

As outlined in Chapter 1, a key aspect of the 2006 changes to the family law system was to require parties who could not otherwise agree on post-separation parenting arrangements to attend family dispute resolution (FDR) to attempt to resolve disagreements over parenting arrangements prior to lodging an application with a court. Chapter 4 provided an overview of pathways to FDR and other services. This chapter examines operational aspects of FDR and relates to policy objectives 2 and 3 of the 2007 Evaluation Framework (Appendix B) concerning encouraging greater involvement by both parents in children's lives after separation, and also protecting children from violence and abuse; and helping separated parents agree on what is best for their children.

After briefly summarising circumstances that prompt exceptions and the issue of certificates, and key factors that inform contemporary practice, this chapter documents agreement rates, the content of agreements, and rates of satisfaction with the FDR process. It was found that most respondents from a large representative survey of parents who had used FDR (the Longitudinal Study of Separated Families Wave 1 [LSSF W1] 2008) had sorted out disputes by the time of the survey—an average of one year after separation. The data also show how agreement rates, satisfaction with and the viability of FDR are strongly linked to how practitioners manage and are perceived to manage questions of violence and family dysfunction.

In addition, the chapter provides an evaluation of the appropriateness of referrals into FDR services and the ongoing judgments that must be made by FDR practitioners in balancing the safety of parents and children with effective child-focused processes. The circumstances in which certificates are issued are also examined.

Information on FDR was obtained from the following sources:

- Family Pathways: The Longitudinal Study of Separated Families Wave 1 2008 (LSSF W1 2008);
- Family Pathways: Looking Back Survey (LBS);
- Family Lawyers Survey (FLS) 2006 and 2008;
- Qualitative Study of Family Relationship Service Program (FRSP) Staff;
- Online Survey of FRSP Staff 2009;
- Survey of FRSP Clients 2009; and
- FRSP Online Database 2006–09.

5.1 A note on FDR with exceptions and certificates

For parents in dispute over their children following separation, exceptions to the requirement to participate in FDR include:

- applications for orders that are made with the consent of the parties (s60I(9)(a)(i));
- circumstances in which there are reasonable grounds to believe that:
 - there has been child abuse by one of the parties to the proceedings (s60I(9)(b)(i));
 - there would be a risk of abuse to the child if there was a delay in an application being made to court (s60I(9)(b)(ii));
 - there has been family violence by one of the parties to the proceedings (s60I(9)(b)(iii));
 - there is a risk of family violence by one of the parties to the proceedings (s60I(9)(b)(iv));
 - and
 - the application is made in circumstances of urgency (s60I(9)(d)); and

- applications for orders in proceedings in which a certificate issued by an FDR practitioner has already been filed (r.12CAB of the Family Law Regulations 1984).

In circumstances where these exceptions apply, the parties may lodge an application in court without attempting FDR, although judicial officers also retain the discretion to refer the parties back to FDR.

If attempts to reach an agreement in FDR are unsuccessful or a matter is judged at the outset not to be suitable for this form of intervention, then an accredited FDR practitioner may issue a certificate to their clients that will then enable them to access the court system.¹ There are five grounds for issuing such certificates:

- a party attended FDR but the other party refused or failed to attend;
- a matter was considered inappropriate for FDR by the practitioner;
- FDR was attended by both parties and a genuine effort was made to resolve the dispute;
- the parties attended FDR but a party or parties did not make a genuine effort to resolve the dispute; and
- the parties began FDR, but it was considered by the practitioner that it would not be appropriate to continue FDR.

5.2 A note on terminology and changing practice

Section 10F of the *SPR Act 2006* defines family dispute resolution as a “process (other than a judicial process) (a) in which a family dispute resolution practitioner helps people affected by separation and divorce to resolve some or all of their disputes with each other; and (b) in which the practitioner is independent of all the parties involved in the process.

In analysing the data that follow, it should be borne in mind that parents may not distinguish between FDR delivered by accredited FDR practitioners and a range of other “family mediation” services, or even between FDR and more directed negotiations between lawyers. Indeed, some parents are more likely to recall who provided the service and with what result than what the service was called or via which organisation or profession it was delivered. It is also important to note that although the principles and accreditation arrangements informing FDR have become increasingly standardised (see footnote 1), procedures continue to vary according to the nature of the dispute and the philosophy that guides the practitioner and their organisation.

Historically, “divorce mediation” began as a process predominantly facilitated by a mediator who implicitly or explicitly assumed from the outset that parents were capable of representing their children and capable of representing themselves (e.g., Haynes, 1981). But the data on levels of violence, safety concerns and other dysfunctional behaviours identified in this chapter and Chapter 10 strongly suggest that many parents currently participating in FDR would not have been suitable candidates for these earlier mediation models. Since the mid- to late 1990s therefore, mediators in family disputes over children (more recently called FDR practitioners) have continued to develop approaches and strategies aimed at safely widening the scope of the work and permitting a larger percentage of separating and separated families to make use of these processes. Increasingly sophisticated intake procedures have been developed that are aimed at determining readiness and capacity to mediate.² Methods of formally addressing

1 Since 1 July 2009, FDR practitioners who wish to issue certificates need to meet accreditation standards set out in the new Family Law (Family Dispute Resolution Practitioner) Regulations 2008. The new standards include competency-based qualifications developed for the family relationships sector. The three pathways to accreditation are: (a) completion of the full Vocational Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent); (b) an appropriate qualification or accreditation under the National Mediator Accreditation Scheme and competency in the six compulsory units from the Vocational Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent); or (c) to have been included in the Register before 1 July 2009 and to have gained competency in the three specified units (or the higher education provider equivalent). The three specified units that require competency are to: (a) respond to family and domestic violence in family work; (b) create a supportive environment for the safety of vulnerable parties in dispute resolution; and (c) operate in a family law environment.

2 More specifically, under regulation 25 of the Family Law (Family Dispute Resolution Practitioner) Regulations 2008, before providing FDR, practitioners must be satisfied that an assessment has been conducted of the parties to the dispute and FDR is appropriate. In determining whether FDR is appropriate, the FDR practitioner must be satisfied that consideration has been given as to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters: the history of family violence, if any, among the

power imbalances during the process itself have also been developed, including imbalances that arise out of certain categories of past or present violence (Cleake, Bickerdike & Moloney, 2006; Kelly, 2007).

Early forms of divorce mediation were also characterised by an emphasis on mediator control of the process and a corresponding “neutrality” or low level of investment in the specifics of the dispute.³ Mediator responsibility for the process remains a characteristic of most mediation models. But under the family law reforms, FDR practitioners are not neutral with regard to outcomes for children. Rather, they are required to actively support the best interests of the child. They typically do this by providing information before and during the process about the intentions of the legislation, about the disadvantages (in most cases) of litigation, and especially about the seriously negative consequences for children of entrenched and high parental conflict, violence or other seriously dysfunctional behaviours.

In addition, while attempting to maximise the autonomy of parents—arguably a key aim of all mediation models—contemporary FDR practitioners also attempt to actively represent children, either directly by working with child consultants (child-inclusive practice) or indirectly through child-focused practice.⁴ At the same time, it is suggested by a number of researchers (e.g., McIntosh & Moloney, 2006; Parkinson & Cashmore, 2008) that in high-conflict disputes, the successful representation of children’s needs also requires an appreciation of and willingness to engage with the less functional aspects of the parental relationship. This is because the generally emotionally laden narratives by which former couples justify or oppose the separation or the consequences of the separation, often distract them from focusing on their children’s needs.

