



Section 60I certificates for Family Dispute Resolution

This Fact Sheet outlines general information about certificates issued under section 60I of the *Family Law Act 1975* (Cth) (the Family Law Act) and the [Family Law \(Family Dispute Resolution Practitioners\) Regulations 2008](#) (the FDR Regulations). It contains general information only and is not intended to constitute legal advice. Issues covered include:

1. the certificate template
2. revocation of certificates
3. purpose of 60I certificates
4. types of certificates
5. issuing certificates
6. time frame for issuing certificates
7. responding to Court-referred FDR cases

For more information, see also the Fact Sheets named: *Exceptions to Family Dispute Resolution*, *Screening and Assessment for Family Dispute Resolution* and *General practice information for FDR practitioners* available on the [Information for family dispute resolution practitioners](#)' web page.

If family dispute resolution (FDR) practitioners are unsure if they should issue a certificate or what category of certificate to issue a client, they should seek legal advice from the Family Relationship Advice Line on 1800 050 321.

1. Section 60I (or Section 66H) certificate templates

A template for section 60I certificates is available from the [Information for accredited family dispute resolution practitioners](#) web page. Note, there are two types of template available – one is specific to Western Australia and applies in certain circumstances.

Which certificate should be issued and filed in the Family Court of Western Australia (FCWA) depends on which jurisdiction the FCWA is exercising:

- A section 60I certificate should be issued if the matter involves a 'married' couple (who have separated or are separating), as the FCWA will exercise Commonwealth jurisdiction under the Family Law Act.
- A section 66H certificate should be issued where a matter involves a 'de facto' couple (who have separated or are separating), as the FCWA will exercise state jurisdiction under the *Family Court Act 1997* (WA).

The important issue is not where the FDR practitioner is based, but which court will be asked to make a parenting order, and if it is in the FCWA, whether the order will be made under Commonwealth Family Law Act (section 60I certificate) or state Family Court Act (section 66H certificate) jurisdiction.

The 'not appropriate to continue FDR' category cannot be included in the section 66H certificate as, to date, the WA Family Court Act has not been amended to include this additional category. If an FDR practitioner has inadvertently used a section 66H certificate with the additional category or incorrectly used the section 60I certificate, then a corrected certificate should be issued to the client.

FDR practitioners cannot amend the wording of a certificate and there is no ability to record comments on the certificate. Practitioners may remove irrelevant categories if they feel it will be less complex for a client to understand the certificate category issued to them.

FDR practitioners are not required to provide the court with any additional information (including reasons) about why they have issued a particular certificate because of confidentiality grounds.

2. Revocation of certificates

Neither the Family Law Act nor the FDR Regulations provide for the revocation of certificates.

As the Attorney-General's Department cannot give legal advice, independent legal advice should be sought on this issue. FDR practitioners can phone the Family Relationship Advice Line on 1800 050 321 to seek legal advice.

3. Purpose of the 60I certificate

The law requires separating families who have a dispute about children to make a genuine effort to try to sort it out through FDR. Most people can work things out and don't need to go to court to have matters resolved. Where FDR has failed due to non-attendance or FDR was not appropriate, or the parties made a genuine effort but couldn't agree to the matters in dispute and require a court to resolve the issues, or a non-genuine effort was made by one or more people involved in the dispute, an accredited FDR practitioner can issue a 'section 60I certificate'.

Section 60I certificates allows people to file an application in court and does not serve any evidentiary purpose. This should be clearly explained to clients as well as any consequences attached, such as courts **may** award costs against a party on the basis of failure to attend or not making a genuine effort.

4. Types of section 60I certificates

The five types of section 60I certificates an FDR practitioner can issue are:

1. the person **did not attend FDR** due to the **refusal or failure** of the other person or people to attend
2. the person **did not attend FDR** because the practitioner **did not consider it would be appropriate** to conduct FDR
3. the **people attended FDR**, conducted by the practitioner, and all people **made a genuine effort** to resolve the issue or issues in dispute
4. the **people 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
5. the **people began FDR**, but part way through the practitioner decided it was **not appropriate to continue**

It is a matter for the professional judgment of an FDR practitioner to issue the category of section 60I certificate they feel most appropriate for the case they are presented with.

If people are unhappy with the section 60I certificate issued, they can choose to attend further FDR with a different practitioner. They can also make an application to court to resolve their dispute. FDR practitioners are required to have a complaints mechanism in place in relation to the services they provide and includes concerns about section 60I certificates. Information about complaints mechanisms can be found in the [Fact Sheet on General practice information for FDR practitioners](#).

An FDR practitioner has the discretion to not issue a section 60I certificate on the grounds that they believe the matters in dispute can be resolved and therefore are keeping people out of court. This stance should only be taken if the practitioner has seen genuine intention from all parties involved to stay out of court and the practitioner has genuine and reasonable belief that they can help to resolve the matters in dispute.

