

Family Dispute Resolution (FDR)



FDR offers an opportunity for separated parties to come together to discuss and resolve family law issues about parenting and property.



Acknowledgement of Country

Tasmania Legal Aid acknowledges and pays our respect to the Palawa/Tasmanian Aboriginal people as the Traditional Custodians of the land and waters of Lutruwita/Tasmania, where we live and work.

Contents

What is Family Dispute Resolution (FDR)?.....	4
FDR at Tasmania Legal Aid	6
Types of FDR conferences.....	7
Case Study	8
Who attends?.....	9
Support worker/person.....	10
Social support and assistance	11
Suitability.....	11
Safety.....	12
Confidentiality	12
Section 60I certificates	13
Format options.....	14
The FDR process	14
Agreements.....	15
Frequently Asked Questions (FAQs)	16
Referral guide.....	18
Notes.....	20

What is Family Dispute Resolution?

Family Dispute Resolution (FDR) is a way of trying to solve family law problems through mediation instead of going to court. Mediation is when people try to solve a problem or disagreement with the help of an independent person.

FDR offers an opportunity for separated parties to come together to discuss and resolve family law issues about parenting, property, and financial matters.

The process encourages parties to focus on finding solutions and compromises (when each party is prepared to give and take) so that disagreements, disputes and conflicts don't get worse and create ongoing harm.

It is actually a requirement of the Family Law Act that separated parents make a genuine effort to use FDR to resolve their parenting dispute before filing a court application (some exceptions apply).

FDR for both parenting and property has a very high success rate and some of the benefits are that:

- parents feel empowered by making their own decisions
- parents are supported and heard through the process
- it is quicker and less stressful than a court process
- it helps preserve and/or improve family relationships
- parties are supported to identify asset pools
- parties are given the opportunity to discuss contributions and seek a property agreement.

FDR at Tasmania Legal Aid

At Tasmania Legal Aid (TLA), we offer mediation through an event called an FDR conference.

We invite parties to consider whether an FDR conference might be a good option for their family.

Our mediation model is a legally assisted one. This means that each party can attend the FDR conference with their own lawyer.

The benefit of this model is that parties receive legal advice and support from their lawyer throughout the FDR process.

TLA has guidelines for granting legal aid for FDR conferences. Please refer to this page (www.legalaid.tas.gov.au/applying-for-legal-aid/) to see if you are eligible for legal aid, or talk to your lawyer about this.

Types of FDR conferences

At TLA, we offer a range of FDR conferences.

1. FDR conference

This is the most common type of conference for parenting matters.

Parties usually attend 1 or 2 FDR conferences, but sometimes more if needed.

Parties can take part in an FDR conference at any stage of their parenting dispute, for example, soon after separation, a year after separation, during a court process, or even after a court process has finished.

If an agreement is reached at an FDR conference, then the lawyers can draft a parenting plan or court orders that reflect this.

2. Child inclusive conference

Sometimes it is necessary and helpful to hear from the children involved in a parenting dispute.

This type of conference is generally considered when children have reached school age, and where they may be expressing views or wishes about the parenting dispute and about matters that are important to them.

The parents have usually attended an initial FDR conference and agreed that a child inclusive conference will be a useful next step.

The lawyers engage a child consultant who meets with the children and talks to them about their experience of the family separation. They do this in a way that supports the children at their current stage of development.

The child consultant then attends a follow-up FDR conference with the parents. The children do not attend the conference; instead, with the children's permission, the child consultant conveys their views and feelings to the parents and their lawyers, with assistance from the FDR Practitioner.

A child inclusive conference is confidential, and information that the consultant delivers is not admissible (cannot be used) in court.

3. Property conference

TLA can assist with some property and financial disputes after the breakdown of a relationship.

Each party works with their own lawyer to identify what is known as the asset pool. This pool consists of each party's property (from superannuation to houses to vehicles to jewellery) and debts (from home loans to credit cards to tax debts). They also discuss their interests, their contributions to the asset pool, and their future needs.

A property conference can then be held to provide parties with the opportunity to discuss a property settlement, and who has use of what in the meantime.

It's a good idea for parties to talk to their lawyer about whether they are eligible for legal aid for this type of conference.

4. Court ordered conference

Sometimes parenting disputes may need a court determination in the Federal Circuit and Family Court of Australia (FCFCOA). This is often a last resort.

In some matters, the court will make an order for parties to attend TLA for an FDR conference, to try to reach a settlement first.

This is usually in matters where the parties are at an early stage of the court process, or where there are unresolved issues that the parties and their lawyers believe they can discuss and resolve in a mediation setting.

5. Independent Children's Lawyer conference

Some court matters involve an Independent Children's Lawyer (ICL). An ICL represents and promotes the best interests of the child in family law proceedings.