FDR practitioners position themselves somewhat differently regarding the emphasis they place on acknowledging these narratives and acknowledging the accompanying emotions. Some practitioners believe that when these things are present, they must at least be acknowledged before progress can be made with respect to the parenting dispute. Some practitioners go further and may offer a form of “therapeutic mediation”.⁵ Others see themselves as being more “practically” focused, believing that working with such “underlying” issues is not part of their brief and that if such interventions are required, the work lies in the domain of professionals other than FDR practitioners.⁶

Finally, it is also important to appreciate that for some separating or separated families, dispute resolution can be the by-product rather than the primary purpose of the help that was originally sought (Lidchi, 2003). Thus, while parents may have originally sought services such as relationship counselling or family therapy, these interventions may nonetheless result in the setting up of formal or informal agreements about future parenting.

It should be kept in mind therefore, that although the focus of the evaluation is on services supported by the Family Relationship Services Programs, parents’ responses are likely to reflect a variety of dispute resolution experiences. In addition, while many of the LSSF W1 2008 respondents were likely to have experienced FDR within FRSPs, for some, FDR (or what they deem as FDR) will have occurred elsewhere.

5.3 Operation and outcomes of FDR

5.3.1 Agreement rates, nature of agreements and satisfaction

According to data from the LSSF W1 2008, among parents who separated post-1 July 2006, 31% of fathers and 26% of mothers reported that they and the other parent had “attempted family dispute resolution or mediation”. The actual question was: “Can I just check, have you and [focus parent] attempted family dispute resolution or mediation?” We refer to this as the “narrow” definition of FDR. By this we mean that these parents reported that they “attempted” FDR or mediation. Those who answered “yes” to the question of whether at any time they had

parties; the likely safety of the parties; the equality of bargaining power among the parties; the risk that a child may suffer abuse; the emotional, psychological and physical health of the parties; and any other matter that the FDR practitioner considers to be relevant to the proposed FDR.

3 Some contemporary models, such as “transformative mediation” (Bush & Folger, 2005), would still favour such an approach.

4 For a more in-depth explanation of these terms and their application, see Moloney and McIntosh (2004).

5 See Smyth and Moloney (2003) for a review of these forms of intervention.

6 This has also led to hybrid models of FDR and counselling, such as that evaluated by Jaffe & Jacobs (2008).

contacted or used a counselling, mediation or dispute resolutions service were deemed to have engaged in dispute resolution in its more broadly defined sense. When respondents were asked this broader question, 50% answered in the affirmative.

According to data from the LBS, among parents who separated prior to July 2006, 28% of fathers and 24% of mothers reported that they and the other parent attempted “some form of mediation or dispute resolution” when they “were deciding the parenting arrangements for [focus child]”. The actual question was: “Just to check, when you were deciding the parenting arrangements for [focus child], did you and [focus parent] attempt some form of mediation or dispute resolution?”

The LSSF W1 2008 provides information on the extent to which agreement was reached when FDR was attempted and, if no agreement was reached, whether a certificate was issued that allowed the parties to proceed to a relevant court should they have wished to do so.

Table 5.1 shows that, among parents from the LSSF W1 2008 study who reported that they had completed FDR, just under two-fifths reported reaching an agreement. The actual question to those who “had attempted family dispute resolution or mediation” and for whom FDR or mediation was not ongoing was: “What was the outcome?” The core options were “an agreement was reached” or “no agreement”.

Just over a fifth did not reach agreement but were issued with a certificate that would have enabled them to proceed to court had they wished to do so. Almost one-third reported not reaching agreement and not being issued with a certificate. These are the first estimates on this issue gathered from a large representative survey.

Table 5.2 uses data from the Survey of FRSP Clients, which was conducted in 2009 to analyse the outcomes from FDR for clients who tried to develop parenting arrangements. The information is presented for mothers and fathers separately and for mother and fathers combined, and according to whether the FDR took place in an FRC or FDR service. Over half the clients (57%) reported that they reached full or partial agreement about their focus child as a result of FDR that took place in either FRCs or FDR services during 2008 or 2009. Certificates were issued in 19% of these cases. A total of 35% of the parents⁷ in the survey who made use of FDR reported that no agreement had been reached. Overall, agreement and non-agreement rates did not vary appreciably by type of service (FRCs or FDR services).

The estimates of the rates of agreement resulting from FDR are lower in the LSSF W1 2008 than in the Survey of FRSP Clients 2009. However, differences in data collection methodologies and questions between the surveys mean that the results of the two surveys are not directly comparable.⁸

Whether or not FDR results in “agreement” is an important outcome of FDR, but it is also important to examine the longer term “dispute management trajectory”. The LSSF W1 2008 provides data on whether, at the time of the survey, the dispute had been sorted out, was in the process of being sorted out, or was not sorted out. The durability of agreements and the extent to which the dispute management trajectories differ between those who receive and do not receive certificates is examined in Section 5.3.3

The Survey of FRSP Clients provides information on the living arrangements agreed to, the extent to which these arrangements represented a change from the pre-FDR situation, and

⁷ This consists of 21.1% who reached no agreement but for whom a certificate was not issued, and 22% who reached no agreement and for whom a certificate was issued.

⁸ There are significant caveats attached to comparing the LSSF W1 2008 and the Survey of FRSP Clients data. Data from LSSF W1 2008 are drawn from a random sample of parents who separated between 2006 and 2008. Data from the Survey of FRSP Clients came from users of services during 2008 and 2009 who volunteered to provide feedback on their experiences. In the client survey sample of parents who used FDR, fathers with one or more children mainly in their care appear to be over-represented. They comprise 26% of the parents with at least one child mainly in their care compared to only 8% of such parents in the LSSF W1 2008. In addition, many of the key questions used in the two studies are not formally comparable. For example, the Survey of FRSP Clients distinguished between full and partial agreements at FDR, while the LSSF W1 2008 did not. With regard to parenting arrangements, the LSSF W1 2008 asked quantifiable questions about the focus child, while the client survey first asked a more general question regarding how many children under 18 the parent had when s/he first used the service and how many of these children at the time were living mainly with that parent, and then asked questions about the focus child. Finally, the LSSF W1 2008 is based upon reports of whether FDR was attempted, whereas, as the name implies, the data from the survey of FRSP clients is restricted to those who experienced FDR in an FRSP service.

Table 5.1 Outcomes of FDR, 2008

	Outcome
	%
An agreement reached	39.4
No agreement and a certificate issued	21.0
No agreement and no certificate	30.6
No agreement and not sure if certificate issued	2.6
Other	6.4
Total	100.0
Number of respondents	2,618

Note: Excludes those who reported "Don't know" or did not answer the question (less than 2%), and those who were still in the process of coming to an agreement (10%).

