IMAW 2026
International Mediation Awareness Week

# Family Violence and FDR

## What support professionals need to know

**AN INVITATION**

Bring FDR practitioners into the team around people affected by family and domestic violence.

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BEFORE WE BEGIN

# Acknowledgement and care

## Acknowledgement of Country

We acknowledge the Traditional Custodians of the lands on which each of us joins today, and pay our respects to Elders past and present. We recognise the strength of First Nations peoples' ways of resolving disputes and caring for family.

## A note on content

Today we talk about family and domestic violence. Please look after yourself – step away if you need to.

**1800RESPECT** · 1800 737 732
24 hours, 7 days

TODAY'S INVITATION

# Why FDR practitioners belong in the team

People who have experienced violence deserve a dispute resolution option that is protected, skilled, safe and shaped around them. Going to court is not the only option.

### Protected

Confidentiality and admissibility protections in the Family Law Act – including for referrals.

### Qualified

Graduate Diploma level study, supervised practice and government accreditation.

### Safety-first

Suitability assessed before and throughout. Safety comes before agreement.

### Trauma-informed

The process is changed to fit the person – not the other way round.

THE BAD OLD DAYS

# Why the law had to change

**What many people experienced**

- Advised to play down violence, so as not to seem “difficult”
- A “friendly parent” test and costs risks that made raising safety concerns feel dangerous
- “Equal shared responsibility” heard as 50/50 time
- A parent’s own safety not a stated factor
- Pressure to agree to unsafe arrangements

The role of FDR Practitioner was established in 2008 with a short upskilling course for family mediators.

**2006**

Shared parenting reforms and the equal shared responsibility presumption

**2012**

“Friendly parent” factor removed; wider family violence definition; protection from harm given priority

**2024**

Presumption repealed; safety of the child and carers comes first

**2025**

Family violence in property, companion animals, protected confidences, new FDR Regulations

Family Law Act 1975 (Cth) amendments 2006, 2011 (in force 2012), 2023 (in force 2024) and 2024 (in force 2025)

PARENTING LAW SINCE 6 MAY 2024

# Best interests: safety comes first

**(a) Safety** of the child **and each person who cares for them** – including from family violence, abuse and neglect

**(b)** Any views the child expresses

**(c)** The child's developmental, psychological, emotional and cultural needs

**(d)** Each proposed carer's capacity to meet those needs

**(e) A relationship with parents** and other significant people – **where it is safe to do so**

**(f)** Anything else relevant to the child's circumstances

**s 60CC(3) Aboriginal and Torres Strait Islander children:** the child's right to enjoy their culture including connection with family, community, culture, Country and language and the likely impact of any proposed order on that right

Sources: Family Law Act 1975 (Cth) s 60CC; Mi, "Parenting Arrangements after Separation"

PARENTING LAW SINCE 6 MAY 2024

# Time with parents: no longer a starting point

### Before

- Presumption of equal shared parental responsibility
- Court had to consider equal time, or “substantial and significant” time
- FDRPs had to ask parents to consider that as well
- That caused many parents believed 50/50 time was the rule

### Now

- Presumption (s 61DA) and time rule (s 65DAA) repealed
- A relationship with each parent is one factor – **where it is safe**
- Decision-making is joint or sole, based on best interests

FDR is still generally required before court (s 60I). Exemptions must be applied for – they aren’t automatic.

Sources: Family Law Amendment Act 2023 (Cth); Mi, “Parenting Arrangements after Separation”

GOING TO COURT

# Exemptions from FDR aren’t automatic

### Court exemption · s 60I(9)

- The person must **apply**, with an Affidavit – Non-filing of FDR Certificate
- A Registrar must be satisfied there are reasonable grounds – e.g. family violence, child abuse, urgency
- If not satisfied, the application is **rejected for filing**

### FDRP assessment · reg 20

- Asks a different question: Can each person **negotiate freely and safely?**
- Family violence doesn’t automatically rule FDR out and its absence doesn’t rule it in
- If not appropriate: a s 60I certificate will be issued with a clear path to court

Encourage early legal advice **and** an FDRP assessment don’t assume an exemption will be granted.

Sources: Family Law Act 1975 (Cth) s 60I; FCFCOA, Compulsory family dispute resolution fact sheet; FDR Practitioners Regulations 2025, s 20

PROPERTY LAW SINCE 10 JUNE 2025

# Family violence now counts in property

> The court must consider the effect of family violence when dividing property and deciding spousal maintenance.

**Contributions · s 79(4)(ca)**

How violence affected a person's ability to contribute – financially, at home or as a parent

**Current & Future · s 79(5)(a)**

The effect on their current and future circumstances, such as health, work and housing

The old "future needs" is gone and it is now "current and future circumstances"

**Economic abuse · s 4AB(2A)**

Controlling money, assets or work is family violence.

