Practitioner's

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BEFORE FDR IS STARTED, THE FDRP MUST PROVIDE THE FOLLOWING INFORMATION PURSUANT TO REG 28:

- it is not the role of the family dispute resolution practitioner to give legal advice
- the confidentiality and disclosure obligations under section 10H
- the provisions of section 10J Relating to admissibility
- the qualifications of the practitioner
- any fees that will be charged
- if person wants to apply to the court for parenting type order unless certain exceptions apply that person must file a 60I certificate which demonstrates they have attempted to attend family dispute resolution
- that costs may be awarded against the party
- and lastly information about the complaint's mechanism.

# FDR Process

## Intake

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Intake is a critical part of the FDR process.

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Opportunity for the FDRP to:

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- build rapport
  - identify issues in dispute
  - identify obstacles and reality testing
  - prepare the client for the process
  - assess suitability and assess mode
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# FDR Process Intake

## Assessing suitability: Reg 25(2)

In determining whether family dispute resolution is appropriate, the family dispute resolution practitioner must be satisfied that consideration has been given to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters:

(a) a history of family violence (if any) among the parties;

(b) the likely safety of the parties;

(c) the equality of bargaining power among the parties;

(d) the risk that a child may suffer abuse;

(e) the emotional, psychological and physical health of the parties;

(f) any other matter that the family dispute resolution practitioner considers relevant to the proposed family dispute resolution.





# Assessment

## Suitability and mode

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### Suitability

**A matter can be assessed as unsuitable for mediation at various stages throughout the clients' engagement.**

### Mode

**Options include face to face, telephone, zoom, shuttle.**

**When assessing mode, the FDRP needs to identify the needs of the clients, evaluate safety, consider their ability to negotiate and consider preferences**

# Inviting the other party

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If it is deemed safe to do so, per regulation 26 at least 2 attempts (with at least one in writing) must be made to invite the other party to attend mediation.



If the other person does not respond to the invitations within the specified timeframes, it will be determined that they do not wish to engage with the process and the initiating party may be entitled to a certificate.



If the other party does engage, they will then undertake the same intake process, and the assessment for suitability will continue.