Source: LSSF W1 2008

Table 5.2 FDR outcomes for clients who tried to sort out parenting arrangements, mothers and fathers, by where FDR took place, 2009

	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%			%			%		
Certificate not issued									
No agreement	11.2	10.4	10.9	12.6	13.4	13.0	12.1	12.1	12.1
Partial agreement	26.0	20.4	23.6	27.0	16.5	22.6	26.4	20.1	23.7
Full agreement	15.8	15.4	15.6	9.8	17.3	13.0	13.7	15.4	14.4
Certificate issued									
No agreement	22.7	22.6	22.7	22.4	22.8	22.6	22.6	22.3	22.4
Partial agreement	11.5	14.0	12.6	16.1	11.8	14.3	12.7	12.9	12.8
Full agreement	3.6	6.3	4.8	8.1	8.7	8.3	5.0	6.9	5.8
Not sure if certificate issued	9.2	10.9	9.9	4.0	9.5	6.3	7.5	10.4	8.7
Total	100.0	100.0	100.1	100.0	100.0	100.1	100.0	100.1	99.9
Number of respondents	304	221	525	174	127	301	496	364	860

Notes: Excludes grandparents. Parenting Orders Program (POP) clients included in the total but not presented separately as the number of respondents in this category was too small to allow statistically reliable estimates to be presented ($N = 34$). The measure of parenthood is based on reported number of children, and on reported number of resident children at the time of first attending the service. Those who have one child or more, but none living with them, are defined as non-resident mothers or fathers. Children includes step- or other children. Responses of non-resident mothers ($N = 14$) are not reported because the sample was too small to allow statistically reliable estimates to be presented. Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

satisfaction rates with respect to the agreements made. Table 5.3 examines the living arrangements that were agreed to during FDR, how this varied between mothers' and fathers' reports, and whether FDR took place in an FDR service or FRC. Fathers were considerably more likely than mothers to report that the agreement specified that the focus child was living about the same time with each parent (33% compared to 18% respectively). Both fathers and mothers who went to FDR services were more likely to report this arrangement (39% and 25% respectively) compared to those who went to FRCs (32% and 14% respectively). However, these differences were minimal for fathers.

Only 8% of fathers compared to 73% of mothers reported that the agreement was for the focus child to live mostly with them. In this case, the gender pattern was similar for FRCs and FDR services. The lower percentages reported by both mothers and fathers who attended FDR services can be accounted for by the higher rates of reported sharing of the parenting.

An important question with respect to a key aim of the reforms is the extent to which these reported arrangements represented a change in the arrangements that existed before FDR took

place. Table 5.4 reveals that for mothers who reached an arrangement at FDR, 11% reported that the focus child spent increased time with them, 43% reported the child spent increased time with the child's father, and 47% reported that the outcome was the same as before FDR commenced. Fathers' reports were fairly consistent with this, with 44% reporting the child spent more time with them, 16% reporting the child spent more time with the mother, and 41% reporting no change. Compared with FRC fathers, FDR fathers were somewhat more likely to report no change and/or the child spending more time with the mother, and less likely to report the child having increased time with the father.

Table 5.5 summarises data on three key aspects of the FDR process experienced by FRSP clients: (a) whether the arrangement worked for the parent; (b) whether each parent thought it worked for the child; and (c) whether the FDR process was likely to help in making future decisions about the children. Over half (57%) of parents thought the agreement worked for them. Fathers were a little more positive than mothers (61% compared to 54%), although this was entirely accounted for by differential reports in the FRC sample.

Interestingly, compared with the question of whether or not it worked for them, more parents (61%) thought that the parenting agreement worked for their child, with the increase in endorsement coming largely from mothers (58–63%), while fathers' support stayed about the same (around 62%). There was no significant difference between FRCs and FDR services on this dimension.

Parents were most likely to agree (strongly or otherwise) with the statement that the children's needs were taken into account. Fathers who attended FRCs or FDR services and mothers who attended FDR services were slightly more likely than mothers who attended FRCs to agree or strongly agree with this statement (73% and 73% compared to 68%). The proposition that the agreement would help in future negotiations over the child was endorsed by 44% of parents, with fathers being somewhat more positive in this regard than mothers.

Table 5.3 Living arrangements specified by FDR agreement, mothers and fathers, by where FDR took place, 2009

	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%			%			%		
Child lives mostly or entirely with respondent	79.1	8.3	48.7	63.3	6.3	39.4	73.1	8.2	45.2
Child lives mostly or entirely with the other parent	2.1	47.2	21.5	0.9	41.8	18.1	2.0	44.8	20.4
Child lives about the same with each parent	13.6	31.9	21.5	24.8	39.2	30.9	17.5	33.2	24.3
Child lives mostly or entirely elsewhere (i.e., with neither parent)	0.0	0.7	0.3	0.0	0.0	0.0	0.0	0.9	0.4
Agreement or plan did not specify arrangement	5.2	11.8	8.1	11.0	12.7	11.7	7.5	12.9	9.8
Total	100.0	99.9	100.1	100.0	100.0	100.1	100.1	100.0	100.1
Number of respondents	191	144	335	109	79	188	308	232	540

Notes: Only includes respondents who specified that they had reached agreement on either "all" or "some aspects" of a parenting plan. POP clients are included in the combined service calculations, but are not presented separately as the number of cases where agreements were made was too small ($N = 17$). Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

Table 5.4 Impact of FDR parenting agreement on time the focus child spent with the client, mothers and fathers, by where FDR took place, 2009

Agreement resulted in:	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%			%			%		
Increased time with the respondent	11.0	48.6	27.2	11.0	34.2	20.7	10.7	43.5	24.8
Increased time with other parent	43.5	14.6	31.0	41.3	20.3	32.5	42.5	16.0	31.1
No change in time spent with either parent	45.6	36.8	41.8	47.7	45.6	46.8	46.8	40.5	44.1
Total	100.1	100.0	100.0	100.0	100.1	100.0	100.0	100.0	100.0
Number of respondents	191	144	335	109	79	188	308	232	540

Notes: Includes only respondents who specified that they had reached agreement on either "all" or "some aspects" of a parenting plan. POP clients are included in the combined service calculations, but are not presented separately as the number of cases was too small ($N = 17$). Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

Table 5.5 Parents' agreement (agree or strongly agree) about aspects of parenting agreement/processes, mothers and fathers, by where FDR took place, 2009

	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%			%			%		
The parenting agreement at the service worked for you.	51.6	62.2	56.2	57.1	57.1	57.1	53.8	60.7	56.8
The parenting agreement at the service worked for the child(ren).	58.0	62.2	59.8	62.6	61.8	62.3	59.7	61.7	60.6
The child(ren)'s needs were taken into account.	68.3	73.2	70.4	73.1	73.4	73.3	70.2	72.5	71.2
The parenting agreement will help me (and my ex-partner) to make decisions together about our children into the future.	40.3	47.2	43.3	44.4	48.0	45.9	41.7	46.7	43.8
Number of respondents^a	186	142	328	108	75	183	302	225	527

Notes: Includes only respondents who specified that they had reached agreement on either "all" or "some aspects" of a parenting plan. "Not applicable" responses are excluded from calculations (less than 3% of respondents). POP clients are included in the combined service calculations, but are not presented separately as the number of cases was too small ($N = 17$). Number of respondents differ slightly between the items as a result of "Not applicable" responses. Percentages may not total exactly 100.0% due to rounding. ^a Refers to the final aspect of the parenting agreement/process shown in the table.

