



**Separating is Hard Enough –
Without Spending Thousands
of Dollars on Lawyers if
You Don't Need to**

**10 Things You Need to
Know but a Lawyer
May Not Tell You**



Bayside Mediation
Family Dispute Resolution

1. You have No Legal Obligation to Respond to a Letter from a Lawyer

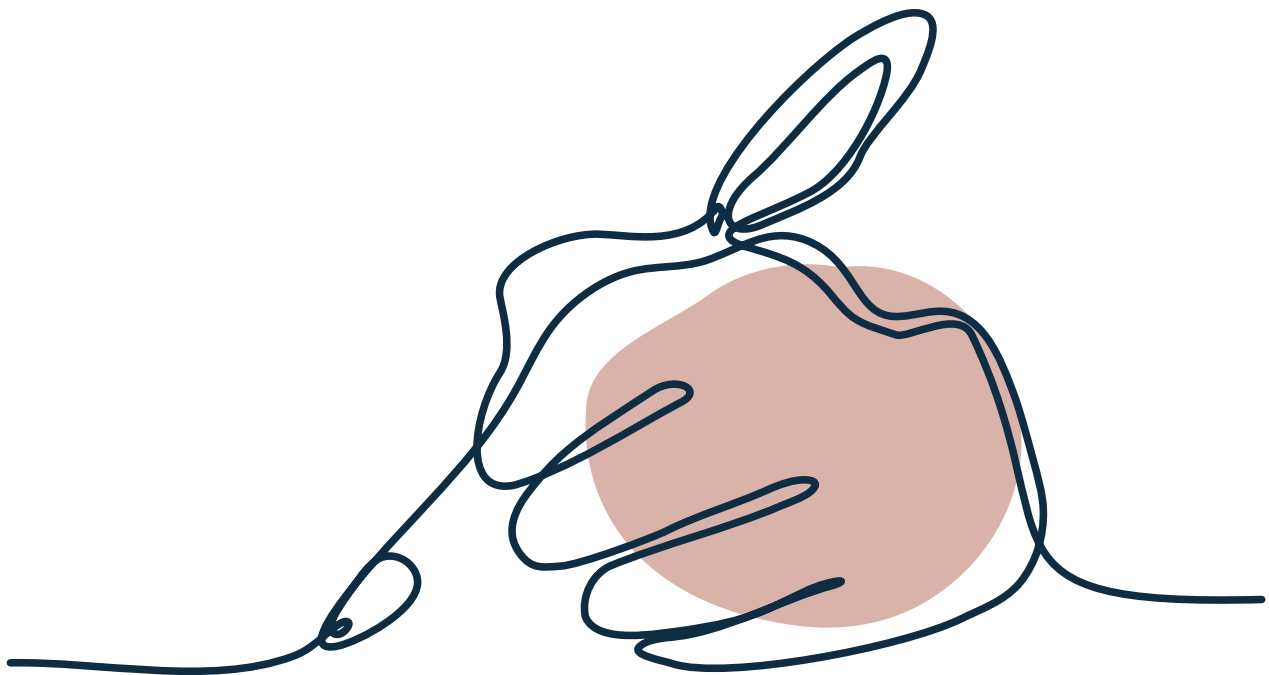
That is right! If you get a letter from your former partner's lawyer, **you do not have to respond**, you don't have to get a lawyer yourself, you don't have to conform to their timelines, you don't have to provide them with information. You can take your time and explore all your options. It is important to seek support and guidance from someone with family law training who can help you understand **all your options**.

Receiving a lawyer's letter regarding a family law matter can be intimidating, but it's **important to understand that you are not legally required to reply**. Lawyer's letters in family law disputes are often used to communicate demands, propose settlements, or outline perceived obligations. It is not uncommon for such letters to be sent as a negotiation tactic or an attempt to intimidate. However, these letters are not legally binding, and their content does not carry the weight of a court order.

In family law, responding to such letters is typically a matter of strategy rather than obligation. If the letter outlines demands you believe are unreasonable or unsupported, responding hastily may unintentionally legitimise those claims. Additionally, providing unnecessary information in a reply could inadvertently weaken your position in future negotiations or court proceedings.

That said, choosing not to reply may have implications depending on the circumstances. However, **unless a court order requires your compliance, there is no immediate legal consequence for silence**.

Ultimately, while there is no blanket requirement to respond to a lawyer's letter in a family law matter, the decision should be informed by the content of the letter, your circumstances, and advice from a qualified legal professional. This ensures your rights are protected while minimising potential risks.



