

## SECTION 60I CERTIFICATES

This Fact Sheet outlines general information about certificates issued under section 60I of the *Family Law Act 1975* and the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (the Regulations). It includes information about:

1. the certificate template
2. purpose of 60I certificates
3. types of certificates
4. issuing certificates
5. time frame for issuing certificates
6. revocation of certificates.

For more information, see also the Fact Sheets called 'Exceptions to Family Dispute Resolution' and 'Family Dispute Resolution Screening and Assessment' available on the [Information for accredited family dispute resolution practitioners'](#) web page.

If Family Dispute Resolution (FDR) practitioners are unsure if they should issue a certificate or what category of certificate to issue a client, they should phone the Family Relationships Advice Line on 1800 050 321 to seek advice.

### 1. Section 60I certificate template

A template for section 60I certificates is available from the [Information for accredited family dispute resolution practitioners'](#) web page. Note, there are two types available - one is specific to Western Australia.

### 2. Purpose of section 60I certificates

Section 60I certificates serve the sole purpose of allowing people to file an application in court. This should be clearly explained to clients as well as any consequences attached, such as courts **may** award costs against a party on the basis of failure to attend or not making a genuine effort.

### Can an FDR practitioner amend a certificate to provide more information?

FDR practitioners cannot amend the wording of a certificate and there is no ability to record comments on the certificate. FDR practitioners are not required to provide the Court with any additional information (including reasons) about why they have issued a particular certificate.

### 3. Types of section 60I certificates

The five types of section 60I certificates an FDR practitioner can issue are:

1. the person **did not attend FDR** due to the **refusal or failure** of the other person or people to attend
2. the person **did not attend FDR** because the practitioner **did not consider it would be appropriate** to conduct FDR
3. the **people attended FDR**, conducted by the practitioner, and all people **made a genuine effort** to resolve the issue or issues in dispute

4. the **people attended FDR**, conducted by the practitioner, but one or more of them **did not make a genuine effort** to resolve the issue or issues in dispute
5. the **people began FDR**, but part way through the practitioner decided it was **not appropriate to continue**

#### **What happens if a person is not happy with the type of certificate issued?**

If people are unhappy with the section 60I certificate issued, they can choose to attend further FDR with a different practitioner. They can also make an application to court to resolve their dispute. FDR practitioners are required to have a complaints mechanism in place in relation to the services they provide.

#### **When an FDR practitioner cannot contact a person involved in the dispute, which certificate can be issued?**

There is no section 60I certificate to cover this situation. If there are no contact details for a person and the others involved in the dispute have no idea of how to find them, they can make an application to the court relying on the exception that one or more of the people to the proceeding is unable to participate effectively.

#### **Can each party be issued with a 'failure to attend' certificate from different FDR practitioners?**

Yes. In a circumstance where a certificate is issued to Person A due to Person B's refusal to attend FDR, and Person B then initiates FDR through a different FDR practitioner and Person A refuses to attend that process, a second 'failure to attend' certificate can be issued. Multiple certificates may be issued in relation to one dispute.

Practitioners should be mindful about whether a party's refusal to attend is due to financial circumstances but that party has a genuine interest in attending FDR. The practitioner will need to rely on professional judgment as to whether a 'failure to attend' certificate should be issued.

#### **Does an FDR practitioner need to speak with all people involved with the proposed FDR before making a decision that the matter is not appropriate?**

No. This is a matter for the professional judgement of an FDR practitioner.

#### **Should an FDR practitioner issue a 'not appropriate' certificate if the practitioner believes FDR is not appropriate at the moment, but may be appropriate in the future after the people involved attend, for example, counselling?**

If an FDR practitioner does not believe it is appropriate to conduct FDR when it is requested, the practitioner should issue a 'not appropriate' certificate if they are asked for a certificate. It does not matter if the FDR practitioner believes that it may become appropriate at some point in the future.

### **What does 'Genuine Effort' mean?**

'Genuine effort' should be given its ordinary meaning in the context of Part VII of the Family Law Act which deals with children.

A genuine effort involves a real, honest exertion or attempt. It must be more than a superficial or token effort, or one that is false, or is pretence. The effort should be one that is realistically directed at resolving the issues that are the subject of the application to a court.

The question about whether a genuine effort has been made to resolve issues in a particular case will depend on the circumstances of the case. It is a matter for the professional judgement of an FDR practitioner.

Whether the issue in dispute is resolved or not will not necessarily be because one or more people did not make a genuine effort. There may be valid reasons why people have differing views on an issue.

### **Should a 'non-genuine effort' certificate be issued if people attend but refuse to change their views on the dispute?**

This is a matter for the professional judgement of the FDR practitioner. Both people may have valid personal reasons why they have refused to change their views. The failure to resolve a dispute does not necessarily mean they have not made a genuine effort.

### **What are the possible consequences for the people involved in the dispute if a 'non-genuine effort' certificate is issued by an FDR practitioner?**

If a certificate is issued including a 'non-genuine effort' certificate, the court may order people to attend FDR before hearing the application.

The court may also take into account that a 'non-genuine effort' certificate has been issued when deciding if a costs order should be made against a person.