Source: Survey of FRSP Clients 2009

5.3.2 Family dysfunction, dispute resolution and certificates

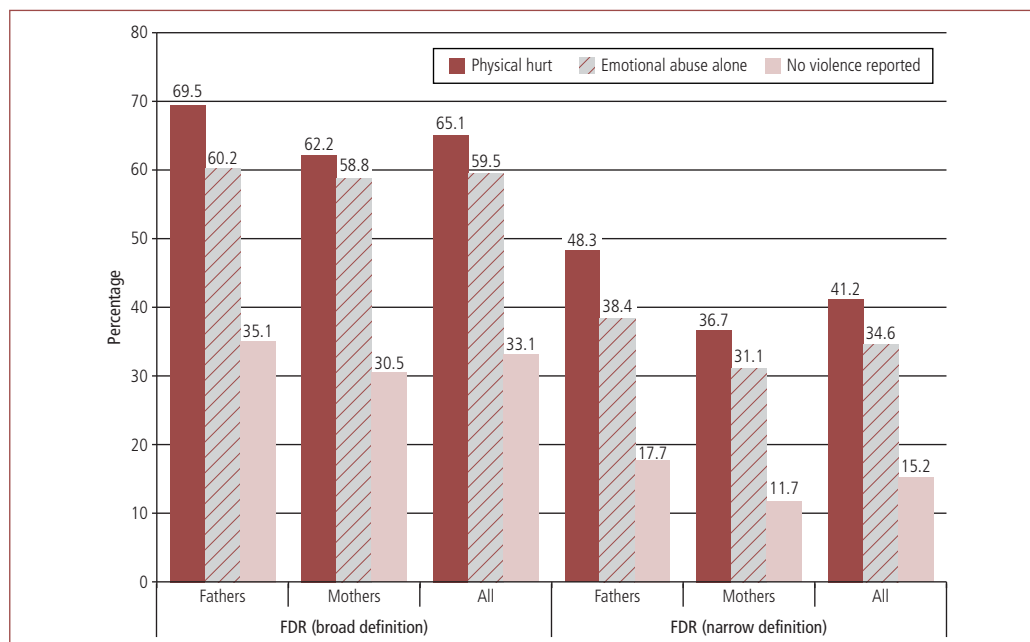
Figure 5.1 shows how the level of use of counselling, FDR or mediation during or after separation varied according to whether the parent said that they: experienced physical violence pre-separation, experienced emotional abuse but not physical violence pre-separation, or reported no violence.

Parents who reported that they had experienced physical violence from their partner were a little more likely (65%) to have either “contacted or used counselling, mediation or FDR” (the broader definition of FDR referred to in Section 5.3.1) than those who reported having experienced emotional abuse alone (60%) and those who did not report experiencing violence (33%). While, as discussed in Chapter 2, fathers were less likely than mothers to report experiences of family violence, those fathers who said they had experienced family violence were as likely if not more likely than mothers who had experienced violence to have contacted or used counselling, FDR or mediation.

Focusing on the narrow definition of FDR (i.e., FDR or mediation was clearly reported as having been attempted), the overall pattern is similar. Parents who reported experiencing violence (physical or emotional) were much more likely to have attempted FDR (41% of those who experienced physical violence and 35% of those who had experienced emotional abuse only) than those who did not report experiencing violence (15%).

Table 5.6 provides information on the outcomes of FDR according to whether family violence had been experienced. The highest rate of agreement was reached in cases in which there had been no reports of violence (48%), and the lowest rate of agreement was reached in cases in which there had been physical abuse (36%). Similarly, the highest proportion of certificates issued with no agreement were in cases in which physical abuse had been reported (26%), and the lowest proportion was when there were no reports of physical violence or emotional abuse (10%).

Table 5.7, derived from Survey of FRSP Clients data, explores selected dysfunctional dynamics in FDR—the impact of reported fear and threats and the capacity to negotiate—and the extent to which they inhibit the process of reaching agreement. The table suggests that behaviours of a former partner that generated fear had a significant negative impact on agreement rates for both women and men. On the other hand, client assessments of whether or not these issues



Notes: “Broad definition” includes those who went to a counsellor, psychologists or mental health professional. “Narrow definition” refers to parents who attempted FDR.

Source: LSSF W1 2008

Figure 5.1 Fathers and mothers who contacted or used counselling, FDR or mediation, by experience of family violence, 2008

were addressed at FDR appear to have had little effect on agreement rates. Feeling afraid of the other partner in the session negatively affects the mothers' capacity to reach agreement (the data for fathers on this variable were too small to allow for a test of significance), while abuse or threats outside the session were closely linked with the fathers' capacity to reach agreement.⁹

Table 5.6 Agreement rates and issue of certificates, by experience of family violence inflicted by other parent, 2008

	Violence reported		No violence reported
	Physical hurt	Emotional abuse alone	
	%	%	%
An agreement reached	35.5	38.2	47.9
No agreement and a certificate issued	26.3	22.3	10.1
No agreement and no certificate	28.6	30.8	34.1
No agreement and not sure if certificate issued	3.0	2.5	2.2
Other	6.7	6.3	5.7
Total	100.1	100.1	100.0
Number of respondents^a	817	1,215	561

Notes: Excludes parents who responded "don't know" or didn't answer the question (less than 2%) and those who had not completed FDR (10%). Percentages may not total exactly 100.0% due to rounding. ^a Total includes a small number of parents who did not respond to the questions on family violence.

Source: LSSF W1 2008

Table 5.7 Agreement rates, mothers and fathers, by fear, abuse or threats and ability to negotiate, 2009

	Behaviour of (other) is cause of fear		Issues addressed		Feel afraid of (other) while in sessions		Abuse or threats outside sessions		Ability to negotiate parenting arrangement affected	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
	%		%		%		%		%	
Mothers										
Full or partial agreement	49.5	72.4	45.9	54.3	56.8	67.9	56.9	65.4	58.2	55.8
No agreement	50.5	27.6	54.1	45.7	43.2	32.1	43.1	34.6	41.8	44.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Number of respondents	212	254	135	70	185	280	144	321	153	129
Fathers										
Full or partial agreement	42.9	67.4	45.0	40.7	54.8	65.6	49.4	69.6	51.9	48.3
No agreement	57.1	32.6	55.0	59.3	45.2	34.4	50.6	30.4	48.2	51.7
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.1	100.0
Number of respondents	49	304	20	27	42	311	81	270	54	58

Note: Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

⁹ Chi-square tests of statistical significance show that for mothers there are statistically significant agreement rates at the 5% level for "Behaviour of (other) is cause of fear" and "Feel afraid of (other) while in sessions" and at the 10% level for "Abuse or threats outside sessions". For fathers, there are statistically significant outcomes at the 5% level for "Behaviour of (other) is cause of fear" and "Abuse or threats outside sessions".

Table 5.8 examines the same dimensions as above with respect to their association with the issuing of certificates. This table suggests a strong correlation between mothers' reporting of fear, both generally and inside the sessions, and the issuing of a certificate. There is a weaker though still statistically significant correlation between fathers' reporting of abuse or threats outside the sessions and the issuing of a certificate¹⁰.