If an ICL decides to hold an ICL conference, then an option for them is to hold their conference at TLA and to have an FDR Practitioner assist in the conference. This is a great way for the ICL to remain impartial and for the parties to be supported in their discussions with the ICL.

CASE STUDY

Mark and Emily were married for 10 years and have two children together, aged 6 and 8.



Separation was hard on everyone and both Mark and Emily agreed they would try to make their own parenting arrangements for their children. The arrangements worked well for a short time, and both parents were able to discuss issues as they arose. However, when Emily re-partnered, communication deteriorated and issues of trust and conflict began to arise.

During a school holiday period there was a misunderstanding about the parenting arrangement. Emily believed that Mark had agreed for her to take the children out of the state for a holiday. Mark maintained that was not the case and he held strong concerns that the mother was trying to relocate.

Mark filed an urgent Application in the Court seeking the return of the children. The Judge made an Order that the parties attend an FDR conference arranged by Tasmania Legal Aid (TLA), to discuss the matter.

Emily and Mark, together with their lawyers, attended an FDR conference with an experienced FDR practitioner at TLA. This provided them a safe and supportive environment to talk about all matters relating to their children and parenting arrangements.

With this assistance, Mark and Emily were able to reach an agreement about the care of the children. They were extremely grateful for the opportunity to come together and talk about their children and clarify any misunderstandings. This allowed Emily and Mark to move forward with future parenting.

Emily and Mark were invited to come back to an FDR conference if problems arise in the future.

Names and some details have been changed to protect privacy.

Who attends?

An FDR conference could be attended by:

- **Parties to the family dispute**

This is usually the parents of the children, or any person who has a primary caring role such as a grandparent.

- **Lawyers**

Each party attends the conference with their lawyer if they have one.

- **Chairperson – FDR Practitioner**

An FDR conference is chaired by an FDR Practitioner who is an accredited professional specially trained to help families resolve their dispute.

An FDR Practitioner might also be known as a Mediator.

The FDR Practitioner will facilitate the discussion in the room. They will listen to everyone, help the parties say what they need to say, and will assist with options for resolution.

Importantly, the FDR Practitioner will ensure that everyone remains safe and supported throughout the conference.

The FDR Practitioner will not take anyone's side and remains independent and impartial to the dispute.

The FDR Practitioner is not a Judge and will not make decisions, and they cannot provide legal advice.

- **Child consultant**

A child consultant will only attend a child inclusive conference.

- **Independent Children's Lawyer (ICL)**

An ICL will generally only attend an ICL conference.

- **Support worker/person**

In some circumstances, a party will have a support worker/person with them at a conference if agreed to by TLA.

Support worker/person

Parties are supported and assisted through the FDR conference by their lawyer and the FDR Practitioner.

Sometimes, parties request to bring additional support to the FDR conference.

TLA notes the difference between a support worker and a support person as follows:

- A support worker is a trained professional from an organisation who provides various forms of assistance and support to individuals who have physical, intellectual, emotional, or development disabilities, mental health issues, or other specific needs.
- A support person is usually an individual who provides emotional or moral support to someone in a personal or informal capacity, usually a friend or family member.

If a party and their lawyer request to bring a support worker, then that request will often be agreed to.

If a party and their lawyer request to bring a support person, then that request will be considered by TLA, and the consent of the other party may be required.

TLA carefully considers all requests, taking into account the best interests of the parties, and the need to ensure a safe and productive FDR process.

TLA can assist all parties in an FDR matter to obtain social support and assistance.

Social support and assistance

At TLA, we understand that there is more to a relationship breakdown than legal matters.

People often need social support as well.

Social support can come in many forms, for example:

- emotional support
- counselling or therapy
- co-parenting support
- financial support
- housing and living arrangements
- safety and security
- self-care and wellbeing.

If parties need some social support and assistance, we encourage them to contact TLA for information about services that might be helpful.

Alternatively, there is a list of services at the back of this booklet.

Suitability

Before an FDR conference is arranged, TLA assesses whether the matter is suitable to proceed.

The requirement for this assessment comes from the Family Law (Family Dispute Resolution Practitioners) Regulations.

The assessment is done using all the information that has been provided to TLA about the matter by the lawyers and the parties.

When doing an assessment, we look at the capacity of each party to effectively participate in FDR considering the following:

- history of family violence
- safety of parties

- equality of bargaining power
- risks to children
- emotional, psychological and physical health of the parties
- any other issues which are relevant.

If TLA decides that a matter is not suitable for an FDR conference, then the parties will be notified and offered a s60I certificate reflecting this decision.

If TLA decides that a matter is suitable, then we will arrange an FDR conference.

Safety

Throughout the FDR process, the physical, psychological and emotional safety of every person comes first. TLA takes care to make sure that all parties feel safe and respected in our conferences.