2. Family Dispute Resolution (Family Law Mediation) is Mandatory Across all Areas of Family Law

Unless there are compelling reasons not to engage in FDR mediation, such as it being not practical or safe to proceed, **you will have to mediate** at some point in your divorce journey. It just depends on whether you want to spend tens of thousands of dollars on a lawyer to facilitate the process, **or not!**

Family Dispute Resolution (FDR) is mandatory in Australia for most family law matters involving parenting and financial disputes. Under the Family Law Act 1975, this requirement aims to encourage parties to resolve their disagreements collaboratively before resorting to court proceedings. This approach reflects the law's commitment to reducing conflict, fostering cooperation, and prioritising fair and practical outcomes for families.

Accredited practitioners facilitate FDR, guide parties in discussing disputes, identifying issues, and exploring mutually acceptable solutions. For parenting matters, the focus is on children's best interests, ensuring that agreements support their welfare and maintain meaningful relationships with both parents. For financial matters, the goal is to achieve equitable arrangements that address the division of property, assets, and financial responsibilities.

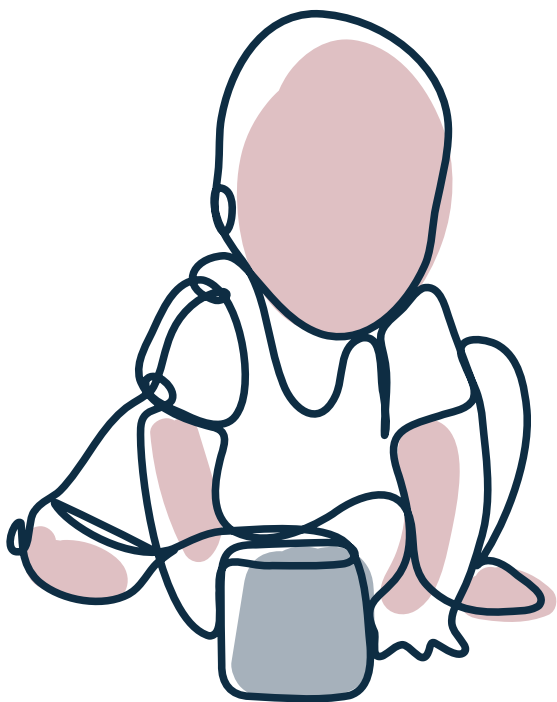
The mandatory nature of FDR applies to most cases, requiring parties to attempt resolution and obtain a Section 60i Certificate for parenting matters or demonstrate attempts at negotiation for financial disputes. Courts generally will not accept applications without evidence of attempting dispute resolution, except in specific circumstances.

Exemptions to the mandatory requirement to attempt FDR include cases involving extreme family violence, child abuse, urgency, or incapacity, where court intervention may be necessary to protect individuals or ensure fairness. These exceptions recognise that FDR is not appropriate in all situations.

Mandating FDR reduces the emotional and financial burden of litigation, encourages tailored agreements, and lessens the strain on the court system. By requiring parties to engage in FDR for both parenting and financial matters, Australian family law promotes dialogue and compromise, helping families transition through separation with minimal conflict. This collaborative process aligns with the law's principles of supporting children's welfare, achieving fair outcomes, and fostering cooperative relationships post-separation.



3. FDR Mediators Determine if Mediation is Appropriate – Not Your Lawyer



It is assumed that lawyers are responsible for determining whether mediation is appropriate. However, this is not the case; the **Family Law Act requires Family Dispute Resolution Practitioners to make that assessment**. Given that FDR mediators should be the first people contacted in most cases where a couple is separating, it makes sense that FDR mediators should also make that call. FDR mediators hear both sides of the separation story much earlier than other professionals in the family law space. FDR mediators are also required to be impartial and confidential, ensuring the safety and confidentiality of the parties involved.

Firstly, the mediator evaluates whether mediation is suitable based on the dynamics between the disputing parties. For example, if there is evidence of severe family violence, coercive control, or significant power imbalances, the mediator may deem mediation inappropriate. The mediator also considers the willingness and capacity of both parties to engage constructively in the process. Mediation relies on voluntary participation and genuine effort to resolve issues; if either party is unwilling or unable to participate, mediation may not be effective.

Additionally, the mediator must consider whether other dispute resolution processes are more appropriate. For example, issues requiring urgent legal intervention or where parties have entrenched positions may not benefit from mediation. By determining the necessity of mediation, the mediator ensures resources are allocated efficiently, and disputes are resolved most effectively.