While the data above suggest that FDR practitioners are responsive to such dysfunctional behaviours (in the sense that they issue relatively more certificates and oversee relatively fewer agreements), they raise a number of questions about the numbers of parents who "attempt FDR" rather than taking a litigation or legally negotiated pathway despite being in circumstances of threats, fear or abuse. Clearly there are cases in which no certificates are issued or in which agreements are made despite the reporting of fear, abuse and threats. Some of these may represent the "least worst" alternative for those mothers or fathers and their children. However, qualitative feedback from the Survey of FRSP Clients suggests that this is not always the case:

Although we worked out a parenting plan, I felt pushed into decisions I was uncomfortable with due to time and the mediators just wanting a quick result. I also had issues regarding violence to me by my ex-partner while we were still together, but they were disregarded because they were in "the past" and they said they didn't want to take sides, even though it happened in front of our children and we were in mediation about the children. This was distressing for me, but I felt like it didn't matter to anyone else. (FRC client survey respondent, female)

For me, there were not enough sessions in the process. I was so scared and intimidated by my ex-husband that I had trouble thinking clearly. As a consequence of this, I felt bulldozed into making an agreement. I needed to be able to go away again and have some time to think each step over clearly; this was not allowed. I also had to sit through a face-to-face session with my ex-husband before they'd believe that I was worried about him and then allow us to be separated on the second session. I felt that my concerns were swept aside and the focus was on my ex-husband's needs/wants. This may have been due to time constraints, but my concerns were not followed through on. (FRC client survey respondent, female)

I found the counsellor very biased towards the female ex-partner. After attending several sessions, I was made to feel as though I was the problem and I left feeling disheartened and disappointed at being let down by the system. With my self-esteem battered, I felt unable to pursue the matter through the courts as I now believe that the system is biased towards the female, so it would not be worth the expense of fighting a court battle (that I cannot afford as I am paying child support because she won't allow my child to stay overnight for more than once per week!) I want shared care; she doesn't; and I get no say in it. (FDR client survey respondent, male)

5.3.3 Post-FDR trajectories

In assessing outcomes, there is a temptation to focus somewhat simplistically on binary variables such as: Is this case appropriate for FDR or not? or Was agreement reached or not? From the perspective of the practitioner, however, successful FDR involves positive responses to a sometimes complex range of questions. For example, at the level of inward referral, there is the question of whether FDR is the best pathway for this situation at this time. Other triage questions revolve around the best sequencing of FDR; for example, how much time should be devoted to the assessment phase, to an educational component, to single vs joint sessions, to the amount of time between sessions, to whether or not a child consultant should be involved, and so on.

Returning to the LSSF W1 2008 outcome data presented in Table 5.1, the complexity of the process becomes clearer when we examine further the three categories of agreement, non-agreement with a certificate, and non-agreement without a certificate, against the parents' reports

¹⁰ Chi-square tests of statistical significance show that for mothers there are statistically significant in the proportion of cases with a certificate issued at the 5% level in agreement rates for "Behaviour of (other) is cause of fear" and "feel afraid of (other) while in sessions" and at the 10% level for "abuse or threats outside sessions". For fathers, there are statistically significant outcomes at the 5% level for "behaviour of (other) is cause of fear" and "abuse or threats outside sessions".

Table 5.8 Issue of certificates, mothers and fathers, by fear, abuse or threats and ability to negotiate, 2009

	Behaviour of (other) is cause of fear		Issues addressed		Feel afraid of (other) while in sessions		Abuse or threats outside sessions		Ability to negotiate parenting arrangement affected	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
	%		%		%		%		%	
Mothers										
Certificate issued	54.3	34.0	55.7	54.4	55.6	35.7	50.4	41.1	51.1	48.4
No certificate issued	45.7	66.0	44.4	45.6	44.4	64.3	49.6	58.9	48.9	51.6
Total	100.0	100.0	100.1	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Number of respondents	212	254	135	70	185	280	144	321	153	129
Chi-square significance (p-value)	0.000		0.869		0.000		0.074		0.662	
Fathers										
Certificate issued	57.1	46.0	57.1	61.5	52.6	45.9	57.5	43.6	61.2	48.1
No certificate issued	42.9	54.0	42.9	38.5	47.4	54.2	42.5	56.4	38.8	51.9
Total	100.0	100.0	100.0	100.0	100.0	100.1	100.0	100.0	100.0	100.0
Number of respondents	49	304	20	27	42	311	81	270	54	58
Chi-square significance (p-value)	0.178		0.787		0.432		0.036		0.185	

Note: Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

of whether or not parenting arrangements had been sorted out at the time the survey was conducted, and what pathways were mainly relied upon.

Table 5.9 shows that of those who reported reaching agreement in FDR, almost three-quarters reported that parenting arrangements had been sorted out by the time of the survey. Only 6% reported that nothing had been sorted out yet, while 19% reported that they were “in the process” of sorting things out. In other words, for 6% of those who reached agreement in FDR, none of the matters agreed to appear to have “stuck”, while for 19%, it appears that FDR did not cover all of the issues at the time, or some issues were being re-negotiated, or new issues had emerged.

Table 5.9 State of parenting arrangements, by outcome from FDR, 2008

	Agreement reached	No agreement and certificate issued	No agreement and no certificate issued
	%		
Arrangement sorted out	74.4	36.3	65.2
Arrangement in process of sorting out	19.3	46.9	23.0
Nothing sorted out	6.3	16.8	11.9
Total	100.0	100.0	100.1
Number of respondents	1,013	554	880

Note: Percentages may not total exactly 100.0% due to rounding.

Source: LSSFW1 2008

Of the group who reported not reaching agreement at FDR but who did not receive a certificate, a considerable majority (65%) had nonetheless sorted things out at the time of the survey, while 23% were still sorting things out. For 12% nothing had been sorted out. The “sorted out” profile of this group with no agreement and no certificate is considerably closer to that of the “agreement” group than to that of the group with no agreement but with a certificate.

Finally, although 36% of the parents in the “certificate” group went on to report that things had been sorted out at the time the survey was conducted, 47% reported that things were still being sorted out and 17% that nothing had been sorted out.

The next two tables shed further light on these parents’ post-FDR trajectory by examining the main reported pathways for sorting things out among the three agreement groups.

Table 5.10 shows that, of the 74% of parents who had reported reaching agreement at FDR and said at the time of the survey that the parenting arrangements had been sorted out, only 7% used lawyers and only 3% used the courts as their main pathway towards resolution. Most of the remainder attributed the sorting out mainly to what might generically be called facilitative practices, that is, counselling/mediation/FDR or discussions between themselves.

Table 5.10 Main pathway used to sort out parenting arrangements, parents who have sorted out parenting arrangements, by outcome from FDR, 2008

	Agreement reached	No agreement and certificate issued	No agreement and no certificate issued
	%		
Counselling, mediation, FDR	48.3	8.9	5.7
Lawyer	7.3	25.6	13.3
The courts	2.6	29.6	7.3
Discussion	35.4	22.8	60.5
Nothing specific, just happened	4.8	7.6	9.2
Other	1.7	5.4	4.0
Total	100.1	99.9	100.0
Number of respondents	760	207	525

Note: Percentages may not total exactly 100.0% due to rounding.

Source: LSSF W1 2008

Of the 65% who did not reach agreement and did not receive a certificate, the majority (61%) attributed the sorting out of matters to discussions between themselves. Lawyers were seen as the main pathway for only 13% and courts for 7% of this group.

These reports again contrast strongly with responses from those reached no agreement and who received a certificate. Of the 36% of this group who had sorted things out, a majority (55%) did so via courts or lawyers as their main pathway. They were far less likely than the other groups to have sorted things out mainly via discussions or via some form of facilitated process.