If there is a family violence order (FVO) in place, then the Order must be provided to TLA before the conference.

Parties need to talk to their lawyer about any safety concerns that they have.

This is really important because it might affect the way that someone attends and participates in an FDR conference. It also helps TLA work out the best possible format and arrangements for a conference.

Confidentiality

FDR conferences are confidential.

Information that is shared, and issues that are raised and explored, are not allowed to be disclosed to others outside the FDR process.

FDR conferences are never allowed to be recorded (audio or video) in any way.

This is particularly important where children's views and wishes are discussed.

The exception to this rule is where there may be concerns about harm to a person, protecting a child from the risk of physical or psychological harm, preventing damage to a person's property or assisting an ICL to properly represent a child's interests.

If an agreement is reached, then that can be documented in a formal agreement, such as a parenting plan or consent orders.

Section 60I certificates

Section 60I (s60I) refers to the section in the Family Law Act that talks about family dispute resolution.

A s60I certificate is a legal document that can only be issued by an FDR Practitioner. It can be issued under 5 circumstances:

1. A person fails or refuses to attend an FDR conference.
2. A matter is assessed as not suitable for an FDR conference.
3. All parties who attended an FDR conference made a genuine effort to resolve the dispute.
4. All parties attended an FDR conference but one or more did not make a genuine effort to resolve the dispute.
5. An FDR conference started, but it was then decided it was not appropriate to continue the process.

A s60I certificate can only be used within 12 months from the date of the last attendance, or attempted attendance, at an FDR conference.

If it has been longer than 12 months since a party last attended an FDR conference, then we suggest they attend again.

A s60I certificate is required to file most court applications if a parenting matter needs to go to court, unless the matter fits within an exception, such as family violence or urgency.

Format options

How the conference is set up is very important. At TLA, we want to make sure that all parties feel comfortable and safe to take part in the process.

We offer the following options for attending and participating in an FDR conference:

- In person at one of TLA's offices
- In person but in separate rooms (also known as a 'shuttle' conference)
- By telephone
- By video conferencing

When a party completes the intake and assessment document at the start of the FDR process, they can select the format they think would suit them best.

It's a good idea for parties to talk to their lawyer about the different format options and what might be best for their situation.

The format that is decided for an FDR conference will always put safety first for all parties.

The FDR process

The general process for FDR is as follows:

1. Party one obtains a grant of legal aid through a lawyer to initiate the FDR process.
2. On behalf of party one, TLA invites party two to consider FDR, and party two discusses the invitation with their lawyer.
3. If party two decides not to participate, a s60I certificate may be issued to the party who started the process.
4. If all parties are willing to attend an FDR conference, they complete an intake and assessment document. This document requires information about matters relating to family violence, risk and safety issues, as well as physical and mental health issues. Filling out this document is an opportunity for people to give some background to their matter and situation, to list issues for discussion and, sometimes, to offer ideas for how to resolve disputes.

5. TLA assesses the completed documents and considers whether the matter is suitable to go ahead with an FDR conference.
6. If the matter is suitable, TLA will arrange a conference.
7. If the matter is not suitable, TLA will notify the parties and offer them a s60I certificate.

Agreements

FDR conferences have a very high rate of success.

If agreement has been reached, then the lawyers will discuss how to formalise that agreement. The 2 most common types of agreements are:

- parenting plans
- consent orders

Parties will receive legal advice from their lawyer about what agreement is best for them and their matter.

If time permits, then the agreement might be drafted during the FDR conference. If not, then the lawyers will draft the agreement and give it to everyone after the conference has taken place.

Sometimes, parties don't reach agreement even though they have tried their best. If this happens, the parties and their lawyers decide what to do next. This might be to attempt another FDR conference or maybe start court proceedings.

Frequently asked questions

- **Why am I being asked to attend an FDR conference?**

If you have received an invitation to attend an FDR conference, this is because the other party, usually your ex partner, has started the process and wants to attend mediation with you to talk about parenting or property matters.

- **How long does an FDR conference go for?**

Approximately 2–3 hours.

- **When are they held?**

Between 9:00am–12:00pm, and 2:00pm–5:00pm, Monday to Friday.

- **How long will I have to wait for my FDR conference?**

An FDR conference is usually scheduled within 3 weeks from the date that TLA receives the completed intake and assessment document from each party's lawyer.

- **Do I have to get a lawyer?**

One party must be legally aided in the FDR process.

It is not essential that the other party has a lawyer, but we strongly encourage it. Parties who have self-represented have told us that they found the process hard and that they did not feel as prepared or empowered to make decisions as they could have been.

If you want a lawyer but cannot find one, please talk to us so that we may assist you.

- **Do I have to attend an FDR conference?**

TLA cannot make you attend a conference, but there is an obligation to attempt FDR in parenting disputes before making a court application, unless an exception applies.

