

Applicants

5. Attend to steps 1–3. If any FDR exception applies under 1 (a)–(f):
 - Make an appointment for your client to attend FDR alone, briefing the FDR provider as to the FDR exception that may apply (e.g. your client has come to the appointment alone due to concern for her safety due to other party’s propensity for intimidation) whereupon an FDR certificate is likely to issue (under s 60I(8)(aa) as to FDR not being appropriate). Pre-action steps may be waived under clause 1/4 of Part 2 of Schedule 1 of the Rules (urgency, violence or abuse, or intractable dispute or prejudice).

Note – If neither party attends, an affidavit will have to be filed under s 60J before an application will be heard.
 - Once an FDR certificate issues, you may issue proceedings (filing the FDR certificate with your Application and waiving the pre-action procedure below). Now go to 7.
6. If no FDR exception applies under 1 (a)–(f):
 - Write to the other party or their lawyer proposing:
 - “without prejudice” the terms of a consent order; or
 - that the parties jointly attend a family dispute resolution practitioner. (For a sample **FDR letter**, see “letters” under “precedents” below. If the matter settles, FDR is not required.); or
 - that they attend a conference with their lawyers to discuss a possible settlement.
 - If the appointment with an FDR practitioner is not kept by the other party, your client is likely to be given an FDR certificate of non-attendance of the other party (under s 60I(8)(a)); or
 - If both parties attend, an FDR certificate will issue to the effect that a genuine effort to resolve issues was either made (para (b) of s 60I(8) or not made (para (c)).
7. Once the certificate is obtained, send a **pre-action procedure letter** to the other party or their lawyer, for a sample of which go to “letters” under “precedents” below (setting out prescribed matters and attaching the required brochure/s).

Note – This is only compulsory for cases in the Family Court, although it can be useful in some FCC cases. If the pre-action procedure has been taken and the case does not settle during this stage, go to 7.
8. You can now issue proceedings:
 - Obtain from your client the details needed to complete an Initiating Application and an affidavit (see “forms” for the forms and “precedents” for their contents) and file them.
 - File the FDR certificate with your Application.
 - If no type of FDR certificate has issued, it will be necessary for you to obtain from your client the details needed to complete and file the form “Affidavit – Non-filing of a Family Dispute Resolution Certificate” (“forms”).

Note – This affidavit is a nuisance. Avoid having to file it by ensuring that some kind of FDR certificate is obtained from the counsellor (and filed with your papers).

- If applicable, see “alleged child abuse or family violence” below for your procedure. You must also hand up at the first hearing an Acknowledgement – Information from a Family Counsellor or FDR practitioner (see “forms” under “applicants” below).
9. A **Reply (FCC)** or **Reply (Fam Ct)** should be filed and served by an applicant if the respondent applies for orders in a cause of action not brought in the initiating application (e.g. if the applicant seeks financial orders only and the respondent applies for parenting orders as well as financial orders).

Respondents

1. After 1–3 (for “both parties”, as above) have been attended to, arrange for your client to attend the FDR appointment (or not to attend if a likely exception applies, e.g. safety, informing the FDR provider of that).
2. After the issue of an FDR certificate, take instructions from your client for a letter in reply to the applicant’s pre-action procedure letter.
3. If proceedings have been filed by the other party:
 - Obtain instructions as to your client’s prior notice of the proceedings and whether the applicant has complied with the FDR and pre-action procedures set out above.
 - If the applicant has not complied, your client is entitled to raise this at the first hearing and argue for their costs.
 - Instructions should be obtained in sufficient detail for completion of a Response to Initiating Application and supporting affidavit (see “forms” and “precedents”).
4. If applicable, see “alleged child abuse or family violence” below for your procedure. You must also hand up at the first hearing an Acknowledgement – Information from a Family Counsellor or FDR practitioner (see “forms” under “applicants” below).

Alleged child abuse or family violence

If your client alleges a risk of harm to a child file and serve a “notice of child abuse, family violence or risk of family violence” and include an interim order for supervision. See “procedure for allegations of abuse or family violence” (from 7 June 2012) under “determining child’s best interests” above.

As an interim hearing proceeds on the papers (without cross-examination) file accurate evidence of the alleged risk and corroboration from any witness. See also “subpoenas” in Chapter 8 for production of corroborative police or welfare documents.

Also see the Family Court’s “Best Practice Principles for use when Family Violence or Abuse is Alleged” at our online forms and precedents.

Negotiations

Negotiations can be more effective with the less-threatening input of a family counsellor, who can be briefed by the lawyers on the issues beforehand and authorised by the parties to provide the lawyers with feedback, enabling follow-up to help with negotiations. If the case settles by way of a consent order, FDR and pre-action procedures do not apply.