

Family Dispute Resolution

Operating Guidelines

1 July 2018



[New Zealand Government](#)

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Introduction

This document is for suppliers the Ministry of Justice (the Ministry) contracts with to deliver the Family Dispute Resolution service (FDR). It forms part of the outcome agreement each Supplier has with the Ministry and services must be delivered in accordance with these guidelines.

The Ministry reserves the right to change these guidelines as required and will consult with Suppliers about proposed changes where practicable.

For further information about these guidelines, please contact the relationship manager in your outcome agreement.

Overview of the out-of-court family justice system

The out-of-court family justice system has the following components:

- Free online information – resources and tools to assist self-resolution.
- Free Parenting through Separation (PTS) programme to help parents and caregivers understand and manage the effects of separation on their children. It's recommended that separating parents first attend PTS to get the most out of FDR, but they can attend at any stage. Attendance is mandatory for people wishing to make standard-track applications to the Family Court.
- FDR – a family Mediation service that aims to remove the stress, conflict and expense of court involvement, and help people develop skills to resolve future issues regarding the care of their children. FDR must be delivered in accordance with the Family Dispute Resolution Act 2013 (the Act), the outcome agreement and these guidelines.
- Family Legal Advice Service (FLAS) – initial legal advice and information so that people involved in a dispute about the care of their children can:
 - understand their rights, responsibilities and options
 - get help to complete court forms if required.

These services enable the Family Court to focus its resources on serious and urgent cases that need the assistance of a judge.

Social services accreditation

The Ministry requires Suppliers of this service to hold and maintain the Ministry of Social Development (MSD) Social Services Accreditation Level 3. For more information about the accreditation process, visit <https://www.msd.govt.nz/what-we-can-do/providers/social-services-accreditation/index.html>.

Definitions

Term	Definition
Act	The Family Dispute Resolution Act 2013 (including all amendments and regulations made under it).
Approved Dispute Resolution Organisation (ADRO)	A dispute resolution organisation approved under section 6 of the Act.
Alternative FDR Provider	A Provider of FDR Services other than the original FDR Provider allocated to the dispute by the Supplier in the first instance. An alternative FDR Provider may be required to take over a dispute if there's a conflict of interest.
CoCA	Care of Children Act 2004.
Delegate	A person who is contracted to or employed by a Supplier to deliver or administer FDR.
Eligible Person	Has the same meaning as that term has in section 47 of the Care of Children Act 2004.
Family Dispute	A dispute that will require an application under the Care of Children Act 2004 to resolve it.
Family Resolution Services	Services, including PTS, FLAS and FDR, that help families resolve care of children issues.
Funding Eligibility	A determination as to whether an FDR Party qualifies for free (fully-funded) family resolution services. Eligibility is determined through the funding eligibility test.
Funding Eligibility Test	A test administered by an FDR or FLAS Provider to determine if an FDR Party is eligible for Free FDR Services. The party must complete a funding declaration form and provide proof of income. The criteria for funding eligibility can be viewed at https://www.justice.govt.nz/family/care-of-children/when-you-dont-agree/funding-eligibility/ Eligibility may change and be reissued at any time by the Ministry in its discretion.
FDR	Family Dispute Resolution provided by a Family Dispute Provider for the purposes of: (a) assisting parties to a Family Dispute to resolve the dispute without having to pursue court proceedings, and (b) ensuring that the parties' first and paramount consideration in reaching a resolution is the welfare and best interests of the children.
FDR Assessment	An initial assessment undertaken by a Supplier for the purpose of assessing whether FDR is suitable for the potential FDR parties.
FDR Dispute	A Family Dispute where parties have authorised the Supplier to provide FDR Services and the Supplier has agreed to provide them.
FDR Outcome form	A form approved by the Secretary for Justice which must be completed by the FDR Provider and given to each party in an FDR dispute who completes FDR. The form is generated in RMS.
FDR Exemption form	A form approved by the Secretary for Justice which must be completed by the FDR Provider and given to each party in an FDR dispute who is exempt from FDR. The form is generated in RMS.
FDR Provider and Mediator	Has the same meaning as in section 4 of the Family Dispute Resolution Act 2013.
FDR Party	(a) an eligible person who wishes to apply for a Parenting Order, or (b) a guardian of a child who is unable to agree with another guardian of the same child, on a matter concerning the exercise of their guardianship, in respect of which one or more of them seeks a direction from the Court.

	It does not include a child or anyone who attends an FDR assessment or Mediation to provide support to an FDR Party.
FDR Services	FDR Assessment, Mediation and/or Preparation for Mediation provided by Suppliers (including FDR Providers), as applicable.
FDR venue	The place: (a) the Supplier determines is the most suitable for all parties to attend Mediation to minimise travel costs, or (b) where all parties agree to attend Mediation. Includes any place the FDR Provider is required to travel for assessments, PFM, or Mediation where a party is unable to travel.
Family Legal Advice Provider	A lawyer who is approved by the Secretary for Justice to provide family legal advice services (a specified legal service under the Legal Services Act 2011).
Family Legal Advice Service (FLAS)	A legal service available to those who complete the same eligibility test as for FDR and are determined to be eligible, and therefore can receive funded services. FLAS advice includes initial advice about rights and responsibilities, the family justice system and potential outcomes. It can also help parties to complete court forms.
Free FDR Services	Fully-funded FDR, where an FDR Party is not required to contribute to the costs of FDR.
Fully-Funded Party	Someone who has completed the funding eligibility test and is eligible for Free FDR Services.
Fully-Funded FDR Dispute	An FDR dispute where all parties involved are eligible for Free FDR Services.
Intake	Allows for information about parties to be collected, identifies all parties to the dispute (including children), provides privacy information to parties, and explains the process of FDR including costs if they're ineligible for Free FDR.
Mediation	Mediation undertaken by an FDR Provider to help FDR parties resolve their FDR Dispute.
Mixed-funded FDR Dispute	An FDR Dispute where at least one of the FDR Parties is eligible for Free FDR Services, and at least one of the FDR Parties is not eligible and will need to pay their share of the Capped Amount.
Outcome Agreement	The contract a Supplier has with the Ministry to deliver FDR Services.
Partially-Funded Party	An FDR Party who is not eligible for Free FDR Services. They will need to pay their share of the Capped Amount.
Partially-funded FDR Dispute	An FDR Dispute where neither FDR Party is eligible for Free FDR Services, each FDR Party will need to pay their share of the Capped Amount.
Preparation for Mediation (PFM)	A voluntary service provided to an FDR Party to prepare them for Mediation (including capturing the voice of the child).
Preparatory Staff	A person or people employed or engaged by the Supplier who delivers PFM.
Parenting through Separation programme (PTS)	A free information programme that provides separated parents and caregivers with the skills, tools and resources to successfully care for their children.
Resolution Management System (RMS)	The online system that tracks the progress of Family Disputes. Access may only be granted by the Ministry and includes any other system provided by the Ministry at any time that the Ministry directs Suppliers and FDR Providers to use.
Service delivery location	The location(s) within which a Supplier is contracted to deliver FDR services, as defined by the Territorial Authorities of New Zealand. At least one FDR Party must usually reside within the contracted service delivery location to receive services under this contract.
Social Services Accreditation	The level of MSD accreditation the Supplier is required by the Ministry to maintain.
Supplier	The organisation contracted by the Ministry to provide FDR Services.
Usual place of business	The location where an FDR Provider usually works.