This gatekeeping role also aligns with legal and ethical obligations under family law frameworks, which emphasise the protection of vulnerable individuals and prioritises children's welfare. In jurisdictions like Australia, FDR mediators are required to assess the suitability of mediation before issuing certificates that may allow parties to proceed to court. By determining if mediation is appropriate, the FDR mediator upholds the integrity of the process, ensures compliance with legal standards, and fosters an environment where parties can negotiate resolutions safely and productively. This foundational role underscores the FDR mediator's responsibility to balance facilitation with safeguarding principles.

It is crucial that both parties attend their intake interviews for an FDR mediator to be able to make the appropriate assessment. All too often, a certificate is issued that states that the other party refused to attend when a more appropriate certificate would be that mediation was not appropriate. However, in most cases the mediator cannot make that determination if both parties do not attend and tell their stories.

4. It's Better for Everyone to Try FDR Mediation Before Bringing Lawyers into the Mix – Even the Lawyers

Engaging in Family Dispute Resolution (FDR) early in the separation process offers several **significant benefits for separating parties**. Early engagement in FDR promotes **better outcomes for families** by addressing issues early and minimising conflict during what can be an emotionally challenging time. FDR mediation is a non-adversarial option; Family Dispute Resolution practitioners don't fuel the fight!

Early FDR helps maintain civil relationships between parties, especially when children are involved. By fostering constructive communication and encouraging mutual respect, **FDR minimises the adversarial nature of disputes**, which is crucial for good co-parenting post-separation and helps lawyers be more effective if needed.

Engaging in FDR early prioritises the best interests of children. Parents can work together to establish parenting arrangements that suit their children's needs, reducing the emotional stress and instability that prolonged conflict can cause.

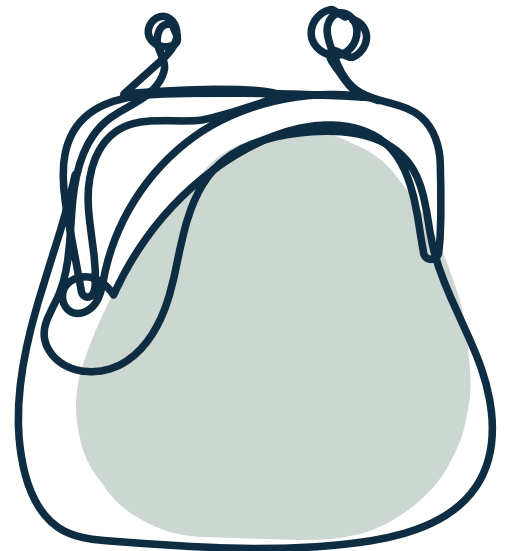
Separation is often emotionally taxing. Early dispute resolution through FDR can provide clarity and stability, **helping parties move forward without the prolonged uncertainty** and strain of unresolved disagreements.

FDR is typically faster and less expensive than going to court. By addressing disputes early, parties can avoid lengthy litigation, legal fees, and the financial burden of extended conflict.

FDR allows parties to retain control over the outcomes of their disputes rather than having decisions imposed by a court. Early engagement encourages collaborative problem-solving and tailored agreements that reflect each family's unique circumstances.

Resolving issues early through FDR decreases the need for court intervention, which helps reduce the strain on the judicial system and avoids the adversarial nature of court proceedings.

Engaging in FDR early allows parties to constructively address disputes, saving time, money, and emotional energy. Even if not all issues are resolved in mediation, **keeping a list of agreed points can save thousands in legal fees and months of litigation** if FDR mediation isn't entirely successful.



5. It's True! You Don't Need to Engage Lawyers or Barristers to Access FDR Mediation

There is no obligation in law to use lawyers or barristers to mediate family law disputes. All FDR mediators are trained in family law and conflict resolution. Some may still have practising certificates but no longer work as lawyers. As Family Dispute Resolution practitioners our first obligation should be to the children of the relationship. Family Dispute Resolution Practitioners (FDRPs) are trained to facilitate discussions, ensuring both parties have a voice and helping them find practical solutions tailored to their needs. Rather than getting bogged down in legal arguments and our adversarial legal system.