The economic impact of family violence needs evidence.

Sources: Family Law Act 1975 (Cth) ss 4AB, 79 (de facto: s 90SM); Mi, "Property Mediation: How has the process changed?"

PROPERTY LAW SINCE 10 JUNE 2025

# Property decisions affect children too

> When dividing property, the court must consider the care of the children – including the need to provide them with appropriate housing.

**Children's housing · s 79(5)(f)**

Who cares for the children, and where they will live, is a factor in dividing property

**The old practice**

Some mediators "only did property" – and didn't ask about family violence or the children

**Good practice now**

Screen for family violence and economic abuse in every matter – property included

Sources: Family Law Act 1975 (Cth) s 79(5); Mi, "Property Mediation: How has the process changed?"

PROPERTY LAW SINCE 10 JUNE 2025

# Pets are now “companion animals”

**WHY IT MATTERS**

Harming or threatening a pet is a common way to control and frighten.

Deliberately injuring an animal is family violence (s 4AB).

**The court considers · s 79(7)**

- Any family violence, including cruelty or threats to the animal
- Who cared for it and paid for it
- How and when it was acquired
- Each person’s ability to care for it
- Attachment of each person – and the children

**Orders (s 79(6)):** one person keeps the animal, it goes to someone who agrees to take it, or it is sold. No shared ownership or “pet custody”.

Sources: Family Law Act 1975 (Cth) ss 4AB, 79(6)–(7); Mi, “Property Mediation: How has the process changed?”

COERCIVE CONTROL

# A pattern, not an incident

> Family violence is “violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family or causes the family member to be fearful” (s 4AB).

**What it can look like**

Controlling money, isolating, monitoring, micro-managing daily life, threats, put-downs, using the children

**Why it’s missed**

Each act may seem minor alone. Together they undermine autonomy, freedom and safety.

**In FDR**

FDR practitioners screen for patterns of control – privately, with each person

Sources: Family Law Act 1975 (Cth) s 4AB; Mi, “What Is Coercive Control?”

COERCIVE CONTROL · PICKFORD & PICKFORD [2024]

# Conflict is not always family violence

> The Full Court: “parental conflict and family violence are not one and the same thing. Parents can be in conflict without one perpetrating family violence upon the other.”

**Look at the pattern**

The impact of a series of acts is “intersecting and cumulative, rather than incident specific”

**Evidence, not assertion**

Feeling controlled isn’t enough alone. The behaviour, context and impact must be shown.

**Fear still counts**

Behaviour that causes genuine fear is family violence. Intention doesn’t have to be proved.

Source: Pickford & Pickford [2024] FedCFamC1A 249 (Full Court, 20 December 2024)

IF YOU WORK WITH PEOPLE WHO USE VIOLENCE

# “Justified” behaviour has consequences

| What a client may believe | What family law calls it (s 4AB) |
|---|---|
| “I’m not paying until I see the kids.” | Withholding financial support |
| “It’s my money, so I decide.” | Economic and financial abuse |
| “I only said it to make them listen.” | Threats and intimidation |
| “I just need to know where they are.” | Stalking and monitoring |

**It can count against them** in parenting arrangements, property settlement and decisions about pets and coercive control is now a crime in some states.

Sources: Family Law Act 1975 (Cth) ss 4AB, 60CC, 79; Mi, “What Is Coercive Control?” General information, not legal advice.



# The law now puts safety first.

So do FDR practitioners.

QUALIFIED

# Who is an accredited FDR practitioner?

### Graduate-level study

Graduate Diploma of Family Dispute Resolution (CHC81115, AQF level 8) with supervised practice, or an approved pathway (6 of the 10 units) + a recognised degree

### Government accreditation

Accredited by the Attorney-General's Department and listed on the public FDR Register

### Ongoing learning

At least 24 hours of professional development every two years – including family violence content

### Accountable

Fit and proper person test, professional indemnity insurance and an approved complaints body

Source: Family Law (Family Dispute Resolution Practitioners) Regulations 2025, ss 8, 9, 12 and 18

PROTECTED · PART 1

# Confidentiality: what stays in the room

**THE RULE · S 10H(1)**

An FDR practitioner must not disclose what is said in FDR unless the law allows or requires it.

### The limits

- **Must** disclose where another law requires it, such as child abuse reporting
- **May** disclose with the consent of the adult who said it
- **May** disclose to protect a child from harm, or prevent a serious and imminent threat to someone's life or health
- **May** disclose to report or prevent violence or damage to property

Source: Family Law Act 1975 (Cth) s 10H; see also s 67ZA (reporting child abuse)

PROTECTED · PART 2

# Admissibility: what can’t be used in court

> What is said or admitted in FDR is generally **not admissible** in any court (s 10J).