The aim of FDR

FDR helps separating parents and caregivers reach agreement, without conflict, about care arrangements for their children without having to go to Family Court. A mediator works with both parties, providing them with the skills to deal with parenting or guardianship issues. The children's best interests are the primary focus.

Culturally responsive delivery

FDR delivery must be culturally sensitive and responsive to the needs of all parties and carried out by culturally competent staff. Cultural competence includes respect for, and understanding of, the different cultural beliefs and needs of FDR participants.

Who is FDR for?

Anyone involved in a dispute relating to the care of children (including guardianship) can go to FDR. Generally, this is parents who are separating but sometimes it may involve extended family/whānau. The disputes are usually about day-to-day care/contact or guardianship matters arising under the Care of Children Act 2004 (CoCA).

It's recommended that parties complete the PTS course first, or at least complete a parenting plan, and seek legal advice before attending FDR.

Parties can attend FDR if they're:

- involved in a dispute relating to the care of children
- thinking of separating or have separated, and are unable to reach an agreement regarding care of their children.

If one party wishes to file a Family Court application, the court may require them to complete FDR first.

Definition of child for FDR purposes

CoCA defines a child as a person under the age of 18 years old.

Children 16 years and older can decide who they want to live with (see section 50 of CoCA). FDR may still be appropriate for disputes about some aspects of their care but not their day-to-day living arrangements (unless the FDR Provider believes there are special circumstances).

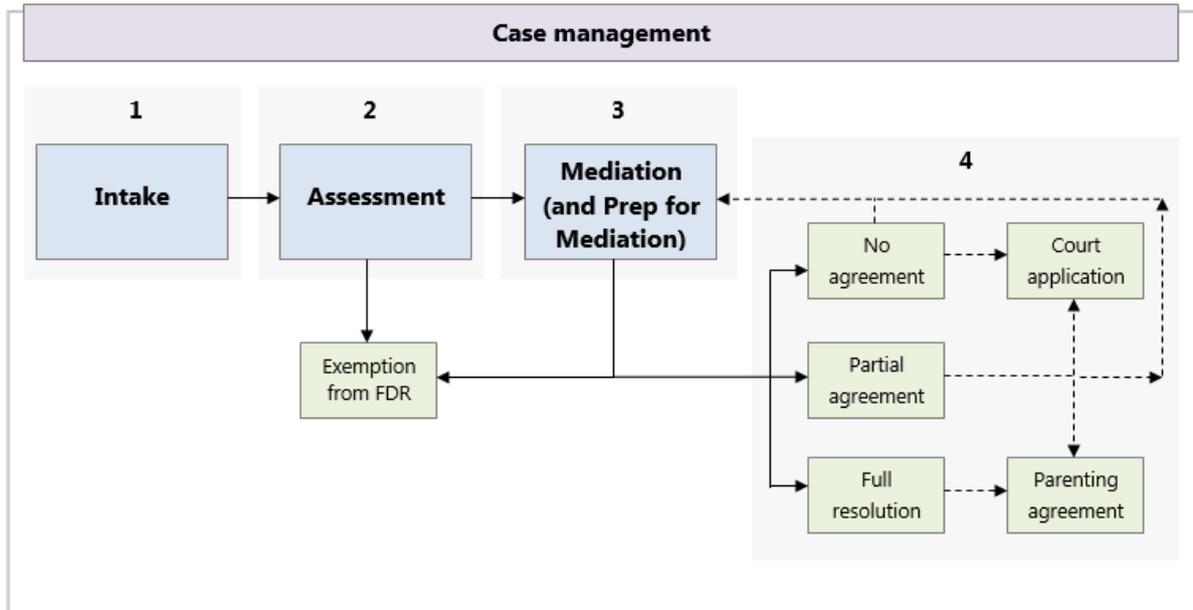
A child aged less than 18 years of age who is a parent themselves will be considered an adult party to any FDR dispute about the care of their child.

Place of residence

Parents and caregivers are eligible for FDR if their children usually live in New Zealand. [See also FDR Intake section for more information about eligibility for FDR.](#)

FDR process

The diagram below shows the various components of the FDR process:



Case management

Suppliers must have effective case management processes in place so that FDR Providers can easily guide parties through the FDR service.

FDR intake

Allows for information about parties to be collected, identifies all parties to the dispute (including the children), provides privacy information to parties and explains the process of FDR including costs if they're ineligible for free FDR.

Who does this?

Suppliers allocate staff who may be FDR Providers or trained administrators to complete this part of the process on behalf of the Supplier.

Why is it important?

Intake reduces the need for repetition later in the process and allows parties to receive information about the services available to them.

Tasks for intake

Establish whether a dispute exists under CoCA and provide advice on the process.

- Use a Supplier-approved standardised script to ensure appropriate information is collected.
- Ensure the privacy statement prescribed by the Ministry in RMS is read and provided to the party, explaining why their information is being collected. [See also Privacy guidelines and requirements.](#)

Verify the party's identity.

- Photo identification of parties isn't mandatory but we recommend you see some form of identification to confirm spelling of names and to avoid duplicate records.

Assess the party's eligibility for free FDR.