1. **Cost-Effective:** Mediation without lawyers is far less expensive. Legal representation often incurs high hourly fees, especially in drawn-out disputes.
2. **Empowerment:** Mediation empowers parties to make their own decisions rather than relying on lawyers to negotiate or courts to decide. This self-driven process often leads to more satisfactory and lasting agreements.
3. **Focus on Collaboration:** Mediators emphasise mutual understanding and cooperation, which helps maintain positive relationships, especially when children are involved.
4. **Accessible:** Mediators manage the process in a way that ensures fairness, even without legal representation, addressing power imbalances where necessary.

Problems with Using Lawyers in Mediation:

1. **Adversarial Approach:** Lawyers are trained to advocate for their client's interests, which can introduce conflict into what should be a collaborative process.
2. **Increased Costs:** Lawyer involvement can increase costs, particularly if negotiations become prolonged or contentious.
3. **Risk of Escalation:** Lawyers may inadvertently escalate tensions by focusing on legal rights over practical solutions, potentially leading to court involvement.
4. **Loss of Personal Agency:** When lawyers dominate the process, parties may feel sidelined and lose control over decisions that directly impact their lives.

In conclusion, mediation without lawyers is cost-effective, empowering, and collaborative. Introducing lawyers can complicate and escalate disputes, making the resolution process more adversarial, costly, and emotionally taxing. Lawyers are always there if mediation fails, and many FDRPs will offer lawyer-assisted mediation if the need arises.



6. Why Would Your Lawyer Suggest You Use a Government-Funded FDR Provider?

Lawyers can indirectly (and sometimes directly) benefit from long waitlists for mediation in family dispute resolution (FDR). Typically, there is a wait of two months or more to use these services. While you are waiting, you are not moving on, not reaching an agreement, and getting increasingly frustrated with each other and the system. **Lawyers don't make money unless there is a fight!** And the longer you wait for mediation, the more entrenched your disputes become and the more money they can make.



When FDR mediation is delayed by using government-funded providers, parties will often turn to lawyers to try and establish boundaries and parenting arrangements. Every legal letter deepens the conflict and creates anguish and distrust. The need for ongoing legal support increases as the conflict continues without resolution, leading to higher legal fees. **Parties may become frustrated by the delay and seek immediate resolution through court,** not realising they need the 60i certificate to proceed. This can, again, lead to frustration and confusion when they discover they will need to mediate further into their litigation experience.

While waiting for FDR mediation, clients may hire lawyers to help them prepare for a potential court case or strategies for their eventual mediation session. Lawyers may offer advice on approaching the negotiation process, reviewing legal options, and drafting legal documents in anticipation of a future FDR session. This extended preparation phase can lead to additional billable hours for lawyers and is often counterproductive to a successful FDR process.

Clients may feel they must remain in close contact with their lawyer for guidance as the dispute remains unresolved. This ongoing relationship can lead to higher client retention, with lawyers continuing to charge for their services as the dispute drags on when an **experienced private FDR practitioner could provide the same support and information.**

While long waitlists for government-funded FDR services are detrimental to families seeking timely resolution, lawyers can benefit from these delays through increased billable hours, a greater likelihood of litigation, and ongoing client engagement. However, it's important to note that some lawyers also prefer mediation as a quicker, more cost-effective alternative, as it can lead to a faster resolution and less emotional toll for their clients. You need to choose a lawyer carefully.

7. Your Lawyer Acts Under Instruction From You, Not the Other Way Around!

Effectively instructing your lawyer in a family law matter is essential to ensure they can represent your interests, help you achieve the best possible outcome, and ensure you can keep control of the cost. Here are key steps to guide you through this process:

1. Choose the right Lawyer

Select a lawyer experienced in family law who understands your goals and communicates clearly. Building trust and a good working relationship is crucial. To help find the right lawyer, following the advice of someone who works within the family law space, such as a Family Dispute Resolution practitioner, could be a good place to start.

2. Prepare for Meetings

Gather all relevant documents, such as financial records, court orders, or communication related to your case. Write down key details about your situation and questions you want to ask.

3. Be Honest and Transparent

Share all relevant facts with your lawyer, even those that may seem unfavourable. Omitting information can harm your case and reduce the effectiveness of your lawyer's representation.

4. Clearly State your Goals

Explain your priorities, whether they involve child custody, property division, or financial support. Be specific about what you hope to achieve. Be prepared to tell your lawyer what you don't want them to do, such as responding to every correspondence from the other side.

5. Listen to Advice

Your lawyer has expertise in navigating family law matters. Consider their guidance carefully, especially if they suggest alternatives or adjustments to your approach.