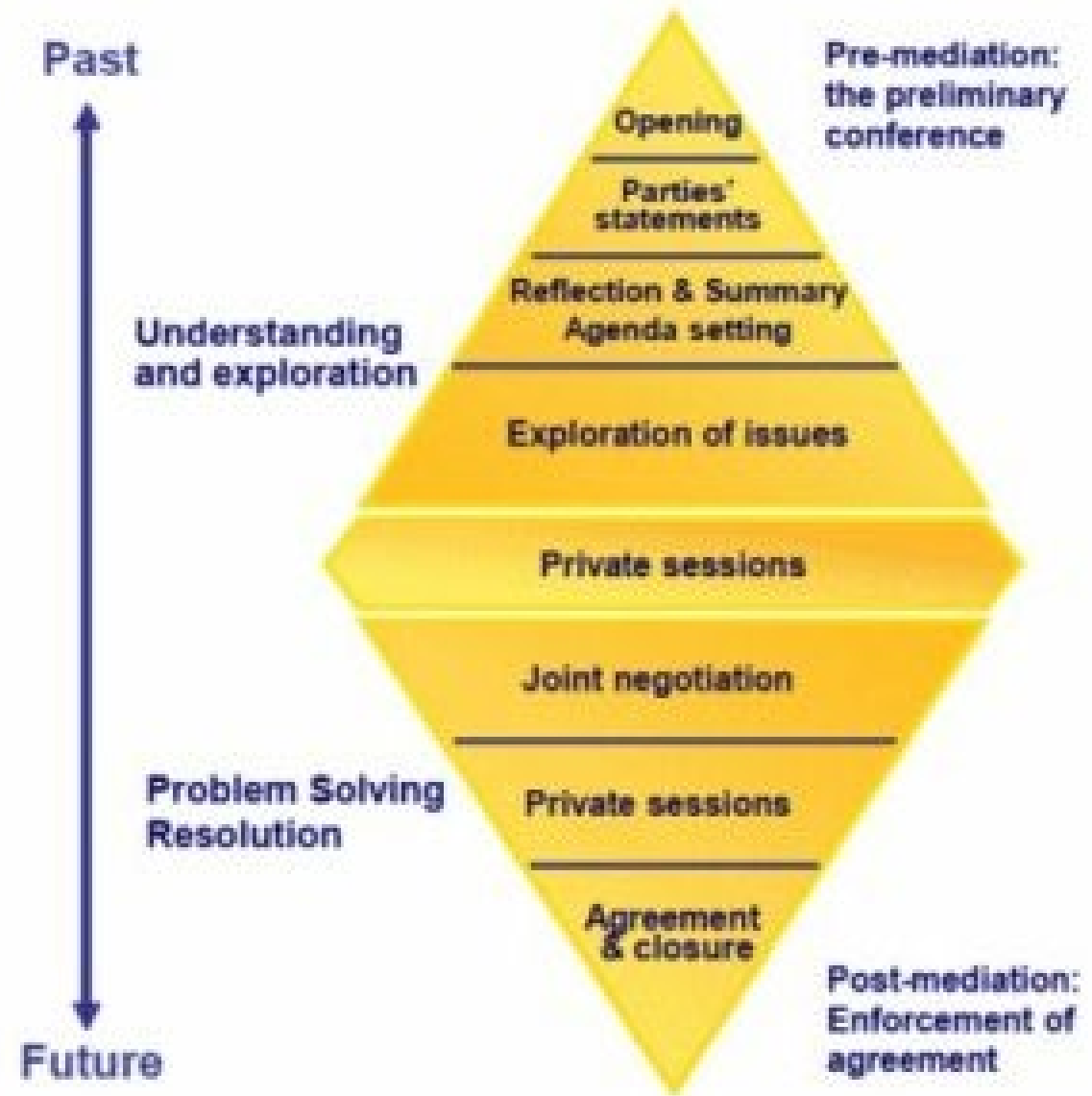
# Mediation – process

The process can be adjusted at the mediator's discretion.

For example, sometimes a mediator may decide not ask parties to give an opening statement and instead ask them what topics they want to talk about to avoid escalation.

Similarly, there may only need to be one private session.

But exploration and option generation/joint negotiation is where most time should be spent.



# Benefits of mediation

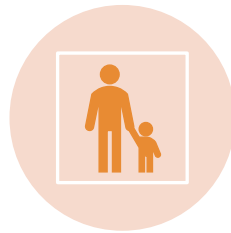
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CHANGES IN ATTITUDES OF THE PARTIES, REGARDLESS OF WHETHER AN AGREEMENT IS REACHED



IDENTIFYING ISSUES AND EXPRESSING THOUGHTS AND CONCERNS. TAKING RESPONSIBILITY FOR ISSUES, MORE CHANCE OF RESOLUTION.



LONGER LASTING AGREEMENTS AS A RESULT IN SHIFT IN ATTITUDES TOWARDS THE OTHER PARENT.



OPPORTUNITY TO HAVE A SAY, BE HEARD AND TALK TO THE OTHER PARTY IN A SAFE ENVIRONMENT



HAVING A BETTER UNDERSTANDING OF EACH OTHER

# Child Inclusive/Informed Mediation

Child-Inclusive Practice is an additional approach during separation that allows children to have their interests taken into account during separation when parents are negotiating parenting arrangements. This is done with the assistance of a child consultant.

**Child Participation:** Children are not expected to propose solutions but are invited to share their experiences and preferences about how their post-separation family can function.

**Safe Space for Expression:** This process provides a secure environment for children to express their anxieties and needs without being caught in parental conflict.

**Child Consultants' Role:** The child consultant gathers the children's insights and relays this information to the parents, helping them create a parenting plan that prioritises the children's well-being.

**Fostering Security:** By including children in discussions, the approach promotes a sense of security and stability, facilitating a smoother transition for the entire family.

**Research Support:** Studies indicate that involving children in decisions that affect them leads to more successful and beneficial arrangements for everyone involved.



# Property Matters

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Mediation is often preferable in property matters for several reasons:

1. **Alignment with court processes:** It mirrors court procedures by identifying assets, assessing contributions, and considering future needs collaboratively.
2. **Collaboration and prioritising needs:** It encourages open discussions about what both parties need moving forward, especially regarding financial stability and children's arrangements.
3. **Flexibility in solutions:** Mediators can facilitate creative, customised solutions particular to each individual circumstance.
4. **Cost and time efficiency:** It is generally quicker and less expensive than litigation, reducing emotional stress and allowing for faster resolutions.



# Case study

## Parenting

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History of litigation, family court orders in place

History of drug use, incarceration

Complex family systems

Lack of trust

Change of mode during the mediation

Discussion around family therapy and how to improve communication

Agreements were reached, this showed the parties that they could agree which was empowering for them



Parents separated 3 years ago; child was 2 at separation.

Dad left and had no contact with the child since.

Mum lives in a remote community; Dad lives in Cairns.

Mediator facilitated communication; encouraged sharing of perspectives.