### The exceptions

- An admission or disclosure that a child has been abused, or is at risk
- Information needed for a s 60I certificate

### Intake is covered too

Since 1 April 2025, the suitability assessment is part of FDR – so screening conversations are protected as well.

Source: Family Law Act 1975 (Cth) s 10J; Family Law (FDR Practitioners) Regulations 2025

PROTECTED · PART 3

# Referrals from an FDRP are protected too

**S 10J(1)(B)**

When an FDR practitioner refers someone to a counsellor, psychologist or other professional, what they say in those sessions is generally **not admissible** in court.

**Why this matters**

People who have been gaslit are often accused of being “mad” or unstable.

An FDRP referral lets them get help without fearing those sessions will be used as evidence against them.

Same exceptions as FDR (child abuse disclosures). Applies to professionals the FDRP refers to – not to existing treating practitioners.

Source: Family Law Act 1975 (Cth) s 10J(1)(b) and (4); protected confidences provisions from 10 June 2025

# A protected space to speak –

and to be heard.



HOW FDR WORKS

# The FDR journey

**1**

**Referral**

From you, a lawyer, the court, or self-referral

**2**

**Private intake**

Separate and protected. Family violence and risk assessed.

**3**

**Preparation**

Information, coaching, safety planning, choice of format

**4**

**Sessions**

Shuttle, online or in person, with breaks and support

**5**

**Outcome**

Parenting plan, property settlement agreement to formalise, or a s 60I certificate

**Safety and suitability are checked at every step.** The person can pause or stop at any time and so can the practitioner.

SAFETY-FIRST

# Suitability is assessed before and throughout

Before and during FDR, the practitioner must decide whether it is appropriate to go ahead. They consider whether each person's ability to negotiate freely is affected by:

- Family violence – past or present
- Equality of bargaining power
- Emotional, psychological and physical health
- The safety of everyone involved
- Risk that a child may be abused
- Undue influence from anyone, including others not part of the FDR process

Source: Family Law (FDR Practitioners) Regulations 2025, s 20 (plus "any other matter" that is relevant)

SAFETY-FIRST

# Safety is non-negotiable

### THE PRACTITIONER CAN

- Decline to start FDR
- Pause or end it at any time
- Issue a s 60I certificate saying FDR is not appropriate – so the person can go to court (parenting only)

### Safer ways to do FDR

- Shuttle FDR – never in the same room
- Online, in separate virtual rooms
- Separate arrival and leaving times
- A support person present or nearby
- Lawyer-assisted FDR
- Safety check-ins before and after each session

Source: Family Law Act 1975 (Cth) s 60I(8); FDR Practitioners Regulations 2025, ss 20 and 22

SAFETY PLANNING

# Hazards and risks

**Hazard:** the potential for harm such as abuse happening during or around FDR

**Risk:** the chance that harm occurs when someone is exposed to the hazard.
**Risk rating** = likelihood × consequence

| Hazard | Controls that reduce the risk |
|---|---|
| Abuse or intimidation during the session | Shuttle or separate online rooms; breaks and agreed signals; pausing or stopping |
| Harm outside the practitioner's control – in the car park, at the train station, on the way home | Staggered arrival and leaving; joining online from a safe place; travel in the safety plan |
| The other party turning up at the home because an address was released | Addresses removed from documents and correspondence; held only by the FDRP |
| Agreeing to inequitable proposals due to fear | Encouraging legal advice before signing parenting plans, property agreements not binding without future steps |

**Risk changes.** It is reassessed at every step – with the person, not just about them.

See also: Mi, "Psychosocial Safety and Mediation" (hierarchy of controls)

PROTECTION ORDERS

# Choose an FDRP, not just a mediator

> Many family violence orders allow communication through a mediator. When that mediator is an accredited FDR practitioner, the person gains family law protections other mediators can't offer.

| Family Law Act protection | Accredited FDRP | Other mediator |
|---|---|---|
| Confidentiality with legislated limits (s 10H) | Yes | No |
| Not admissible in court (s 10J) | Yes | No |
| Referrals to other professionals protected (s 10J(1)(b)) | Yes | No |
| Required family violence and safety assessment (reg 20) | Yes | No |
| Can issue a s 60I certificate | Yes | No |

Other mediators may offer contractual confidentiality, but not these Family Law Act protections. Check each order's conditions.

SELF-DETERMINATION

# Safety first – then real choice

The person decides what to agree to and whether to keep going. Our job is to protect the conditions for a free and informed choice.

**No pressure**

No agreement is better than an unsafe one.

**Informed**

Legal advice encouraged before anything is signed.