Failure to attend

If a party refuses to participate in the FDR process either verbally or in writing, then the practitioner may issue a 'failure to attend' certificate.

Another example where a 'failure to attend certificate' may be issued is where an FDR practitioner has completed an intake for the parties in dispute and determined that FDR is appropriate, but one or more of the parties didn't attend their scheduled FDR session. In this instance, the practitioner may determine that it would be suitable to issue a 'failure to attend' certificate in those circumstances.

Practitioners should indicate on the certificate which party (or parties) did not attend FDR - being due to the refusal or failure of the other party/parties to attend the process.

Practitioners should ensure that this certificate is explained to the party/parties otherwise it may lead to confusion.

As required under the FDR Regulations (see Regulation 26), when inviting a party to FDR, a practitioner (or a person acting on their behalf) is required to advise that if the party does not attend FDR the certificate issued may be taken into account by a court when determining whether to make an order under section 13C of the Family Law Act referring the parties to attend further FDR, or awarding costs against a party under section 117 of the Family Law Act.

CASE STUDY:

If the initiating party attended the FDR session but the other party/parties in the dispute either refused or failed to attend, then the practitioner should record on the certificate that the initiating party did not attend the FDR session which was due to the refusal of the other party/parties.

Think about:

- if the parties are showing a willingness to engage in FDR, rather than immediately issuing a certificate, as a mediator, could another session be arranged in a reasonable time?

In a circumstance where a certificate is issued to one party due to the other party's refusal to attend FDR, and the other party then initiates FDR through a different FDR practitioner and the party in receipt of the first certificate refuses to attend that process, a second 'failure to attend' certificate can be issued. Multiple certificates may be issued in relation to one dispute.

Practitioners should be mindful about whether a party's refusal to attend is due to financial circumstances but that party has a genuine interest in attending FDR. The practitioner will need to rely on professional judgment as to whether a 'failure to attend' certificate should be issued. A referral to a service funded by the Government may be appropriate for this circumstance.

'Not appropriate' certificate

If an FDR practitioner does not believe it is appropriate to conduct FDR when it is requested, the practitioner should issue a 'not appropriate' certificate if they are asked for a certificate. It does not matter if the FDR practitioner believes that it may become appropriate at some point in the future.

It is a matter for the professional judgment of an FDR practitioner to speak with all people involved with the proposed FDR before making a decision that the matter is not appropriate.

'Genuine effort' certificate

'Genuine effort' should be given its ordinary meaning in the context of Part VII of the Family Law Act which deals with children.

A genuine effort involves a real, honest exertion or attempt. It must be more than a superficial or token effort, or one that is false, or is pretence. The effort should be one that is realistically directed at resolving the issues that are going to be the subject of the application to a court. If a genuine effort has not been made, then it may be appropriate to provide a 'non-genuine' effort certificate (see section below).

However, where the parties in dispute have resolved their matters and do not need the court's assistance, it would be counterintuitive to the intention of FDR to issue a 'genuine effort' section 60I certificate, as section 60I certificates only serve the purpose of allowing people to file an application in court.

Where an agreement has broken down after mediation has taken place, an FDR practitioner should encourage parties to try mediation again with the intention of keeping their clients out of court. If the practitioner genuinely believes the clients have made their best attempt to mediate and make their agreement work, however is not able to be recovered, only then should an FDR practitioner issue a 'genuine effort' section 60I certificate.

Certificates cannot be issued more than 12 months after the last attended (or attempt to attend) FDR session about the issue or issues to be covered by a court application.

The question about whether a genuine effort has been made to resolve issues in a particular case will depend on the circumstances of the case. It is a matter for the professional judgment of an FDR practitioner.

Whether the issue in dispute is resolved or not will not necessarily be because one or more people did not make a genuine effort. There may be valid reasons why people have differing views on an issue.

Non-genuine effort certificate

If people involved with the dispute attend FDR but refuse to change their views on the matters in dispute, it is a matter for the professional judgment of the FDR practitioner whether a 'non-genuine' certificate should be issued. Both people may have valid personal reasons why they have refused to change their views. The failure to resolve a dispute does not necessarily mean they have not made a genuine effort.

If a certificate is issued, including a 'non-genuine effort' certificate, the court may order people to attend FDR before hearing the application.

The court may also take into account that a 'non-genuine effort' certificate has been issued when deciding if a costs order should be made against a person.

When FDR commences and family violence is identified

An FDR practitioner can issue a section 60I certificate to cover the situation where it becomes apparent during the course of the FDR that it would be inappropriate to continue. For example, where a history of violence impacts on a person's ability to negotiate is not picked up during the intake process but becomes apparent during FDR, the practitioner may decide to stop the process and issue a certificate.