Successful outcomes: Dad learned Mum supported his relationship with their son.  
Mum heard Dad's gratitude for her efforts in raising their son and his regret for his absence:

## Case Study

# Key skills

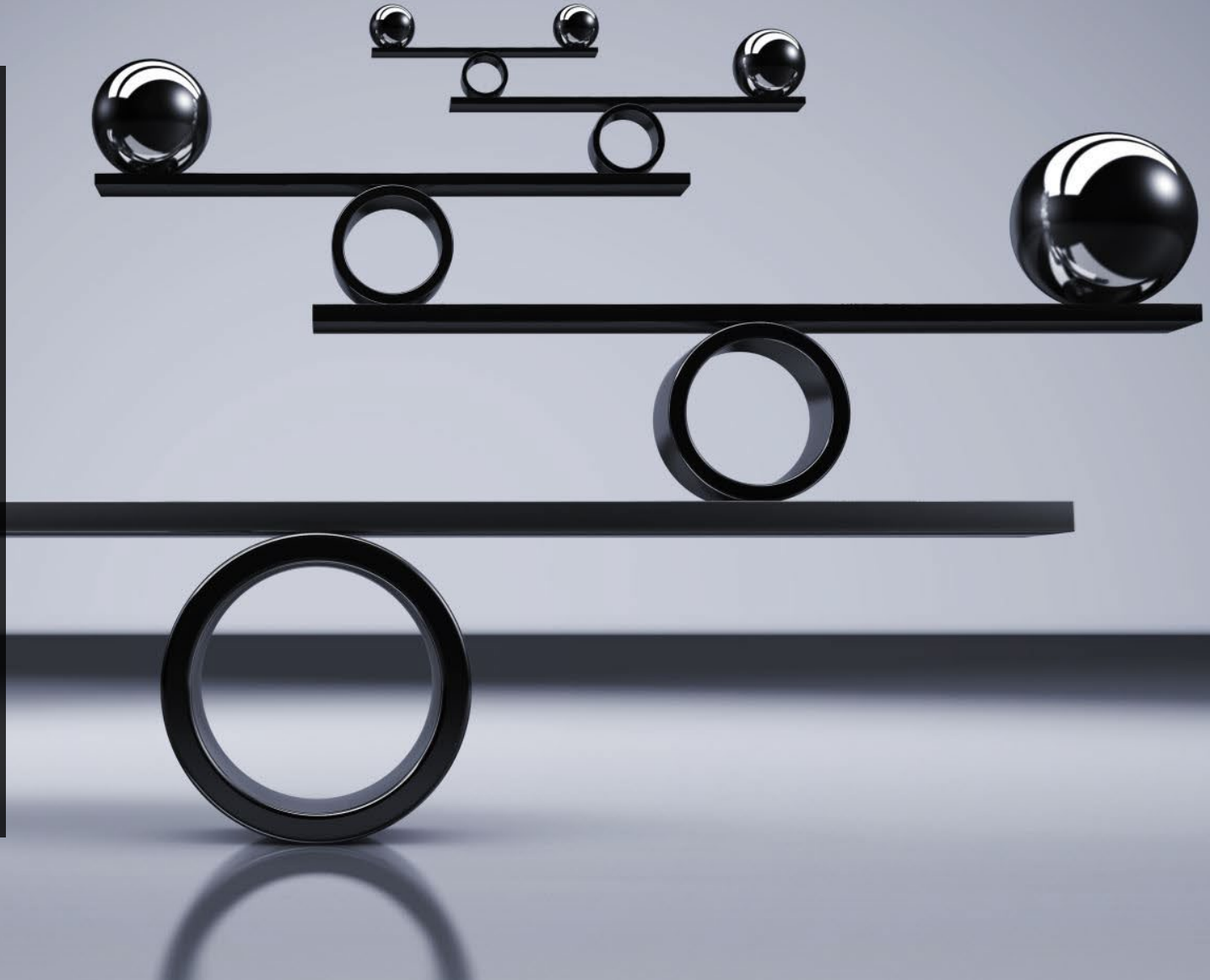
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# Discussion

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- ❖ Most difficult matters to mediate
- ❖ Things to Keep in mind



# Pathway for accreditation

Attorney General's Department  
Practitioner Accreditation Unit

Person to meet criteria must have:

- Having appropriate qualifications and competencies
- NOT Being prohibited under a law of a state or territory from working with children (Blue Card)
- have access to a suitable complaint's mechanism
- not being disqualified from accreditation ( a current national police check will be required as proof,) and
- being suitable to perform the functions and duties of an FDR practitioner



**Thank you**

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