Applicants

6. Attend to steps 1–4. If any FDR exception applies under s 90I(9):

   - 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 FLR 4.01(3) (urgency, violence or abuse, or previous application within the past 12 months) (in WA, FCR 22).

     Note – If neither party attends, an affidavit will have to be filed under s 60J.

   - 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 8.

7. If no FDR exception applies:

   - 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)).

8. 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 – If the case does not settle after pre-action procedures go to 9.

9. You can now issue proceedings:

   - Obtain from your client the details needed to complete an Initiating Application; a Notice of child abuse, family violence or risk; an Undertaking as to Disclosure (FLR 6.02; in WA, FCR 211); and a Genuine Steps Certificate: see "forms" and "precedents" below. A Parenting Questionnaire must be filed if no interim orders are sought.

   - In WA, your client is to complete an Initiating Application and a case information affidavit (FCR 27 FCR). A Notice of Child Abuse and Family Violence (or risk) – Form 4 is to be filed only if there are allegations of child abuse, family violence or a risk thereof.

   - File the FDR certificate with your Application. If no type of FDR certificate is available, then you either need to include content to support a s 60I(9) exception (see above) in your client's affidavit in support, or if no interim orders are sought, file an "Affidavit – Non-filing of a Family Dispute Resolution Certificate" ("forms"). See the precedent below.

   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).

- In the FCFCA, only file an affidavit if interim orders are sought, limited to 25 pages and 10 annexures (Div 1) and 10 pages and 5 annexures (Div 2) (FLR 5.08(2)). In WA, affidavits for interim orders in a parenting case require leave (para 5 of the FCWA's Case Management Guidelines)."

Note – There is no need to file a Parenting Questionnaire if an affidavit is required to be filed.

- Hand up at the first hearing an Acknowledgement – Information from a Family Counsellor or FDR practitioner (see "forms" under "applicants" below).

10. A Reply, or in WA, a Reply to Response to Initiating Application, 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).

Respondents

1. After 1-4 ("both parties" above) arrange for your client to attend FDR (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:
   - If the applicant has not complied with pre-action procedures, your client is entitled to raise this at the first hearing and argue for their costs (or a stay pursuant to FLR 4.04(1)).
   - Instructions should be obtained in sufficient detail for completion of a Response to Initiating Application and, if no interim orders are sought, a Parenting Questionnaire (FLR 8.09); a Genuine Steps Certificate; and a supporting affidavit (only to be filed if interim orders are sought in either the Initiating Application or the Response).

Note – A Response must be filed and served within 28 days of service of the application to which it relates: FLR 2.18(2) (or, in WA, at least 7 days before the hearing to which the Response relates: FCR 153).

Child abuse or family violence

In the FCFCA a Notice of child abuse, family violence or risk must be filed by any party seeking parenting orders whether risk is alleged or not. In the FCWA if a risk of harm is alleged file a Form 4 and include an order for supervision. And in both courts an affidavit with evidence of any such alleged fact. See "procedure for allegations of abuse or family violence" under "determining child's best interests" above. See also "subpoenas" in Chapter 8 for production of corroborative police or welfare documents.

All registries of the FCFCA have a specialist list for "parenting only" cases, called "the Lighthouse Project" to identify and case manage risk of harm, moving any high risk cases to the "Evatt List". Family Law Practice Direction – Evatt List is here.

If a s 60I certificate is not filed due to a s 60I(9) exception, include evidence in your client's affidavit in support of the exception, but if no affidavit is to be filed (i.e. only final orders are sought), file an *Affidavit – Non-Filing of Family Dispute Resolution Certificate*. See the precedent below.