### **Type of certificate to issue where FDR commences and family violence is identified**

An FDR practitioner can issue a section 60I certificate to cover the situation where it becomes apparent during the course of the FDR that it would be inappropriate to continue. For example, where a history of violence impacts on a person's ability to negotiate is not picked up during the intake process but becomes apparent during FDR, the practitioner may decide to stop the process and issue a certificate.

On the certificate, the FDR practitioner is only required to indicate that FDR is inappropriate. Practitioners are not required to provide any reason why it is inappropriate. Communications to FDR practitioners are not admissible in court proceedings, except in cases of child abuse where the court cannot obtain the information through other sources.

## 4. Issuing certificates

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Only **accredited** FDR practitioners **can issue section 60I certificates**.

The practitioner who conducted FDR must sign the certificate unless they are incapable of signing for example, due to **death, loss of accreditation** or an **inability to be contacted**.

In particular, the Regulations provide that if a practitioner who is entitled to give a certificate under section 60I of the Family Law Act becomes incapable of giving a certificate, the certificate may be given on behalf of the practitioner by an organisation (including an accredited supervisor) for which the practitioner has provided FDR services.

In cases where a person requests a certificate and the FDR practitioner who conducted the FDR no longer works for the organisation, if the organisation knows of a way to contact the practitioner, an attempt should be made to locate them so they can sign the certificate. However, there are no obligations in the Family Law Act or the Regulations for an organisation to undertake onerous searches to find a practitioner who has left the organisation.

If there is no easy way to find the practitioner, the certificate should be signed by the organisation on the practitioner's behalf. The Regulations list the inability to contact a practitioner as an example of where it is appropriate for another member of the organisation to sign the certificate.

### Who can't issue section 60I certificates?

People who are not accredited, including those still training, cannot issue section 60I certificates.

For example, an accredited practitioner cannot issue a certificate to people on the recommendation of a practitioner who is not accredited and has conducted mediation with the people in the dispute. In this instance, the accredited practitioner still needs to take the people involved through the FDR process before issuing a certificate.

### Who can section 60I certificates be issued to?

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. Ultimately, it is decision for the individual FDR practitioner to make. It is open to provide the certificate to all people involved in the FDR process.

A copy of a 'failure/refusal to attend' certificate may also be given to the person who did not attend, or the practitioner may write to them to let them know a certificate has been issued.

### Does an FDR practitioner have to issue a certificate?

Generally, a Court cannot hear an application for an order concerning a child unless the person applying to the court files a certificate from an accredited FDR practitioner, or the matter falls within certain exceptions (including cases involving family violence, child

abuse or urgency). Therefore, if people wish to proceed to Court after attempting FDR, practitioners should issue the relevant section 60I certificate to them.

### **Do original or copies of certificates need to be given to clients?**

It is up to the FDR practitioner to decide whether to provide original or photocopied section 60I certificates to people. Practitioners can choose to give everyone involved an original certificate. They can also choose whether to keep an original certificate or a photocopy in their file.

### **What if two FDR practitioners issue certificates for the same dispute?**

There may be circumstances where both people involved in a dispute obtain a refusal/failure to attend section 60I certificates against each other from different FDR practitioners.

In this situation the Court will need to consider the individual circumstances and may decide to order the people involved to attend FDR before the application is heard. The Court could also decide to hear the matter without people attending FDR.

## **5. Time frames for issuing section 60I certificates**

An FDR practitioner cannot give a section 60I certificate to a person if more than 12 months has elapsed since the person last attended, or attempted to attend, FDR about the issue or issues to be covered by the court application.

Similarly, a person can only file a certificate that a practitioner has issued within 12 months of the last FDR or attempted FDR.

These time limits recognise that the issues in dispute, and/or the attitudes of the people involved, will usually change over time and this may warrant another attempt at FDR.

### **How long should the practitioner wait before issuing a certificate saying that person failed to attend if a person responds to an invitation to attend FDR, but uses delaying tactics to avoid attending?**

When to issue a section 60I certificate saying that a person failed or refused to attend is a matter for the professional judgement of an FDR practitioner. There may be genuine reasons why a person is unable to attend at a number of sessions. However, if a practitioner has reason to believe that a person is using delaying tactics, they are able to issue a certificate so long as the practitioner has complied with the requirements of the Regulations.

This means that FDR practitioners (or someone acting for them), must attempt to contact the party who has failed to attend at least twice, with one contact in writing. FDR practitioners are also required to offer a reasonable choice of days and times for attendance at FDR. It would also be good practice for a practitioner to tell people they are considering issuing this type of certificate.

## Are additional certificates required if further orders are sought?

Where parties have already been issued a section 60I certificate and have applied to the Court for final orders, additional certificates are not required for any subsequent orders sought as part of having their parenting dispute resolved by the Court.

For example, when applying to the Court about their parenting matter, people apply for final orders. As part of the process of obtaining final orders, parents may need to apply for other orders related to the final orders. These orders could include interim orders or orders incidental to the family law matter, such as an order to appoint an Independent Children's Lawyer. In this situation, people do not need to go back to FDR to obtain certificates for these orders. However, if people wanted to start new family law proceedings they would have to obtain new certificates.

## 6. Revocation of certificates

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Neither the Family Law Act nor the Regulations provide for the revocation of certificates.

As the Attorney-General's Department cannot give legal advice, independent legal advice should be sought on this issue. FDR practitioners can phone the Family Relationship Advice Line on 1800 050 321 to seek advice.