6. Provide Prompt Feedback

Respond quickly to your lawyer's requests for additional information or decisions. Timely communication helps keep your case on track.

7. Set Boundaries and Expectations

Clarify your preferred communication style, budget, and timelines. Ensure you understand your lawyer's billing practices and keep an open dialogue about costs.

8. Stay Involved

Review progress regularly and ask for updates. Ensure your lawyer is acting in accordance with your instructions and keeping your goals in mind.

Being proactive, clear, and cooperative can effectively instruct your lawyer to navigate your family law matter, protect your interests, and reduce costs.



8. Discovery - Disclosure: What Is It and Do You Need it?

Whether you use an FDR practitioner or a lawyer to help negotiate your financial separation, **'Full and Frank' disclosure is required**. This means you must provide the other party with all the information they need to make a fully informed decision and for any agreement reached to be legally binding. The difference is how comprehensive it needs to be. **You can reach the same agreement in FDR mediation as you would negotiating through lawyers without spending thousands of dollars on discovery if you don't need to.**

When handled by lawyers, discovery is typically more formal and governed by legal procedures and the expectation that they will need to take your matter to court. This process is often adversarial, with each party seeking to secure evidence to support their case. Non-compliance with disclosure requirements can result in legal penalties, such as fines or unfavourable rulings if you end up in front of a Judge. Lawyers focus on ensuring that all information meets evidentiary standards and is admissible in court, making the process detailed, **meticulous and expensive**. Lawyers typically ask for three or more years' worth of bank statements, credit card statements, mortgage statements, loan documents, share statements, etc.

In contrast, discovery during FDR mediation is more informal and collaborative. **Family Dispute Resolution Practitioners (FDRPs) support clients to ask for the documents they need** to make a fully informed decision. All agreements reached in FDR mediation must comply with the Family Law Act, but clients choose how deep they dive into each other's financial details. This is particularly relevant for clients who have had shared finances for years and are confident the other party doesn't have millions hidden offshore. This saves separating couples many thousands of dollars in lawyer fees and months of research and data collection.

FDR Mediators facilitate discussions between parties to encourage voluntary and open sharing of information. The emphasis is on resolving disputes amicably, so the process **avoids legal jargon and rigid protocols**. Instead of subpoenas or formal demands, FDRPs guide the parties in providing relevant documents and discussing their issues transparently. Ultimately, discovery with lawyers is court-focused and formal, while FDR aims to foster cooperation in a less adversarial environment.



9. The Majority of Family Law Disputes are Resolved Without Going to Court

Most couples going through separation and divorce have never had experience with the courts or the Family Law Act; this is their first attempt at navigating **our complicated and expensive legal system**. Expectations of a quick resolution in court or with lawyers are often unrealistic. There are many issues that need to be discussed and agreed upon with lawyers or in mediation before the family can move on and continue with their lives. Sometime in the heat of the moment, we hear, 'I'll take them to court.' However, the reality of taking someone to court is that you will need to dedicate around **two years of your life** to the very complex process and up to **one hundred thousand dollars in legal fees**, if not more.

The majority of family law matters are resolved without going to court. Many matters start down the litigation path (using lawyers) only to run out of money or realise a better alternative exists. In some situations, FDR mediation runs alongside court hearings and litigation, often at the Registrar's or Judges' request. According to the Australian Institute of Family Studies, less than 10% of separating couples actually end up in front of a Judge. Of the rest, approximately **70% resolve their issues using Family Dispute Resolution, Lawyers, or both.**

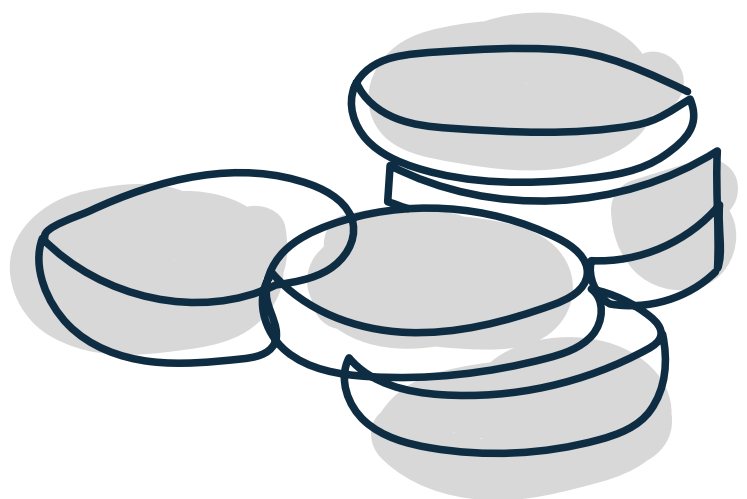
It is difficult to provide accurate figures because the majority of the data comes from the AIFS, which gets its information from court documents and the records of government-funded FDR providers. Private FDR practitioners, who see hundreds of clients annually, are not included in the research data.