On the certificate, the FDR practitioner is only required to indicate that FDR is inappropriate. Practitioners are not required to provide any reason why it is inappropriate. Communications to FDR practitioners are not admissible in court proceedings, except in cases of child abuse where the court cannot obtain the information through other sources.

5. Issuing certificates

Only **accredited** FDR practitioners **can issue section 60I certificates**. People who are not accredited, including those still training, cannot issue section 60I certificates.

A certificate should not be issued to people on the recommendation of a practitioner (or lawyer) who is not accredited as an FDR practitioner. This applies even where the non-FDR practitioner may have conducted some form of mediation with the people in the dispute. The accredited FDR practitioner must take the people involved through the FDR process before issuing a certificate and use their professional judgment in all aspects of the case. The usual information outlined under regulation 28 must be provided to the clients, including information about an FDR practitioner's complaints mechanism.

The practitioner who conducted FDR must be the person to issue the certificate unless they are incapable of signing/issuing for example, due to death, loss of accreditation or an inability to be contacted.

In particular, the FDR Regulations provide that if a practitioner who is entitled to give a certificate under section 60I of the Family Law Act becomes incapable of giving a certificate, the certificate may be given on behalf of the practitioner by an organisation (funded by the Government to provide FDR services) for which the practitioner has provided FDR services. This is not an option for independent practitioners.

Should the situation arise that a person is unavailable to issue a certificate for the FDR service they have provided through a Government-funded organisation, another accredited FDR practitioner could issue the certificate using their own Registration number if they are comfortable to do so after reading the case notes, or an appropriate person in the organisation can issue the certificate using the Registration number allocated to the organisation by the Attorney-General's Department.

The use of the unavailable practitioner's Registration number is not recommended, particularly if their accreditation had been cancelled after they left the organisation (or they have died), as it may render the certificate invalid.

Who can section 60I certificates be issued to?

If only one person asks for a section 60I certificate, there is no requirement in the Family Law Act to issue a certificate to everyone involved in the FDR process. However, it is a decision for the individual FDR practitioner to make in context to the clients they have interacted with. This applies to the timing of when they advise the second party (or not) that a certificate has been issued.

Similarly, a copy of a 'failure/refusal to attend' certificate may be considered appropriate for the person who did not attend, in order to further advise them of the potential for the court to take the certificate into consideration when deciding whether to make an order to refer people to FDR or to award costs against a person.

Generally, a court cannot hear an application for a parenting order unless the person applying to the court files a certificate from an accredited FDR practitioner, or the matter falls within certain exceptions (including cases involving family violence, child abuse or urgency). Therefore, if people wish to proceed to court after attempting FDR, practitioners should issue the relevant section 60I certificate to them.

Originals or copies of certificates

It is up to the FDR practitioner to decide whether to provide original or photocopied section 60I certificates to people. Practitioners can choose to give everyone involved an original certificate. They can also choose whether to keep an original certificate or a photocopy in their file.

Two FDR practitioners can issue certificates for the same dispute

There may be circumstances where both people involved in a dispute obtain a refusal/ failure to attend section 60I certificates against each other from different FDR practitioners.

In this situation the court will need to consider the individual circumstances and may decide to order the people involved to attend FDR before the application is heard. The court could also decide to hear the matter without people attending FDR.

Unable to contact another party

If there are no contact details for a person and the others involved in the dispute have no idea of how to find them, they can make an application to the court relying on the exception that one or more of the people to the proceeding is unable to participate effectively.

Otherwise, it is a matter for the professional judgment of an FDR practitioner as to whether it would be more appropriate, based on the individual circumstances of the case, to issue a 'not appropriate to conduct FDR'.

CASE STUDY:

If an FDR practitioner has conducted an intake session with the initiating party but not with the other party/parties in the dispute because there are no contact details available or the wrong contact details have been provided, the practitioner may consider it inappropriate to proceed to FDR given that a full screening and assessment has not been done with the other party/parties. That is, there is lack of suitable information to determine whether it would be appropriate to proceed to FDR. A 'not appropriate to conduct FDR' certificate may be suitable for this situation.

Delaying tactics by a party

When to issue a section 60I certificate saying that a person failed or refused to attend (including non-responses) is a matter for the professional judgment of an FDR practitioner. However, if a practitioner has reason to believe that a person is using delaying tactics, they are able to issue a certificate so long as the practitioner has complied with the requirements of the FDR Regulations.

This means that an FDR practitioner (or someone acting for them), must attempt to contact the party who has failed to attend at least twice, with at least one contact in writing. FDR practitioners are also required to offer a reasonable choice of days and times for attendance at FDR and advise of the consequence for not attending (ie, a section 60I certificate may be issued). It is up to each individual or organisation to determine the reasonable length of time in which to comply with this requirement.

