

## WHEN IS FAMILY MEDIATION REQUIRED?

In Australia mediation is the preferred approach when separated parents cannot come to an agreement by themselves regarding the care, welfare and well-being of children. In Australia mediation is carried out by Family Dispute Resolution (FDR) practitioners accredited by the Commonwealth Attorney General's Department under the Family Law Act 1975 (Cth).

The Australian Family Court will not allow parents to initiate proceedings in the Family Court unless they have a Section 60I certificate, or an exception applies to their situation. This includes parties seeking to change an existing Parenting Order.

## WHAT IS A SECTION 60I CERTIFICATE?

If family mediation is not successful, an accredited FDR practitioner can issue a certificate, allowing a party to make an application to the Family Law Court in Australia. The certificate is called a 'Section 60I certificate' and can only be issued by an accredited FDRP.

## WHAT DOES THE CERTIFICATE SAY?

A section 60I certificate will record the details of the FDR practitioner, the names of the parties, the issues in dispute and some general outcomes from the FDR process.

The Section 60I certificate will say one of the following:

- a)** the other party did not attend;
- b)** the FDR practitioner decided your case was not appropriate for FDR;
- c)** you and the other party attended and made a genuine effort to resolve the dispute;
- d)** you and the other party attended but one or both of you did not make a genuine effort to resolve the dispute; or
- e)** the FDR practitioner decided it was not appropriate to continue part way through the FDR process.

A Section 60I certificate can also be issued if FDR is not appropriate for the particular situation. This could mean there are concerns about family violence, the safety of the parties or risks to children, the ability for each party to be able to negotiate, or other issues the practitioner feels are relevant.

Section 60I certificates allow people to file an application in court, they do not serve any evidentiary purpose. It is important for you to be aware that the courts may award costs against a party on the basis of failure to attend or for not making a genuine effort.

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.

## WHEN DON'T I NEED A CERTIFICATE?

A certificate to start family court proceedings in Australia is required unless any of the following applies:

- An agreement has been reached and you want to file consent orders;
- You are responding to another party's application;
- If your matter is urgent;
- There are family violence or child abuse concerns;
- If you want to make a family court application in relation to another party's non-compliance with a court order made in the last 12 months and the other party has behaved in a way that shows a serious disregard for their obligations under the court order;
- One party is not able to participate effectively in FDR (for example, incapacity or for some other reason); or
- Other circumstances specified in the regulations are satisfied.

This information is from section 60I (9) Family Law Act 1975.

If you believe you do not need a certificate to start Family Court proceedings we recommend that you seek advice from a family lawyer.

Note: 'Party' means the other person or persons involved in the parenting dispute.

## HOW LONG IS A SECTION 60I CERTIFICATE VALID?

A section 60I certificate can be issued within 12 months of the last attendance, or attempted attendance at FDR. Similarly, a certificate can only be filed with a Court if it has been issued within 12 months of the last FDR or attempted FDR. Over time, the issues in dispute and the people's attitudes usually change which may warrant a further attempt at FDR and these time frames recognise this.