Table 5.11 suggests that a similar pattern emerges for those parents who were still in the process of sorting things out, with courts and lawyers again being nominated most frequently as their main resolution pathway by the no agreement/certificate group (67%), while the equivalent responses for the agreement and the no agreement/no certificate groups were 30% and 33% respectively.

In summary, most parents who reach agreement at FDR/mediation report that lawyers or courts do not play a key role after the agreement had been reached. The data also suggest that although a little over half the separated parents who report that they “attempted FDR or mediation” did not develop a formal agreement as a direct result of this process, most nonetheless went on to reach agreement and most did so via discussions between themselves as the main pathway. This lends support to the idea that FDR processes can be an important step in a complex set of other formally facilitated as well as non-facilitated negotiations and can help to sow the seeds for future reconciliation of differences. Examples of this from the client feedback part of the Survey of FRSP Clients include the following:

Table 5.11 Main pathway being used to sort out parenting arrangements, parents in process of sorting parenting arrangements, by outcome from FDR, 2008

	Agreement reached	No agreement and certificate issued	No agreement and no certificate issued
	%		
Counselling, mediation, FDR	26.8	4.0	7.5
Lawyer	15.2	30.0	15.8
The courts	14.9	37.2	17.1
Discussion	34.4	19.5	42.5
Nothing specific, just happened	6.1	5.8	13.8
Other	2.6	3.5	3.4
Total	100.0	100.0	100.1
Number of respondents	189	252	178

Note: Percentages may not total exactly 100.0% due to rounding.

Source: LSSFW1 2008

A great deal of our success was the flexibility of the FRC to accommodate our situation. We did not neatly fit the criteria or processes normally adopted and the workers were great at meeting our needs, which in the end resulted in a positive and sustainable agreement regarding our child. (FRC client survey respondent, female)

All I can say is the services the FRC offers is very good and I feel like the experience with attending the FRC has made a huge difference in my life and my child's life. It has made me aware of the things that I didn't know before. (FRC client survey respondent, male)

After the initial contact at the centre, most of our mediation was done via phone hook-up. This worked well for me with young children at home. Although my ex-husband didn't take any part after the first contact, I continued for a few more sessions and found the advice very helpful. Thank you. (FRC client survey respondent, female)

Both the mediators who were present at every session had a very mature, professional and succinct understanding of what each of our individual issues were. Having a male and female mediator gave us a chance to see things from both perspectives (husband and wife). I am glad I went to mediation, and even though we decided to separate under the same roof, our children are happy and we now have a clear perspective of what each of our expectations are in the relationship. (FDR client survey respondent, female)

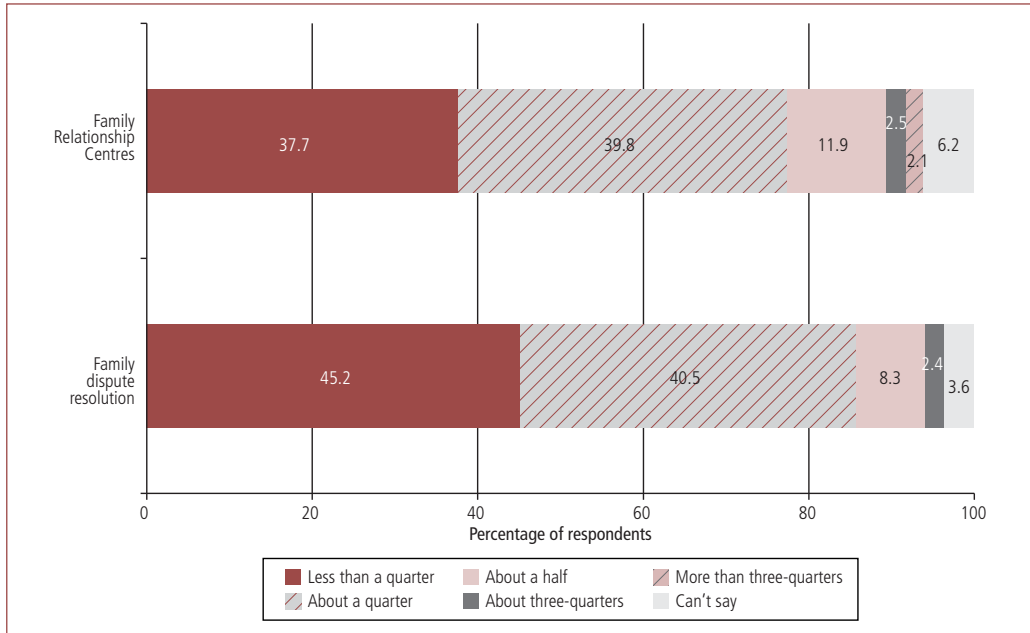
It would appear that the key predictor with respect to whether things were likely to be sorted out at the time the LSSFW1 2008 parents were surveyed was not agreement or non-agreement at FDR, but whether or not a certificate had been issued. Before further considering the role that certificates may be playing in the FDR process, we turn to the analysis of outcomes reported by parents in the Survey of FRSP Clients who attempted to develop parenting arrangements using FDR.

The above data suggest that FDR is capable of directly or indirectly assisting a majority of separating parents who use the service to reach agreements. A majority of those who reach agreements believe that the agreements "work for them" and somewhat higher proportion report that the agreement works for their children. At the same time, although the majority report favourably on the experience, a good deal of FDR takes place in conditions in which there is fear and abuse both inside and outside the sessions; and significant minorities of clients express concerns about the process. The issuing of certificates is also not infrequently associated with such behaviours.

The following figures summarise the views of FRC staff and FDR practitioners regarding the appropriateness of referrals into the FDR process. Figure 5.2 shows that 78% of FRC staff surveyed thought that FDR was inappropriate because of family violence for up to a quarter of parents who came to their services in relation to children's matters. In the case of FDR services, the equivalent figure rose to 86%. This issue is examined in more detail in Chapter 10, which focuses more fully on family violence.

Figure 5.3 shows that a considerable majority of FRC and FDR staff (64% and 73%) thought that FDR was inappropriate for less than a quarter of separated families with whom they engaged because of child abuse or neglect issues. A further fifth (23% and 20%) thought this figure was about a quarter, although very few thought it was higher.