6. Timeframes for issuing section 60I certificates

Regulation 26(1) specifies that an applicant may only file a certificate within 12 months after the last FDR session or attempted FDR. Also, Regulation 26(3) specifies that an FDR practitioner cannot give a section 60I certificate to a person if more than 12 months has elapsed since the person last attended, or attempted to attend, FDR about the issue or issues to be covered by the court application.

These time limits recognise that the issues in dispute, and/or the attitudes of the people involved, may change over time and this may warrant another attempt at FDR.

It is important when issuing section 60I certificates that FDR practitioners include two dates on the certificate, being the date of last attempted FDR and when the certificate was issued, or the date of last attended FDR and when the certificate was issued.

'Last attended' means when the person attended the most recent FDR session. 'Last attempted to attend' would mean when the practitioner determined that FDR is not suitable, received a refusal, or the date by which the practitioner was unable to engage the second party by.

When to issue a section 60I certificate saying that a person failed or refused to attend is a matter for the professional judgment of an FDR practitioner. There may be genuine reasons why a person is unable to attend at a number of sessions. However, if a practitioner has reason to believe that a person is using delaying tactics, they are able to issue a certificate so long as the practitioner has complied with the requirements of the FDR Regulations.

This means that FDR practitioners (or someone acting for them), must attempt to contact the party who has failed to attend at least twice, with at least one contact in writing. FDR practitioners are also required to offer a reasonable choice of days and times for attendance at FDR. It is good practice for a practitioner to tell people they are considering issuing this type of certificate.

CASE STUDY 1:

The parties attended FDR on 1 March 2020, the certificate will reflect this date as the 'last attendance'. However, the clients did not ask for a certificate until 1 September 2020. When issuing the section 60I certificate, the FDR practitioner should include the 'Date of certificate' as 1 September 2020 and 'Date of last attendance at FDR (for category 'c', 'd' or 'e')' as 1 March 2020.

CASE STUDY 2:

A party attempted the FDR process with an accredited FDR practitioner on 1 April 2020. The practitioner invited the second party to engage in FDR by 19 April 2020 - advising them that failing to attend may be taken into account by the court. The practitioner was not able to engage the second party, so the certificate (for category 'a') should reflect the date they received a refusal from the second party or the last opportunity to attend FDR, being 19 April 2020. The date the certificate was issued should also be included.

CASE STUDY 3:

On 30 June 2020, a client contacted an FDR practitioner and the practitioner determined the matter was unsuitable for FDR in accordance with regulation 25(2). When issuing the section 60I certificate, the practitioner would write 30 June 2020 as both the date of certificate and the date of last attempted FDR (for category 'b').

Applying for final orders

Where parties have already been issued a section 60I certificate and have applied to the court for final orders, additional certificates are not required for any subsequent orders sought as part of having their parenting dispute resolved by the court. For example, when applying to the court about their parenting matter, people apply for final orders. As part of the process of obtaining final orders, parents may need to apply for other orders related to the final orders. These orders could include interim orders or orders incidental to the family law matter, such as an order to appoint an Independent Children's Lawyer. In this situation, people do not need to go back to FDR to obtain certificates for these orders. However, if people wanted to start new family law proceedings they would have to obtain new certificates.

7. Responding to Court-referred FDR cases

The [Central Practice Direction – Family Law Case Management](#), issued by the Federal and Family Court of Australia on 1 September 2021, sets out detail around the role of dispute resolution in the Court's case management pathway. In particular, the Court's power to refer cases out to mediation or FDR, if the Court determines the case is appropriate to be managed outside of the Court.

The Central Practice Direction requires parties to provide certain material to FDR practitioners no less than 7 days prior to FDR. This does not apply if the Court otherwise directs, or the FDR practitioner and the parties otherwise agree. Examples of the types of information required to be provided include all relevant Applications, Responses, Affidavits, and Financial Statements filed in the proceedings, any relevant expert reports, any documents exchanged between the parties, and a confidential case outline in an approved form.

There is no obligation under the Central Practice Directions for an FDR practitioner to have regard to such material and the extent to which an FDR practitioner chooses to do so is a matter within the practitioner's discretion. Unlike the record-keeping obligations under the Regulations (to ensure there is no unauthorised access to a record), there are no record keeping obligations imposed by the Central Practice Direction on FDR practitioners in respect of material provided by the parties for the purposes of FDR in accordance with the Central Practice Direction. Individuals, and employer organisations of FDR practitioners, may choose to develop their own policy guidance on these matters, of which should comply with laws relating to privacy and confidentiality of personal information.

In order to report back to the Court, a practitioner is required to issue the Court's Certificate of Dispute Resolution, so as to inform the Court of the outcome of the mediation. The certificate will be provided by the Applicant in the matter and should be given back, once completed, to the Applicant.

Any questions about the certificate required by the Court, should be directed to the Court for response.