- Check in RMS if another Provider has already assessed the party's eligibility within the last 12 months. If eligibility has already been assessed and parties' financial circumstances haven't changed, you don't need to assess their eligibility at this stage.
- Use the table at www.justice.govt.nz/family/care-of-children/when-you-dont-agree/funding-eligibility.
- Check in RMS if the party has used FDR before as this could affect their eligibility.
- If the party isn't eligible for fully-funded FDR, explain what they'll need to pay for Mediation.
- Funding eligibility lasts for 12 months unless there's been a change in financial circumstances.

Ensure all parties are identified and included in the dispute. All affected children must also be identified.

Explain the nature of the FDR process, how it's funded, its implications and the role of everyone involved.

Record the party and dispute information in RMS. (Their information may already be recorded if they've received FLAS, attended PTS or have been to FDR before.)

Points to note

- FDR is unlikely to be appropriate where the child is the subject of proceedings under the Oranga Tamariki Act 1989; FDR only applies for CoCA cases. However, in some Oranga Tamariki cases, parties may be directed to engage in FDR before having a family group conference.
- Where parties disagree on who the FDR Provider should be or where Mediation should be held, the Supplier will work with them (and other Suppliers if necessary) to negotiate a solution.
- If parties contact an FDR Provider directly, the Provider should refer them to the contracted Supplier to begin intake and assess their eligibility for funded services. This will ensure parties get consistent and correct services from the appropriate channel.

FDR Assessment

An initial assessment by a Supplier confirming information collected at intake and to decide if FDR is suitable for the potential FDR parties.

Who does this?

Assessments can be administered by FDR Providers and any delegated staff member nominated by the Supplier. However, in accordance with section 11 of the Act, only an FDR Provider can determine if it's appropriate to start FDR.

Why is it important?

- To establish if FDR is appropriate for the parties.
- To identify any risks (for example, whether there has been family violence or if there's a risk of harm to a party or children).
- To confirm eligibility for funding.

Tasks for FDR assessors

- Confirm the identities of all parties, including children, to the dispute.
- Help eligible parties complete the funding application form (if not previously done).
- Make every effort to engage all parties in Mediation.
- Ensure arrangements are made for cultural or special needs.
- Parties need to authorise Mediation by signing the Supplier's 'Agreement to Mediate' form (this form is developed by the Supplier and approved by the Ministry). If the assessment is completed remotely, the form must be signed (and posted or emailed) before the first Mediation. [See also Mediation tasks.](#)
- Ensure all parties agree not to use statements made during Mediation in any subsequent court proceedings (unless required by law to do so).
- Decide if FDR is appropriate (ensure there's no risk of violence or harm to any party).
- Determine whether PFM is required and, if so, help parties arrange it with an appropriate FDR Provider. [See also Preparation for Mediation](#) for the rules about who can provide PFM.
- If parties are unable to be engaged after the assessment (for example, they're not responding to contact), record an 'admin withdrawal' in RMS. Parties can sometimes change their mind about participating in FDR without informing the Supplier. If they decide to come back to FDR, they can receive services without delay.
- Complete the required steps in RMS promptly to show how the assessment is progressing.
- Issue an FDR exemption form if FDR isn't appropriate.

Points to note

- If in-person contact isn't possible, assessments can be carried out over the phone or remotely using Skype or similar technology.
- The Ministry will pay actual and reasonable travel and interpreter costs if needed to carry out the assessment. [See also Mediation payments.](#)

Payments

The assessment must be finalised in RMS to allow the Supplier to be paid.

Parties are eligible for one funded assessment per dispute within a 12-month period. An exception is when parties are directed to attend FDR by a judge; the dispute will then be eligible for another funded assessment. The Ministry may also allow exceptions for parties who want to change Suppliers after the assessment has been completed; these need to be discussed on a case-by-case basis with the Ministry relationship manager.

Exemptions

In some cases, an FDR Provider may determine that FDR isn't appropriate. In these cases, one or more parties will be exempt from attending FDR.

If parties are exempt for any of the following reasons, the FDR Provider must give an exemption form to each party to the dispute:

- at least one party is unable to participate effectively in FDR (for example, there are mental health or language difficulties)
- at least one party or a child of a party has been subjected to family violence from another party to the dispute
- the FDR Provider has reasonable grounds for deciding it's inappropriate (for example, there's a risk of family violence or a power imbalance between parties).

Sometimes FDR can't start or continue because a party refuses to attend. In this case, the FDR Provider must give every other party to the dispute an exemption form. They must not exempt or give an exemption form to the party who refused to attend FDR.

Exempt parties can choose to make a guardianship or parenting application to the court. [See also Recording the FDR outcome.](#)

Preparation for Mediation (PFM)

PFM is a voluntary process that helps parties prepare for the Mediation sessions including capturing the voice of the child.

Who provides this?

PFM is provided by personnel who are suitably accredited by a professional membership body. Generally, these will be counsellors appointed under section 46K of CoCA, but may include people registered with one of the following organisations:

- New Zealand Association of Counselling
- New Zealand Christian Counsellors Association

- New Zealand Association of Psychotherapists
- Aotearoa New Zealand Association of Social Workers Incorporated
- Arbitrators' and Mediators' Institute of New Zealand
- Resolution Institute
- New Zealand Law Society.

FDR Providers may deliver PFM but must not also deliver Mediation for the same dispute. This is to ensure the mediator is neutral throughout the Mediation process.

Why is it important?

PFM helps people manage their feelings and focus on their children so they can participate effectively in FDR and improve the likelihood of successful Mediation.

Tasks for PFM staff

- PFM is usually delivered to individual FDR parties. However, it can be delivered jointly to two or more parties as long as the PFM Provider obtains an agreement in writing between each party and the PFM Provider:
 - to maintain the confidentiality of any information divulged,
 - that no participant in PFM will subsequently use information from PFM in any court proceedings (unless required by law).
- Advise the referring Supplier about the completion or otherwise of the service.
- Ask the Supplier or FDR Provider to record attendance at PFM in RMS.

Points to note

- PFM isn't compulsory but is recommended to improve outcomes at Mediation.
- Parties can be referred directly to appropriate PFM staff either before or during Mediation.
- PFM can be used to capture the voice of the child and communicate this back to the parents. [See also Voice of the child.](#)
- Matters discussed (other than capturing the child's voice, as above) during PFM are confidential and not reported to the Supplier or the FDR Provider.
- PFM sessions are counted as part of the 12 hours of Mediation available to all parties. [See also FDR business rules.](#)

Payments

To enable payments to be made to the Supplier, the following conditions must be met:

- at least one party must have turned up for the PFM session
- the PFM session has been recorded in RMS, including the number of hours per session
- the PFM event is finalised in RMS.