You should seek legal advice about this.

- **How much does it cost?**

TLA provides a grant of legal aid to enable eligible parties to have legal representation at an FDR conference. If you are eligible, then there is no cost to attend an FDR conference.

If you are not eligible for a grant of legal aid, then you may need to pay a private lawyer to attend with you.

- **Can I bring my children?**

No. Children are not allowed to attend any of our conferences. Please make sure that you have made appropriate childcare arrangements in advance. Please talk to us if you have an exceptional circumstance.

- **Can I bring a support person?**

Please read the section in this booklet about support workers and support persons. If you have any questions about this, we encourage you to talk to us or your lawyer about it.

- **Will I be in the same room as the other party?**

Only if you would like to be. TLA offers a number of format options including shuttle conferencing, as well as telephone and video conferencing. Talk to your lawyer about the best and safest option for you to attend and participate.

- **Can I bring in notes to the FDR conference?**

Absolutely. Please make a note of anything that is important and relevant to you regarding your children and your matter – you can use the 'Notes' section at the back of this booklet. This will help you to remember to raise it during your FDR conference.

- **What if my children are sick on the day, or if I'm sick and cannot attend?**

Please provide us with as much notice as possible. Rearranging a conference can be tricky and can result in a delay. We will talk to you about whether a telephone or video option might work for you on that day instead.

Referrals

Legal-Statewide

Tasmania Legal Aid 1300 366 611 www.legalaid.tas.gov.au

- Legal Help
- Family Advocacy & Support Service (FASS) 1800 431 157

Women's Legal Service Tasmania 1800 682 468 www.womenslegaltas.org.au

Tasmanian Aboriginal Legal Service 1800 595 162 www.tals.net.au

Launceston Community Legal Centre 1800 066 019 www.lclc.net.au

Hobart Community Legal Centre 6223 2500 www.hobartlegal.org.au

North-West Community Legal Centre 6424 8720 www.nwclc.org.au

Law Society www.lst.org.au
List of all private practitioners

Referrals

Non-Legal-Statewide

Family Violence Services

Tasmania Legal Aid – Safe at Home 1300 366 611

Family Violence Response & Referral line 1800 633 937

www.safeathome.tas.gov.au

Tasmania Police (immediate danger and risk) 000

Safe Choices 1800 806 189

Family Violence Counselling and Support Service 1800 608 122

1800 RESPECT 1800 737 732

Relationships Australia Tasmania 1300 364 277 www.tas.relationships.org.au

Anglicare 1800 243 232 www.anglicare-tas.org.au

CatholicCare Tasmania 1800 819 447 www.catholiccaretas.org.au

Positive Solutions 03 6223 5612 www.positivesolutions.com.au

Lifeline 13 11 14 www.lifeline.org.au

Tasmanian Mental Health Services 1800 332 388
or 6233 2388

Advocacy Tasmania 1800 005 131 www.advocacytasmania.org.au

MensLine Australia 1300 789 978 www.mensline.org.au

Beyond Blue Support Service 1300 224 636 www.beyondblue.org.au

Migrant Resource Centre Tasmania 03 6221 0999 www.mrctas.org.au

Family Dispute Resolution (FDR)

Tasmania Legal Aid conference@legalaid.tas.gov.au

FDR Social Support Service fdrsocialsupport@reltas.com.au

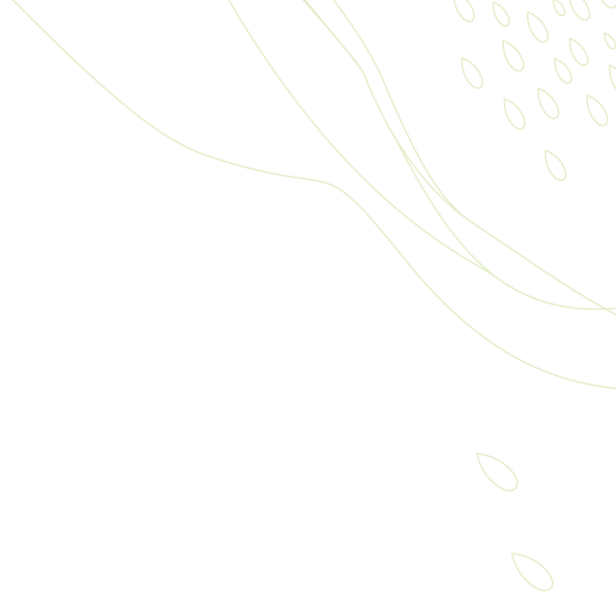
Notes



Notes

Notes section with 20 horizontal dotted lines for writing.

Notes



1300 366 611

www.legalaid.tas.gov.au

Hobart • Launceston • Devonport • Burnie

Tasmania
Legal Aid | **A starting place**
for everything legal