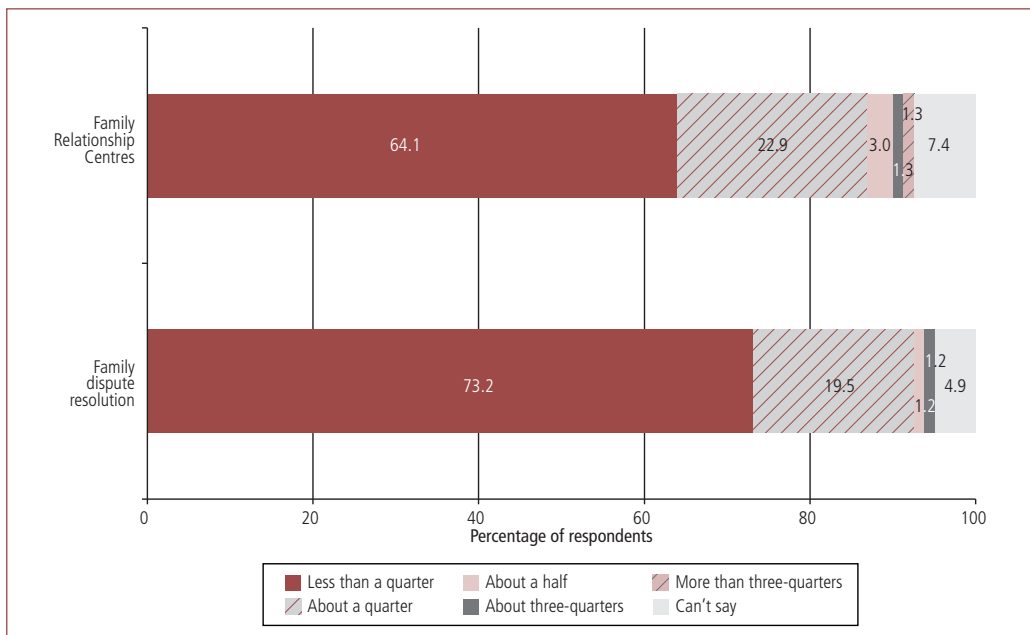
In the view of these service providers, FDR was not appropriate for a significant proportion of families coming to their service in relation to children’s matters, because of family violence or issues of child abuse and neglect. At the same time, this proportion was substantially lower than the proportion of parents using FDR who reported violence as an issue. Practitioners appear



Note: Percentages may not total exactly 100% due to rounding.

Source: Survey of FRSP Staff 2009

Figure 5.2 Service providers’ views about the proportion of clients for whom FDR was inappropriate due to family violence, 2009



Source: Survey of FRSP Staff 2009

Figure 5.3 Service providers’ views about the proportion of clients for whom FDR was inappropriate due to child abuse or neglect, 2009

to be discriminating here between a history of violence or child abuse that, while never acceptable, does not preclude the possibility of FDR, and forms of violence and child abuse that should not, at least at that point in time, proceed to FDR.

It is important to recognise that the data presented earlier, which link certificates to the trajectory of a case, do not, of course, suggest a causal connection between the issue of a certificate and the final outcome. Indeed, the data demonstrate that a considerable number of certificates are issued precisely because one or more family members present with highly dysfunctional behaviours.

Thus, a key issue that arises in separation-related disputes over children is at what point and by whom should seriously dysfunctional behaviours and dysfunctional dynamics be assessed and acted upon? The intention of the legislation is that they should be subjected to speedy assessment and speedy decisions within the court system. This pathway is constrained by the issue of the availability of resources—especially independent assessment resources—within the courts themselves, and by the (probably related) decision-making difficulties within the courts, previously discussed by Moloney et al. (2007).

The question of how and when appropriate triage should take place received considerable attention from professionals in FRCs and FDR services during interviews conducted in 2009. On numerous occasions, FDR practitioners spoke on the one hand of the advantages of FDR as broadly conceived (such as helping to change attitudes and connecting family members with other appropriate services), and on the other hand of the amount of time involved in the consideration of certificates in cases in which FDR would be inappropriate, if not dangerous, or in which clients presented with an agenda that clearly precluded constructive engagement around their parenting responsibilities.

Their observations could be summarised as follows:

- FRCs do not provide certificates “as a matter of course”:

We make it quite plain to clients and we make it quite plain to lawyers that our role is not to write out certificates. (FRC manager, 2009)

- Some clients and/or their legal advisors nonetheless see the primary function of FRCs and/or FDR practitioners to be that of issuing certificates. Among other things, this attitude predisposes clients who present with this attitude towards not engaging in the range of services and referral options that an FRC can provide:

Some clients are told by their lawyers to “go down to the FRC and get your bus pass stamped” (FDR practitioner, 2009)

- Some clients and/or their legal advisors also believe a certificate should be issued as a default option, even if FDR has been engaged in and agreement has been reached:

There are still clients who will insist on receiving a genuine effort certificate, for example. [Interviewer: Even if they’ve actually got an agreement?] Yes, indeed. In fact, we’d love to produce another certificate. Certificate G is our proposal—“G for good”—so that for people who really want a certificate and we give them a good certificate for having attempted mediation and having focused in on their children’s needs, etc. We’ve actually drafted one, but half in jest, which we’d love to be able to send out to our clients who really want a certificate but have actually reached agreement, but for some reason they feel that the need is to have that certificate. We coach them away from it, of course. (FDR practitioner, 2009)

- Clients who are clearly in the “exceptions to FDR” category are not infrequently referred to the FRCs by lawyers (and to a lesser extent by courts):

The difficulty with exemption is that solicitors will send them to us because it’s easier for them to get a not-appropriate certificate from us than it is for a solicitor to go and do a whole lot of paperwork to put that to the court. (FRC manager, 2009)

Look, it depends on the legal practitioner, but the majority of practitioners would say, “Go and get a certificate”, because from their perspective it’s more proof. Even though the client is then having to retell their story. I get the feeling—this is what I hear anecdotally—that solicitors were looking at the exemptions ... they are putting stuff through. But I hear anecdotally things are actually getting ... the magistrate was saying, “Well why

wasn't there mediation? Why didn't you go to Family Relationship Centre?" So there are mixed messages there for solicitors. (FDR practitioner, 2009)

It's about solicitors, like that's [assessing family violence] not their realm of expertise. I think that's quite good because we are lucky that we don't have waiting lists, but I know some of the other FRCs do. So that's a real problem. If you've got an FRC with a wait list of three months for a first appointment and as a solicitor you've got a client who you could put an exemption through, and there are safety issues, you'd want to do that wouldn't you? (FRC manager, 2009)

We also considered the empirical evidence for the assertion from practitioners in FRCs and FDR services that referrals of seriously dysfunctional clients may be leading to an increase in the number of certificates that needed to be issued. It was noted in Table 5.2 that certificates were issued in 41% of the cases in the Survey of FRSP Clients, almost twice the frequency of those reported in the LSSF W1 2008 (21%; Table 5.1). Our initial thought was that as more than half the parents in the LSSF W1 2008 sample had separated before July 2007, the date after which certificates were required if court action was to be taken, many of these respondents who wished to proceed to court would not require a certificate. However, although we do not know how many are in this category (because the data do not contain information on precise dates of service delivery), we have reason to believe that the number of parents making use of FDR before July 2007 was relatively small. This is because when the data in Table 5.1 was subdivided into four categories of parents—those who separated in 2006, in the first half of 2007, the second half of 2007, and in 2008—it was found that all groups had roughly equal percentages who reported receiving a certificate. Clearly, receiving a certificate meant the service was delivered after July 2007.

It was also found that less than 9% of the sample had separated in 2006. In addition, although roughly half of the parents reported on in Table 5.1 separated in the first half of 2007, statistically speaking we would not have expected many of them to have commenced and completed FDR before the middle of the year. Thus, the absence of a need for a certificate due to FDR taking place before July 2007 is not likely to account for many of the parents reporting that they did not reach agreement and did not receive a certificate.

Another possible explanation for what seemed to be a relatively high percentage of parents from the Survey of FRSP Clients being in the "certificate" category is that even though Table 5.1 speaks to what has been described as the narrow definition of FDR, as noted in Section 5.2, we cannot be certain about how many LSSF W1 2008 respondents were referring specifically to FDR services provided by registered FDR practitioners. Experiencing "FDR" or mediation from a person or service not authorised to issue certificates might account for some of the "no agreement/no certificate" parents, but we have no way of telling how many might be in that category.