Mediation

FDR Mediation enables people to work towards and reach care agreements that are in the best interests of their children. The mediator will focus on what's best for the children and won't force any agreement or make any decisions on behalf of the parties.

Mediators will sometimes meet with individual parties before having joint Mediation. If necessary, parties can participate in Mediation from separate rooms. The mediator must continuously assess the risks to parties throughout the Mediation process.

Who provides this?

Mediation must be provided by an approved FDR Provider working for a Supplier organisation. FDR Providers are approved and appointed under section 9 of the Act by one of the following ADROs:

- Arbitrators' and Mediators' Institute of New Zealand
- Resolution Institute
- New Zealand Law Society.

Why is it important?

Mediation helps people make sustainable parenting arrangements with minimal conflict and ensures the primary focus is on the wellbeing of the children. It also teaches people the skills to deal with future disagreements about parenting and guardianship matters themselves.

Tasks for mediators

- Before proceeding with Mediation, confirm all parties have signed an agreement to mediate and authorised the FDR Provider to undertake Mediation.
- When Mediation is successfully completed, complete the FDR outcome form through RMS and issue it to the parties. If parties want to turn their parenting agreement into a consent order, they'll need to present the FDR outcome form at court.
- If the FDR Provider concludes that the parties should be exempted from FDR, they must give each of them an FDR exemption form from RMS. Parties must take the form to the court if they want to apply for a guardianship or parenting order. [See also Exemptions.](#)
- Record the outcome promptly in RMS. [See also Recording FDR outcomes.](#)

Points to note

- The mediator has discretion about where and when to hold Mediation sessions, as long as a safety management plan is in place and the time and venue meet the expectations of all parties. For example, they may have sessions in the evenings or on a weekend if that suits everyone.
- If necessary, Mediation can be done remotely using Skype or similar technology.

Payments

To allow the Supplier to be paid, the following conditions must be met:

- at least one party must attend a scheduled individual Mediation session
- all FDR parties must attend a scheduled joint Mediation session
- Mediation sessions must be recorded in RMS and finalised, including the number of hours per session.

Travel costs

The Ministry will pay actual and reasonable travel costs for necessary travel that is more than 50km from the mediator's normal place of business in accordance with the travel policy set out in [Appendix 3](#).

Interpreter costs

If necessary, the Ministry will pay for an interpreter. An interpreter must be an affiliate member of the New Zealand Society of Translators and Interpreters. Where the rate is more than \$65 an hour (GST exclusive), Suppliers must check with their Ministry relationship manager before engaging the interpreter.

Support person

Parties can bring a support person or lawyer to Mediation as long as the mediator and other party agree.

Voice of the child

The Supplier must have processes in place to ensure children's voices are represented at Mediation. There are many different models available to help Suppliers with this including:

- interviewing the child separately and communicating their thoughts back to the parents, or
- having a child's representative present during Mediation sessions.

Suppliers aren't required to seek direct input from the child; instead, parents can be asked to reflect on the child's voice during Mediation.

Suppliers must have their model approved by the Ministry before it's implemented. If the Supplier model does seek direct input from the child, the Supplier must ensure they have suitably qualified and experienced FDR Providers, or some other qualified professional, competent in capturing the child's voice, to deliver their model.

The Supplier and Provider must ensure the wellbeing of every child who is invited to participate in FDR.

Relationship property

An FDR Provider might agree to discuss relationship property during Mediation, but only if these issues remain secondary to CoCA issues.

Recording FDR outcomes

Who does this?

The FDR Provider who delivered the Mediation is responsible for recording the FDR outcome.

Why is it important?

It's important to document any agreements reached during Mediation. Recording the outcomes in RMS provides evidence that parties have attempted or completed Mediation (or have been granted an exemption). Parties will need these forms if they want to apply to the court at a later time.

Tasks when recording the outcome

- Record the outcome in RMS as appropriate:
 - FDR exemption. [Also see Exemptions.](#)
 - FDR completed – no matters resolved. The parties can't agree.
 - FDR completed – some matters resolved. The parties haven't resolved all matters within a reasonable time but they have agreed on some.
 - FDR completed – all matters resolved. The parties agree and a resolution has been reached on all matters.
- Generate an FDR outcome or exemption form from RMS. The form will display the dispute ID, the party names and a summary of the outcome. The mediator must sign and date the form (once satisfied it's accurate).
- If only some matters are resolved, the FDR outcome form must state the matters on which the parties didn't reach agreement.
- Issue the FDR outcome or exemption form to all parties (as described in section 12 of the Act).
- If parties have reached a full or partial agreement, the mediator will write this up as a mediated agreement and will give all parties a copy.
- If parties choose to withdraw from Mediation because they've reached an agreement themselves, the 'joint withdrawal' option can be used in RMS to record this.

Points to note

FDR outcome form

The FDR outcome form has a section where the FDR Provider can summarise what was agreed or not agreed at Mediation, or why the parties were granted exemption. It must be a high-level summary only, for example, 'school holidays', 'Christmas holidays', 'significant celebrations'. Further details should be recorded in the Mediation agreement.

Turning Mediation agreements into court orders

A Mediation agreement isn't legally enforceable unless it's been formalised as a court order. To do this, parties must make an application to the court for a consent order. FDR Providers must ensure all parties understand that the Mediation agreement isn't legally enforceable on its own.

Making a non-consented parenting application

If parties haven't reached agreement, they may wish to apply for a guardianship or parenting order.¹ To do this, they must provide an FDR outcome or exemption form issued in the past 12 months to the Family Court. To apply for a parenting order, they must also show they've completed PTS within the previous two years.

Court-directed FDR

A judge may direct parties to FDR if they haven't attended in the past 12 months, or refer them back if they've already attended. For details about payment in these circumstances, [see FDR business rules](#).

Privilege and confidentiality

Mediators should make it clear to all parties that:

- matters raised and discussed during FDR are legally privileged and confidential
- legal privilege doesn't apply to the FDR outcome or exemption forms or the terms of the Mediation agreement.