**Impartial**

We don’t take sides – **but we are never neutral about violence including coercive control.**

SELF-DETERMINATION

# A right – not a reward for being “safe enough”

> Experiencing abuse doesn’t remove a person’s capacity or their right to make their own decisions. Taking choices away, by telling them FDR isn’t for them, can repeat the control they have lived with.

**Dignity and autonomy**

All people are equal in dignity and rights (UDHR art 1)

**Equal before the law**

Recognised as a person who makes legal decisions (ICCPR art 16; CRPD art 12)

**Supported, not substituted**

We support decision-making – we don’t make the decision for them

Universal Declaration of Human Rights; ICCPR; Convention on the Rights of Persons with Disabilities; Charter of Human Rights and Responsibilities Act 2006 (Vic)

TRAUMA-INFORMED

# Trauma-informed FDR supports agency

Trauma can affect memory, concentration, trust and decision-making. A trauma-informed process helps the person stay in control of their own decisions.

**Safety**
Physical and emotional

**Trust in the process**
Clear about every step

**Choice**
Options at each stage

**Collaboration**
Doing with, not to

**Empowerment**
Building on strengths

**Cultural safety**
Respecting identity and culture

Principles adapted from Blue Knot Foundation and SAMHSA trauma-informed care guidance

TRAUMA-INFORMED

# Change the process as much as needed

### Before

- Extra preparation sessions
- Information in writing, in advance
- Choice of format and timing
- Agreed signals for a break
- Interpreter or support person

### During

- Shorter sessions, more breaks
- One issue at a time
- Proposals in writing
- Regular safety and wellbeing check-ins
- Pause or stop when needed

### After

- A written summary
- Time for legal advice before signing
- Referrals and follow-up
- A check-in on safety



**Impartial between the parties.**

**Never neutral about violence.**

WORKING TOGETHER

# The team around the person

- Family violence specialist
- Counsellor or psychologist
- Lawyer or legal aid




- **FDR practitioner**
- Child and family services
- GP and health services

FDR practitioners are impartial between the parties – and share your commitment to safety.

MAKING A REFERRAL

# Questions to ask an FDR practitioner

- Are you accredited? Check the FDR Register.
- How do you screen for DFV and assess risk?
- What safety options do you offer – shuttle, online, separate times?
- Can I talk with you, or attend as a support person, with my client's consent?
- What happens if FDR isn't suitable?
- What are your fees – and are there free or low-cost options?

MAKING A REFERRAL

# Helping your client prepare

- **Get legal advice early** – know their rights and options
- **Tell the FDRP at intake** about violence and what they need to feel safe
- **Plan for afterwards** – support and self-care after each session
- **Update the safety plan** around session days
- **Think about priorities** – especially for the children
- **Know they can stop** – at any time, for any reason

**Help them avoid minimisation** – the FDRP doesn't want to retraumatize with detail but they do need to be able to evaluate patterns and impact in their suitability decisions

OTHER PATHS

# When FDR isn’t right and that’s OK

### A certificate or exception

An FDRP can issue a s 60I certificate, or the court can accept a family violence exception.

The person can go straight to court but court is usually not an easier process.

### Safety orders first

Protection or intervention orders take priority.

Any agreement must work safely alongside them.

Past and current orders are relevant to the risk screening.

### Maybe later

FDR may become suitable later, or for some issues.

Interim financial agreements or property settlements can occur before parenting arrangements are finalised.

Lawyers can be involved.

General information only, not legal advice. Encourage clients to get their own legal advice.

THE TAKE-AWAY

# Five things to tell your client

1. **The violence counts.** Don’t play it down – it matters in parenting, property and pet decisions.
2. **Keep records.** In property matters, the effect of the violence needs evidence.
3. **Get legal advice early** – before agreeing to or signing anything.
4. **Don’t assume an exemption from FDR.** It must be applied for and can be refused.
5. **Choose an accredited FDR practitioner** – for the Family Law Act protections other mediators don’t have.

General information only, not legal advice. Encourage clients to get their own legal advice.

FURTHER READING

# Plain-English guides from Mi

- Parenting Arrangements after Separation
- Dividing Property After Separation – What Gets Taken Into Account
- Property Mediation: How has the process changed since the FLA was amended?
- What Is Coercive Control?
- Coercive Control Laws in Australia: What Mediators, FDRPs and Lawyers Need to Know
- FDR Regulations 2025

All at **mediationinstitute.edu.au/blog**

THANK YOU

# Let’s work together

Protected. Qualified. Safety-first. Trauma-informed.
Bring an FDR practitioner into the team.

**Mediation Institute (Mi)**
mediationinstitute.edu.au

## Your questions

Need support?
**1800RESPECT** · 1800 737 732
In danger now? Call **000**