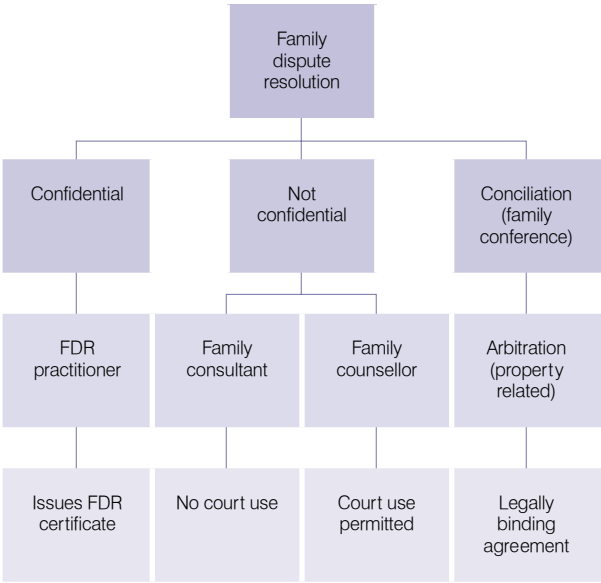


Family dispute resolution procedures

FDR procedures commence before court proceedings and have different relevance in court. The following chart explains the different options available for mediation between parties.



Parenting plans, parenting orders and consent orders

Parents are encouraged to formalise a **parenting plan** that sets out the parenting arrangements for their children. It is worked out and agreed upon jointly, which has the added benefit of neither party having to go to court.

Parenting orders are court-determined orders and, unlike parenting plans, are legally enforceable. They can be made by those concerned for a child’s welfare such as parents, grandparents, aunts/uncles, cousins or family friends.

A **consent order** is a written agreement that, while not requiring presence at court, is approved by the court and can include financial arrangements such as property and spousal or de facto maintenance as well as parenting arrangements for children. You can apply for a consent order without an FDR certificate.

Court processes

If you cannot reach an agreement, you may consider applying to the court for orders. Going to court can be stressful, expensive and time-consuming. However, sometimes it is the only way to resolve a dispute. The court you go to depends on the matter you are seeking to resolve. Your solicitor can advise you on this.

Even when a court application is filed, it is still possible to reach an agreement, at any stage, without the need for a court hearing.

After the court’s decision

Each person is bound by the court order and must follow it.

There are services in the community that can help you and your family adjust to and comply with the court order.

- **Family Assistance Office**
familyassist.gov.au or 13 61 50
- **Legal Aid Queensland**
legalaid.qld.gov.au or 1300 65 11 88
- **Family Law Courts National Enquiry Centre**
familycourts.gov.au or 1300 352 000

If the order is not complied with or you wish to change the order, you may file a court application.

Looking for a solicitor?

You can find one via the Queensland Law Society referral service at qls.com.au or phone 1300 367 757.

A legal guide to understanding the family court system

family law

public information



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The information in this brochure is merely a guide and is not meant to be a detailed explanation of the law and does not constitute legal advice. Queensland Law Society recommends you see your solicitor about particular legal concerns.



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QLSPB FAMILY OCT2011

Family law regulates legal rights and responsibilities of couples who marry, live together as de facto partners or have children together and can apply at any time in the relationship – including before, during and after the relationship.

The principles of family law

- Children always come first.
- ‘No fault’ divorces (no consideration is given to who broke up the relationship and why).
- Mediation must be attempted before court proceedings.
- In some circumstances the Court will also require parties to undergo counselling.

What is a family lawyer?

Family lawyers represent people in resolving family law disputes via mediation or, if that is unsuccessful, in court. These practitioners have a complex set of skills that includes thorough knowledge of State and Commonwealth law and court rulings, the ability to conduct court matters and even an understanding of accounting to manage asset distribution.

A family lawyer can:

- arrange prenuptial agreements (before a legal marriage) to bind the parties to the relationship
- take your instructions and obtain information from witnesses and government agencies, as well as acquire bank statements, valuations and medical reports
- act independently for children (eg when determining where they should live)
- provide guidance with family life-related legal needs such as will making, enduring powers of attorney or adoption.

You do not have to engage a lawyer if you separate or divorce, however family lawyers can guide you through the mediation process and formalise any agreements with legally binding documents.

A solicitor has an obligation to advise clients of the effects of the proposed proceedings and the dispute resolution options available.

How are children protected?

The *Commonwealth Family Law Act 1975* sets out a number of important principles in relation to children:

- children should have the right to know and be cared for by both parents
- they have a right to spend time and communicate on a regular basis with both parents and other people who are significant to them
- parents jointly share duties and responsibilities regarding their children
- parents should agree about the future parenting of their children
- where the Court is asked to make decisions about children, it must regard the best interests of the child as being the paramount consideration.

Separation – how a family lawyer can help

Separation can be an upsetting experience for everyone involved as you and your partner need to make some important decisions about the future care of your children as well as divide your property, money and belongings. Working through these issues can be a challenging process.

If you are considering separation or have separated, it is advisable that you seek legal guidance. A solicitor can help you understand your legal rights and responsibilities and also explain how the law applies to your case and which court is the right one in which to address it (ie Magistrates or Family Court).

Solicitors who specialise in family law play an important role in assisting parties to reach an agreement by providing the necessary advice so each party can make informed decisions, often without the need to go to Court. They may also alert you to issues you may not have considered.

Queensland Law Society can refer you to an accredited specialist solicitor who has successfully completed an advanced, peer reviewed assessment program in family law and is hence highly skilled in this area.

Non court-based family services

There is a legal requirement for people who consider separation or divorce, along with those affected by it, to make a genuine effort to use services available in the community to resolve issues before attempting court proceedings. There are a number of different avenues available (see chart).

Pre-action procedures

In the Family Court, parties intending to apply for parenting or financial orders must follow pre-action procedures, such as obtaining a dispute resolution certificate (requested by the Court with rare exceptions), before filing an application. The family dispute resolution (FDR) procedure is compulsory in most cases. The aim is to explore areas of resolution and where a dispute cannot be resolved, to narrow the issues that require a court decision.

Family dispute resolution practitioner

You will need to attend FDR and obtain a certificate from a registered FDR provider. The FDR practitioner’s findings are confidential and cannot be used in court.

There are exceptions to this requirement, such as cases involving family violence, child abuse or other urgencies. For more information on FDR and how to locate a registered provider please visit familyrelationships.gov.au or call 1800 050 321.

Family consultants and counsellors

Family counsellors can also help, however their findings cannot be used in court. Family consultants are psychologists or social workers who specialise in child and family issues after separation and divorce and can:

- solve disputes with other parties
- assist and advise the court and give evidence about your case
- write and provide a report to the court about your family.

Their work with you is not confidential and may be used in court at a later date.

Arbitration

Property settlement before going to court is called arbitration. During arbitration, parties present arguments and evidence to an arbitrator, who makes a legally binding decision. Before arbitration you usually need to have a family conference called conciliation.

Agreement may be reached at any stage in the pre-action procedures, with consent orders made and the case finalised. Different steps may apply in some cases.

Reaching an agreement with your former partner has a number of advantages, such as:

- making your own decisions
- greatly reducing the financial and emotional costs of legal proceedings
- supporting your continuing relationship as parents, if you have children
- moving forward and making a new life for yourself
- potentially improving communication with your former partner, which will enable you to better resolve any disputes in the future.