Information and resources

For information and resources, go to <https://www.justice.govt.nz/family/>

All Suppliers, their locations and contact details, are listed at www.justice.govt.nz/family/care-of-children/find-a-service-to-help-with-disputes.

¹ A guardianship order is needed when parties cannot agree on guardianship issues like where the children live, where they go to school. A parenting order is needed when parties can't agree on day-to-day care or when parents or others see the children.

FDR funding

For the purpose of establishing eligibility for FDR funding, a single FDR dispute is defined as involving the same parties and the same child or children.

Funding for FDR Services (assessment, preparation for Mediation and Mediation) is tied to unique disputes. If individuals are party to more than one dispute (that is, disputes that involve different parties or children), they may be eligible for separate funding for each dispute.

FDR is free for people who qualify. The eligibility threshold is aligned with eligibility for civil legal aid but is based on the gross income of the person applying for FDR and the number of dependants (this can also include a dependent spouse or partner). For those who qualify, no repayment is required.

If someone doesn't qualify for full funding, they can access partially-funded FDR where the total cost is kept to a fixed maximum through government subsidy.

People may also choose not to access partially-funded FDR by making their own private arrangements. Please note that private arrangements are funded by parties who chose to make these arrangements, and can't be retrospectively funded by the Ministry.

Determining funding eligibility

Who determines eligibility?

Funding eligibility is determined by:

- a Supplier's delegate (usually an FDR Provider or FDR staff member), or
- a FLAS Provider.

Why is it important?

The funding determination establishes eligibility for fully-funded FDR and FLAS. Eligibility is valid for 12 months from the date eligibility was established (that is, their eligibility does not need to be re-determined during that time), unless there's a change to the person's financial circumstances.

Tasks when determining funding eligibility

- Check RMS to see whether funding eligibility has already been determined.
- If the person is recorded as eligible, confirm whether the person's financial situation has changed since the last funding determination.
- Undertake a new funding determination if eligibility hasn't been previously established, eligibility has expired, or the person's financial situation has changed.

- In RMS, record whether funding is approved or not. Record 'funding is not granted' if a person doesn't want to apply for funding or hasn't provided adequate evidence of income.

Funding declaration form

The funding declaration form must be completed to establish whether someone qualifies for full funding.

Generate the form through RMS.

Help parties complete the form.

- Applicants or their agents must sign the funding declaration form² to confirm the information provided is true and correct and they understand the conditions attached to any funding granted.
- Applicants must provide evidence to support their application. [See also Evidence of eligibility.](#)

Tell parties how their information may be used and the consequences of providing incorrect information. [See also Applicant declaration on the form attached in Appendix 2.](#)

The person administering the eligibility test will also need to sign the part of the form that requires them to declare they've administered the test, physically sighted evidence of income, and recorded the information correctly.

[See also Appendix 1 for a step-by-step guide to assessing funding eligibility.](#)

Points to note

Eligibility thresholds

Financial eligibility is assessed on gross personal income for the past three months and the number of dependants.

The thresholds for eligibility can be viewed at www.justice.govt.nz/family/care-of-children/when-you-dont-agree/funding-eligibility.

Income

Income is defined as any money received and used for income-related purposes. This includes wages, salary, welfare benefits, shareholder dividends, interest, student allowance, and child support payments.

The person administering the eligibility test will need to determine the parties' income before any tax, ACC levies, KiwiSaver contributions and/or student loan repayments are deducted from it.

² When FDR is completed remotely, the supplier or FDR provider may sign on behalf of the applicant.

Dependants

Dependants are:

- a spouse or partner without income, or
- children who are financially supported.

Dependent children don't have to live in the same home as the applicant or be the applicant's own children. However, the applicant must be contributing financially towards their care, whether in the form of child support or private arrangement.

If a child has their own income (for example, student allowance), they must not be counted as a dependent. Generally, a dependent child is someone who is under the age of 18 years old and not otherwise financially independent. Where the child is 18 years old, and is still at school or at a tertiary educational establishment and not receiving a student allowance, they will be considered to be a dependant (until the end of the calendar year in which they turned 18).³

A person aged 19 years or older isn't considered to be a dependent child, regardless of their income or where they live.

Evidence of eligibility

The following information may be used as evidence of income:

- letter from the applicant's employer
- payslips from the last three months
- bank statements for the past three months
- letter from Work and Income NZ
- a copy of the applicant's most recent tax return
- proof of civil or family legal aid received in the previous 12 months
- a declaration that the applicant has had no income and that includes the number of dependants and a statement explaining why the applicant has had no income and how they have supported themselves without any income. A declaration of this sort is suitable for applicants whose financial situation has changed suddenly and cannot provide proof of three months' income; for example, they may be in the process of applying for a welfare benefit, or may have left work to care for children.
- any other evidence deemed sufficient by the person carrying out the funding determination.

Audit and compliance requirements

To satisfy audit requirements, Suppliers must keep a copy of the completed funding form and copies of any supporting evidence for seven years. Copies may be paper or electronic, but must be stored securely.

³ See sections 3 and 63A of the Social Security Act 1964.

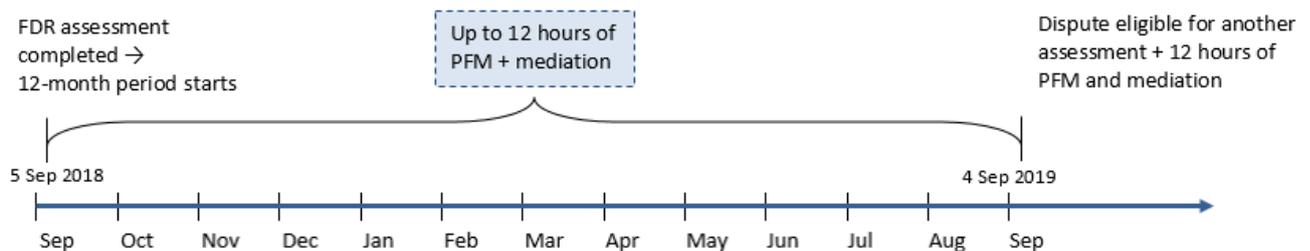
FDR business rules

All parties can access the following within a 12-month period per dispute:

- one funded FDR Assessment
- up to 12 hours of PFM and Mediation.