According to available **data, around 10% of separating couples use government-funded** providers of Family Dispute Resolution (family law mediation), and of that 10%, only 40% to 50% reach an agreement. This is contrasted by our data (Bayside Mediation), which shows that more than **80% of our clients reach an agreement.** We can only surmise that our figures will be similar to those of other private practitioners. So, of the 70% of couples who choose to use either private FDR, Lawyers, or both, around 80% are reaching an agreement without attending court.

Other research from the Productivity Commission:

Studies and reports suggest that 30–50% of family law litigants are self-represented at some stage of their case, particularly in lower-income groups or jurisdictions with limited access to legal aid. Many self-represented parties resolve their matters without lawyers through negotiation, mediation, or direct agreements with the other party. In jurisdictions that require alternative dispute resolution (ADR), such as mediation or family dispute resolution (FDR), a significant proportion of cases are resolved without formal legal representation.

Approximately 50–70% of cases referred to mediation or FDR are resolved without requiring further legal intervention.



10. You Can Mediate With a Family Violence Order in Place

A family violence order is a legal instrument designed to protect individuals from harm or intimidation by restricting the actions and proximity of the perpetrator. While such orders indicate the presence of risk, **they do not automatically exclude the possibility of FDR mediation**. Australian family law, governed by the Family Law Act 1975 (Cth), prioritises the child's best interests, which includes the child's right to have a meaningful relationship with both parents as long as it is safe. FDR mediation is often required under section 60i of the Act before applying to the court for parenting orders, except in cases where there is a risk of harm. However, **FDR mediation may proceed even with an FVO in place** if safeguards are implemented to protect the vulnerable party. Each state has its own process and legislation. In Victoria and other states, the Family Violence Order will include a clause that states what the respondent can do. This clause often allows the respondent (the person who has committed the FV) to negotiate with the victim via mediation. It is important to understand that the FDR mediator cannot change the protection order. However, any agreement reached in FDR mediation relating to children's care arrangements and well-being can be followed by the parties without being in breach of the FVO and will be accepted by the court.

Safeguards in Place

When a family violence order exists, strict safeguards are implemented to ensure that mediation is safe and equitable:

1. **Pre-Mediation Screening:** FDR practitioners assess the suitability of mediation by screening for risks, including coercion, intimidation, or power imbalances.
2. **Informed Consent:** Both parties must voluntarily agree to participate, understanding their rights and options.
3. **Physical and Emotional Safety Measures:** Shuttle mediation, virtual sessions, and safety plans are used to protect participants from harm.
4. **Support Services:** Parties are encouraged to seek legal advice and access support services, such as counselling or advocacy, to navigate the process.
5. **Support People:** A support person may be present during the mediation to provide emotional support.
6. **Termination of Mediation:** If the mediator determines that the process is unsafe or unproductive, they can terminate the session and refer the parties to court.
7. **Empowering the Protected Party:** Mediation empowers the protected party to have a voice in the decision-making process. With the support of the FDR mediator, they can negotiate terms that prioritise their safety and the children's wellbeing. This contrasts with court proceedings, which may feel impersonal and disempowering.
8. **Encouraging Accountability:** Involving the restrained party in mediation can encourage accountability and compliance with parenting arrangements. The process often includes discussions about the impact of their behaviour on the children, which may promote reflection and positive change.

Challenges and Considerations

While FDR mediation with a family violence order in place can be effective, it is not without challenges. Power imbalances, re-traumatisation risk, and the complexity of enforcing agreements are valid concerns. These issues underscore the importance of choosing an FDR practitioner who has undertaken further training in dealing with difficult personality types and can offer comprehensive safeguards to protect vulnerable parties.

Conclusion

FDR mediation provides separated couples with a platform to negotiate child access even when a family violence order exists. By prioritising the best interests of the child and implementing robust safety measures, mediation can achieve outcomes that promote stability and well-being for the entire family. While it is not suitable in all cases, careful assessment and customised safeguards can make FDR mediation a viable and constructive alternative to litigation.



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