On balance, however, we believe that perceptions from FRCs that the rate of issuing of certificates has increased, and that this is in part connected with an absence of triage by lawyers and other professionals prior to referral for FDR, is likely to be correct.

It has become clearer that the implementation of "FDR with exceptions" is a complex process. Implementing the exceptions provision assumes that the person consulted by the client has the skills to make a reasonable judgment about eligibility (and perhaps just as importantly, has the time to carefully "hear" the client's story). The more conservative approach frequently seems to be to let an FRC or an FDR practitioner make such a judgment and use the certificate system as a substitute for an claiming an exception. This represents a post-reform change that clearly places a greater set of responsibilities and resource demands on practitioners in the family relationships sector. It is a process that must also at times be confusing for clients.

In the words of one FRC manager:

Prior to reforms, traditional mediation clients were far more likely to have a good understanding of what mediation is and to know that this is a very good outcome if I can get it here rather than go through courts.

A practitioner echoed this observation by noting one of the post-reform conundrums:

Now, of course, we've got people thinking that they *have* to do it [FDR] and we've got all those people that would not be really understanding of the process. However, having said that, I have a very strong belief that we're also about information-giving and

referral-making and role-modelling good communication and good conflict resolution for the client.

Another practitioner also spoke of the broader aims of FDR:

So even if they don't come to an agreement, I believe it's been a successful mediation if they can have a dialogue and they can turn around some of their methods of bad communication. I think that's definitely an up side for some of these clients who are not likely to come to agreements, but they can still gain something from going to mediation.

It is probably a truism to observe that FDR is more likely to succeed when all professionals involved in the case, including those who have an advocacy role for a particular parent, are committed to the process of reaching a solution that is in the best interests of the child.

For FRCs that had been in operation for a longer period of time, many interviewees noted what they saw as a greater understanding and acceptance of their role among lawyers. Practitioners also noted that misunderstandings about the role of the FRC among lawyers were more likely to occur when the lawyer did not specialise in family law.

They used to send people along just to get your certificates. Now they are really in the picture of what we do, so they go: "Look go to the Family Relationship Centre. You have got so many issues, and they are not all legal issues, so you need to go around there and they will sort you out". (FRC manager)

I think it's actually improving because I think solicitors now are beginning to understand possibly to some extent what our service is. First, there was rivalry because there was competition stuff. I think that once they realise that we're not here to take work off them, then a lot of them have gotten better. A lot of them actually use our service because they see the advantages of it. So they'll send their clients here. (FRC manager)

Table 5.12 provides information on the extent to which those contacting or using counselling, FDR or mediation during or after separation (the broad and narrow definitions of FDR) also had contact with a lawyer.

Table 5.12 Parents who had contacted or used a lawyer, by whether contacted or used counselling, FDR or mediation, or had attempted FDR, 2008

Contacted/used a lawyer during or after separation	Contacted/used counselling, FDR or mediation		Attempted FDR	
	No	Yes	No	Yes
	%		%	
No	74.4	34.8	65.8	25.6
Yes	25.6	65.2	34.2	74.4
Total	100.0	100.0	100.0	100.0
Number of respondents	4,756	5,246	6,956	2,938

Source: LSSFW1 2008

The table shows that of parents who contacted or used counselling, FDR or mediation during or after separation, 65% also contacted or used a lawyer and 35% had not contacted or used a lawyer. Focusing on the narrow definition of FDR, 74% of those who had attempted FDR also had contact with or had used a lawyer.

Conversely, the majority of parents who had not used counselling, FDR or mediation services had also not contacted a lawyer (74%). There is a similar pattern when the narrow definition of attempting FDR is used, with 66% of those who did not attempt FDR also not using a lawyer.

These figures suggest that in many cases, there is potential for constructive interaction between family lawyers and FDR practitioners, especially in circumstances in which difficult allegations have been raised. On the other hand, data from the 2006 and 2008 Family Lawyers Surveys, considered in more detail in Chapter 9, suggest that, although there are signs of an increase in lawyers' confidence in FRCs, this confidence comes off a low initial base. In addition, and

perhaps more telling, is the increase between 2006 and 2008 in the number of lawyers who had insufficient knowledge of FRCs to offer an opinion on their operations.

5.4 Summary

FDR appears to work well for many parents and their children. Among parents who had separated after the reforms, 31% of fathers and 26% of mothers reported that they had “attempted family dispute resolution or mediation”. About two-fifths of this group reached an agreement and most of these agreements were still in place at the time the LSSF W1 2008 was conducted (about a year after separation). Most parents who had not reached agreement at FDR had sorted out their dispute at the time the survey was conducted. Whether or not FDR resulted directly in an agreement, the majority of parents who had attended FDR and who had sorted out their disputes felt that they had done so mainly through discussions between themselves. This is consistent with a key aim of FDR, which is to empower disputants to take charge of their dispute. Parents who had not reach agreement at the time of FDR and who were issued with a certificate were the least likely to have sorted matters out or to have had a decision made about their dispute.

Most disputes referred to FDR and FRCs appear to be complex. Indeed, FRCs have become an early point of entry for a significant number of parents whose capacity to mediate is compromised to a greater or lesser extent by their past or present experience of violence, and/or other dysfunctional behaviours. FRCs are regarded by a proportion of lawyers as the most logical entry point for effective triage and effective referral of complex cases. There is also evidence that referral of difficult cases, either to FRCs or to an FDR service, is sometimes regarded as a type of insurance policy. Thus, although some of the cases clearly meet the criteria for an exception under s60I(9), lawyers are not always confident that courts will see the situation this way. Such cases are frequently issued with certificates by FDR practitioners, affording them “entry” into the court system. At the same time, some parents who would probably meet the exception criteria commence and/or complete FDR.

There are no easily predictable “best” pathways for this problematic end of the dispute spectrum. Some clients reported that they felt pressured into FDR or into reaching an agreement. Others with seemingly similar complex family dynamics did not provide this feedback. The new skills-based training for accrediting FDR practitioners is designed to increase capabilities in this area. Effective screening is an essential aspect of this training but effective screening does not always provide an answer to the critical question of “what next”?

The data indicate considerable overlap between client use of lawyers and client use of FDR. The data also suggest continuing concerns by lawyers about FDR and the service sector in general. Clearly, the advocacy role that lawyers must play on behalf of their clients is at times in tension with the aims of FDR. Put simply, the aims of both legal and service professionals are capable of complementing or colliding with each other

Active engagement between FDR practitioners, family lawyers and other family law professionals is likely to lessen the risk of re-creating between the professionals themselves many of their own clients’ experiences of high conflict and low trust. More broadly, any initiatives designed to promote a shared commitment to responsible FDR between lawyers and FDR professionals, and between lawyers and other service sector professionals, are likely to improve the efficacy of services generally, FDR in particular, and the family law system in general.

It should be noted in this regard that the evaluation provides good examples, most especially from regional centres, of lawyers, FDR professionals and other service professionals working cooperatively towards achieving post-separation arrangements between ex-partners that were likely to promote healthy and developmentally appropriate outcomes for children.