The 12 hours can be any combination of PFM and Mediation agreed by the Supplier, FDR Provider and all parties. PFM and Mediation is free for eligible parties, while partially-funded parties pay a fixed fee. [See also Costs to parties of Mediation.](#)

The 12-month period is calculated from the date when the FDR Assessment was completed and the decision was made to proceed with FDR or not. So, if the assessment outcome decision was made on September 5, 2018, parties are eligible for 12 hours of PFM and Mediation by September 4, 2019. After the 12-month period is up, the dispute is again eligible for one FDR Assessment and up to 12 hours of PFM and Mediation. The parties' funding eligibility may also need to be reassessed at this stage.



Exception to the 12-month rule

Court-directed FDR is excluded from the 12-month rule described above. If a dispute is referred to FDR by the court, it will be eligible for an FDR Assessment and up to 12 hours of PFM and Mediation, even if it's less than 12 months since FDR was initiated previously. Partially-funded parties will still have to pay.

Costs to parties of Mediation

The amount parties need to pay depends on their funding eligibility, which is determined by the civil legal aid income thresholds. [See also the funding for FDR section.](#) For parties who are ineligible for free FDR, the cost of Mediation is partially funded by government subsidy and the cost of Mediation is capped. There are three funding scenarios:

Fully-Funded Disputes

Where all parties meet the funding eligibility criteria for free FDR:

- the parties don't pay anything
- the Ministry will pay the Supplier the contracted fee for the hours used, up to 12 hours of PFM and/or Mediation.

Mixed-Funded Disputes

Where at least one party meets the funding eligibility criteria for free FDR and at least one party doesn't:

- the eligible party is fully funded by the Ministry and doesn't pay anything
- the Partially Funded FDR Party needs to pay their share of \$390 plus GST; this equates to 2.15 hours of the 12 hours of PFM and/or Mediation available (if there is one Partially Funded FDR party, they pay \$390; if there are two, they each pay \$195, etc). The parties must not be charged any more than those amounts by the Supplier or FDR Provider.
- the party paid hours must be delivered prior to the Ministry funded hours.
- the Ministry will pay the Supplier the contracted fee for the remainder of the hours used in the dispute.

Partially-Funded Disputes

Where no party meets the funding eligibility criteria for free FDR:

- each party must pay their share of \$780 plus GST; this equates to 4.3 hours of the 12 hours of PFM and/or Mediation available (if there are two parties, they each pay \$390; if there are three, they each pay \$260, etc). The parties must not be charged any more than those amounts by the Supplier or FDR Provider.
- the party paid hours must be delivered prior to the Ministry funded hours.
- the Ministry will pay the Supplier the contracted fee for the remainder of the hours used in the dispute.

If the dispute requires more than 12 hours of PFM and Mediation, the Supplier can continue to provide services to the parties at their own cost.

Resolution Management System

All Suppliers and FDR Providers are required to use RMS, the online recording and reporting system for tracking family resolution services.

RMS allows FDR Providers to quickly check whether a party has already been assessed for funding eligibility and what other services they have accessed. Court registrars, relevant Ministry staff, Suppliers and Providers, and PTS and FLAS Providers have access to different parts of RMS depending on the tasks they're required to undertake.

Getting access to RMS

Suppliers must provide the Ministry with a list of all authorised staff who need access to RMS and state whether they'll be using it in an administrative or FDR Provider capacity.

- Each RMS user needs a unique email address.
- Suppliers must complete an 'RMS delegated user' form⁴ for new users and email this to rms.family@justice.govt.nz

The Supplier must advise the Ministry of any staff changes, for example, when a person leaves their business. This ensures the user database stays up-to-date and the integrity and security of RMS is maintained.

What RMS is used for

RMS is used:

- to search
 - whether a party and dispute is already in the system
 - whether the party has already attended FDR and, if so, when
 - whether the funding eligibility test has been completed and whether eligibility is current
- to record
 - party contact details
 - names of the parties and children involved in the dispute
 - results of the funding eligibility test
 - services delivered to the party
 - completion of an activity (to trigger payment)
 - results of an activity
- to generate appropriate FDR outcome or exemption forms.

⁴ This form is available from the Ministry.

Timely recording of data in RMS

Why is it important?

Timely recording of data in RMS ensures:

- basic identity information is available to other Providers so that parties don't need to repeat details if they access other family resolution services
- Providers can see the result of any previous funding assessments
- all involved Providers are aware of each other (this may be required when different parties to the dispute approach separate Providers)
- timely payments can be made to Suppliers for services delivered.

Tasks for RMS users

As soon as possible, and preferably within two working days of initial contact, enter each party into RMS and any services you have provided to parties. Subsequent actions should also be entered into RMS within two working days.

RMS and Supplier payment arrangements

The Ministry will make payments for RMS events that have been recorded and finalised. It produces a monthly payment report which provides a list of payments due to each Supplier, and includes the RMS activities finalised by them in the previous month.

Each Supplier will be sent a copy of the report to confirm the information is correct. Payments will be made by the 20th day of the next calendar month.

The Supplier and the Ministry must keep copies of the payment report and Ministry-created remittance advice.

Suppliers manage their own payment arrangements with FDR Providers and the relevant parties (if they're not eligible for free FDR).

RMS user guidelines and support

For more information about using RMS, see the RMS process tool in the RMS Learning Tools section of RMS.

RMS user support is available:

- by phoning the RMS helpdesk on 0800 774 418 from 8.30am to 5pm weekdays
- by emailing support@rmssupport.co.nz.

Privacy guidelines and requirements

Why is privacy important?

The Privacy Act 1993 imposes obligations around the collection, use, disclosure and storage of personal information obtained from individuals. For the delivery of FDR, privacy (particularly in relation to contact details) is also critical to ensure the security and safety of FDR parties and any children involved in a Family Dispute.

Privacy Act 1993

Under the Privacy Act, individuals have the right to access all information held about them and to request correction of that information. Individuals providing personal information to a Supplier or FDR Provider must be told about this. A privacy statement reminder is visible on each screen in RMS.

It's not compulsory for people to provide the Ministry or the Supplier with their personal information but they must be made aware that if they don't provide all the information requested, their application for funding may not be able to be assessed or may be declined.

Suppliers and FDR Providers must keep all information collected from FDR parties (or potential FDR parties) secure and confidential, and only use the information for the purposes of service delivery.

RMS rules

- Advise the parties what information is being collected about them and why it's being collected. There's a privacy statement in RMS that you must read or provide to the party. [See also Appendix 4.](#)
- When you login to RMS, you need to confirm that you're using the system for proper purposes.
- Only use RMS for recording or checking information about your own parties and for linking a party to a dispute or service.
- Don't use RMS to gather contact information for another party.
- Don't improperly use the system. (There's a record of what information users have accessed and this is reviewed regularly.)

Promotion of FDR and collaboration

Who's responsible?

Suppliers must work with other Suppliers in their area (for example, PTS and FLAS Providers, Family Court staff) to promote FDR Services. With approval from the relevant Court or regional manager, Suppliers can also be present at the court when family matters are scheduled. This helps to build the profile of FDR Services with other family justice stakeholders and helps potential parties to access FDR Services in a timely and efficient manner.

Why is this important?

Promotion of family justice services and collaboration among Providers of those services is important to make parties aware of all the available services in their community and how to access them.

Tasks for Suppliers

- Work with local stakeholders and community groups to promote the benefits of FDR and increase knowledge of the services available. This may include local print publications, digital media, and local community meetings and events.
- Create seamless connections between services for all involved parties.

Points to note

- Suppliers must ensure all public communication about FDR, including distribution of written material and website content, is consistent with the Ministry's published communications.
- Media enquiries about FDR should be referred to the Ministry in the first instance. The Supplier must notify the Ministry promptly before they respond directly to queries that have potential implications for the Ministry.

Appendix 1 – Determining funding eligibility

Please check the Ministry website for current funding eligibility thresholds as they change annually. Go to www.justice.govt.nz/family/care-of-children/when-you-dont-agree/funding-eligibility.

Key steps to complete

Detailed RMS steps are available in the process tool in RMS.

- Have preliminary discussion (can be over the phone)
 - ask the party if they wish to apply for funding
 - if they do not wish to proceed with FDR, no further action is required
 - if no and the party wishes to proceed with FDR, choose 'no evidence' from the 'type of evidence' dropdown box in RMS
 - if yes, enquire further to see if they are likely to qualify for funding and can provide proof of this.
- Obtain party details
- Check whether they already have a party and dispute record in RMS
 - if no party record exists, create party record and ensure RMS privacy statement is read or provided to the party (party details should be entered into RMS within 48 hours)
 - if no dispute record exists, create dispute record containing information about who the parties and children are and what services, if any, they have accessed
 - if there's already a party and/or dispute record, make sure the party is linked to the dispute
 - check if another Provider has already assessed the party's funding eligibility in the last 12 months
 - check if party has already received funding for FDR in the last 12 months (up to 12 hours of funded FDR is available within a 12-month period).
- Perform funding eligibility test
 - confirm party identification (recommended to see some physical identification but not mandatory)
 - check if they are currently receiving civil legal aid (they are then automatically eligible for fully-funded FDR)
 - obtain proof of income and number of dependants (parties unable to supply proof of income must attest to this in the funding declaration form)
 - check eligibility using the table on the Ministry website at www.justice.govt.nz/family/care-of-children/when-you-dont-agree/funding-eligibility
 - sight and retain for 7 years a copy of proof of income.
- Generate funding declaration form from RMS
 - applicant's personal details are pre-populated by RMS
 - for confidentiality, details of an applicant's income are not captured in RMS; this information must be kept as per the Supplier's business records, data security and confidentiality processes
 - ask the party to complete the funding declaration form and check this is correct

- ensure party understands the privacy provisions and signs form
confirm the parties' eligibility and sign the funding declaration form (the same person must sight evidence and sign the form).
- Update party record in RMS with the result of the funding eligibility test
 - this should be done within 48 hours of conducting the test
 - if funding isn't granted, record this in RMS.

Appendix 2 – Funding Declaration form

This form is an example only. Suppliers and Providers must generate the form in RMS.



07/17 form 40
Funding Declaration Form
Family Dispute Resolution & Family Legal Advice Service

Please note: This form does not need to be completed if you have had funding approved for Family Dispute Resolution or the Family Legal Advice Service in the last 12 months, and your financial situation has not changed.
 For more information see www.justice.govt.nz/family-justice or call 0800 2AGREE (0800 224 733)

1. Applicant Personal Details

***Compulsory Questions**

Title : Dr Mr Mrs Ms Miss

* First name(s): _____ * Surname: _____

Gender Male Female Gender diverse * Date of birth: _____

Home address: _____

Email address: _____

Contact phone number(s): _____

* Do you have a dependent spouse, civil union or de facto partner who has no source of income? No Yes

* Do you have any dependent children? No Yes * How many? _____

2. Applicant Eligibility Details

What is your estimated annual income (before tax and other deductions)? \$_____

Please tick one of the following:

I have received a grant of civil or family legal aid within the past 12 months and my financial circumstances have not changed since I was approved for this grant of legal aid.

My estimated annual income before tax and other deductions is below the funding income threshold (see Section 3 for details)

My income has changed in the past 3 months, and is below the funding income threshold

Please tell us how your income has changed in the past 3 months

Please attach proof of eligibility (see Section 6 for examples of proof required)

3. Income Thresholds

This table will help you to determine your eligibility for services

Number of Dependants	Annual Income before tax and other deductions
0 - Applicant only	\$23,326
1 - Spouse/Partner or Child	\$36,940
2 - Spouse/Partner and/or Children	\$53,119
3 - Spouse/Partner and/or Children	\$60,363
4 - Spouse/Partner and/or Children	\$67,453
5 - Spouse/Partner and/or Children	\$75,404
6 or more	Plus \$6,976 per additional

Note: Spouse or partner in this instance must have no income to be taken into account

4. Privacy Statement for Applicant

The information you provide in this form is being collected to assess your eligibility for funded out of court family justice services. Your information may be used by

- the Ministry of Justice (including judges and court staff)
- your out of court family justice service provider
- the organisation that employs or engages your out of court family justice service provider

to determine your eligibility for funding, provide and/or manage out of court family justice services, or to validate the accuracy of information provided.

The information you provide may also be disclosed to third parties when we believe in good faith that we are required to do so by law.

You have the right to ask for a copy of any personal information we hold about you, and to request correction of that information if you think it is wrong. To request a copy of your information, or to have it corrected, contact us at:

Address: Provider and Community Services, Ministry of Justice, SX10088, Wellington
Email: RMS.Family@justice.govt.nz

5. Applicant Declaration

I acknowledge that:

- I must attach evidence to support the information required by this application
- The information that I have provided is true and correct
- If I provide false or misleading information, my funding may be revoked and I may be prosecuted
- If I am subsequently found to be ineligible for funding I may be required to repay the Ministry of Justice for the funded services I have received
- The assessment of my eligibility will use the information that applies to the 3 month period before the date of this application
- My eligibility for funding may be checked by other out of court service providers to assess my eligibility to receive the free family justice services they may provide

I understand that:

- If circumstances change that may affect my eligibility for funding, I must immediately inform my family justice service provider who will re-administer the eligibility test using the updated information
- If this family dispute progresses to court, any application for legal aid may be compared with the information provided in this funding application for the purposes of auditing funding applications
- Any information relating to me and my family dispute that is obtained or recorded by a family justice service provider may be subject to an audit or investigation
- Copy of this form will be retained by the provider for audit purposes.

I authorise the collection and use of the information I have provided in accordance with the "Privacy Statement for Applicant" set out in Section 4 and acknowledge that the consequences of not providing such information may result in ineligibility to receive free out of court family justice services.

Applicant's name (print) _____

Signature _____

Date _____

Please send the signed and completed form to your service provider.

6. Applicant Checklist

Check you have:

Completed sections 1 & 2 above

Given your provider:

proof of your income, for example:

- letter from employer or payslip
- bank statements for the last 3 months
- letter from NZ Work and Income
- copy of your most recent tax return

OR

proof that you have been granted civil or family legal aid in the previous 12 months

Read the Privacy Statement for Applicant in Section 4

Read and signed the Applicant Declaration in Section 5

7. Service Provider Confirmation *(for office use only)*

I confirm that:

- The applicant in this application qualifies for funding
- I have retained a copy of this for my records

Service Provider name (print) _____

Signature _____

Date _____

Supplier name (print) _____

Type of Service (tick one)

Family Legal Advice Service

Family Dispute Resolution

8. Service Provider Checklist *(for office use only)*

Before you approve this application, check you have:

Retained a copy of the applicant's proof of eligibility for funding

9. Resolution Management System *(for office use only)*

Entered into Resolution Management System by: _____

(Print name)

Date entered into Resolution Management System: _____

Appendix 3 – Travel and room hire policy

The Ministry’s travel and room hire policy for FDR Services

This policy applies to Suppliers of FDR Services, and outlines situations where the Ministry will reimburse travel expenses incurred by a Supplier’s FDR Providers and PFM staff.

General principles

The Supplier should ensure:

- parties to a dispute receive services in their local area
- the FDR Provider whose usual place of business is closest to the FDR venue is allocated to the dispute
- travel costs are minimised for all the parties and the FDR Provider.

Travel rules

Suppliers will not be reimbursed for travel and room hire costs in the following situations:

- To an FDR venue within 50km of the FDR Provider’s usual place of business; and
- Between the FDR Provider’s residence and usual place of business.

Suppliers will be reimbursed for travel and room hire expenses in the following situations:

- Within the Supplier’s contracted service delivery location, but where the FDR venue is more than 50km from the closest FDR Provider’s usual place of business;
- When one party lives or works in the Supplier’s contracted service delivery location and the other party doesn’t, and the Provider is required to travel to complete assessments or PFM, when Skype or other similar technology cannot be utilised;
- When there is an FDR Provider within 50km of the closest FDR Provider’s usual place of business but:
 - there’s a conflict of interest between the closest FDR Provider and either of the parties
 - a particular FDR Provider has been allocated to meet the parties’ cultural needs (for example, either party may request a Māori FDR Provider)
 - a particular FDR Provider has been allocated to meet the language needs of the parties involved, where this can’t otherwise be met by translators or interpreters; and
- In the event an FDR Provider is required to travel to locations where Supplier rooms are not available and they need to hire rooms to carry out FDR.

The Ministry will reimburse the Supplier at the following rates:

Type of Expense	Applicable Rate	Conditions
Travel by car	At the rate set by the Inland Revenue Department (if the distance is more than	Expenses incurred were necessary for the FDR parties to proceed through FDR.

	50km) ⁵ (GST exclusive)	<p>The Ministry's prior approval in writing must be sought for any travel expenses and room hire which will, in total, exceed \$500 per FDR event.</p> <p>The maximum amount of travel expenses must not exceed \$2000 per FDR dispute. The Ministry's prior approval in writing must be sought to exceed this.</p>
Room Hire	Up to \$200 per day, pro rata (GST exclusive)	
Travel time	\$63 per hour, to the nearest half hour (GST exclusive)	
Air travel	The full airfare for the cheapest and most direct route available	

Room Hire example:

e.g. if a room is hired at a cost of \$35 per day, the Ministry will pay \$35 per day.

If a room is hired at \$225 per day, the Ministry will pay \$200 per day.

If a room is hired at a cost of \$200 per half day, the Ministry will pay \$100 for that half day.

⁵ Currently 0.73 per kilometre excluding GST. See <http://www.ird.govt.nz/business-income-tax/expenses/mileage-rates/emp-deductions-allowances-mileage.html>

Appendix 4 – Privacy statement

To provide you with our service we need to collect personal information about you, including:

- name
- contact information
- demographic information (meaning gender, age, ethnicity)
- funding eligibility (where funding is sought)
- information about the dispute(s) you're involved in concerning the care of children
- the type of out-of-court family justice services you access and their high-level outcomes.

We record and store your information in a secure database managed by the Ministry of Justice.

We collect your personal information to track and report on our services to the Ministry of Justice, and to make sure that other family justice service Providers have access to relevant information if providing services to you.

Your information may be used by the Ministry of Justice for reporting and research purposes but this won't identify you. The Ministry of Justice may also contact you to invite you to participate in research, for example online surveys. Participation is voluntary.

We may also disclose your personal information to third parties when required by law.

It's not compulsory for you to provide the Ministry of Justice with personal information, but if you don't provide all the information requested, we may not be able to provide you with a service.

You have the right to ask for a copy of any personal information we hold about you, and to request we correct that information if you think it's wrong. To request a copy of your information, or to have it corrected, contact us at:

Provider and Community Services

Ministry of Justice

SX10088

WELLINGTON

RMS.Family@justice.govt.nz

Ministry of Justice
Tāhū o te Ture

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