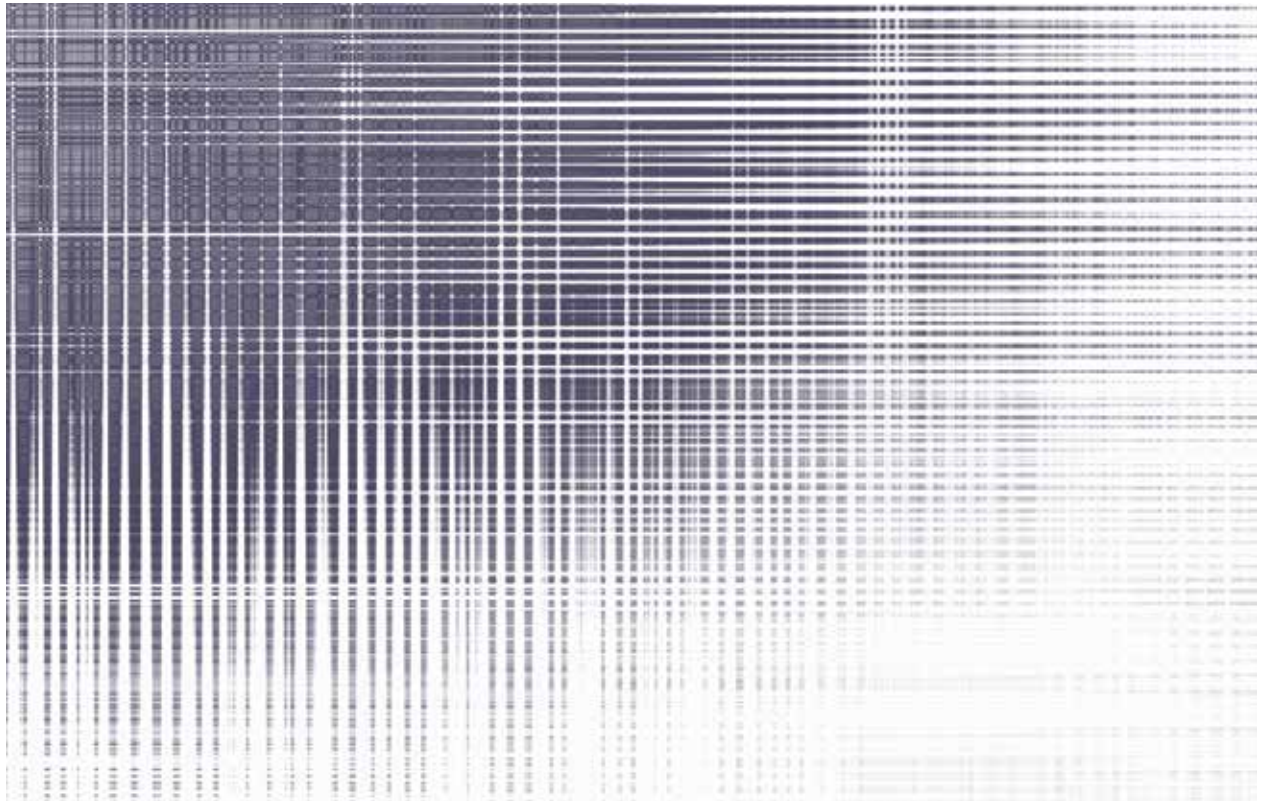




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Certifying mediation: a study of section 60I certificates

**B. Smyth, W. Bonython, B. Rodgers, E. Keogh, R. Chisholm, R. Butler,
R. Parker, M. Stubbs, J. Temple & M. Vnuk**



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Professor Matthew Gray

Director, ANU Centre for Social Research & Methods
Research School of Social Sciences
College of Arts & Social Sciences
The Australian National University
November 2017



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B. Smyth, W. Bonython, B. Rodgers, E. Keogh, R. Chisholm, R. Butler, R. Parker, M. Stubbs, J. Temple & M. Vnuk

Wendy Bonython is an Assistant Professor in the School of Law and Justice, Faculty of Business Government and Law, at the University of Canberra. She has a PhD in Molecular Medicine from Griffith University, a Juris Doctor from the University of Canberra, and is an admitted practitioner of the ACT Supreme Court.

Ross Butler is Senior Manager, Family Dispute Resolution for Interrelate. He has a Bachelor Degree, majoring in Psychology, and is a Registered Family Dispute Resolution Practitioner. Ross has worked for major agencies in the community sector for 18 years, specialising in mediation and family dispute resolution with couples and families.

Richard Chisholm was appointed as a Judge of the Family Court of Australia in 1993. On his retirement in 2004, he resumed academic work, and was appointed Honorary Professor of Law at the University of Sydney, and, after his move to Canberra in 2006, Adjunct Professor at the ANU College of Law. He was awarded the AM in 2009 for 'service to the judiciary, to the law and to legal education, particularly in the field of family law and the welfare and rights of children and young people'. He has worked with a variety of organisations, including the Family Law Council, the Australian Law Reform Commission, the New South Wales Law Reform Commission, and the NSW Child Protection Council. Since leaving the bench he has continued to research and publish on family law. His report, the Family Courts Violence Review, was released by the Commonwealth Attorney-General in 2010.

Elizabeth Keogh is a lecturer in the ANU Legal Workshop at the Australian National University. She has a BA / LLB (Hons) from the Australian National University, and is an admitted practitioner of the ACT Supreme Court. She practiced as a

family lawyer for 10 years prior to commencing her academic career.

Robyn Parker is Senior Manager, Research & Evaluation at Interrelate. She has a Master of Science (Psychology) degree. Her work in the service sector began in 2012, after 14 years at the Australian Institute of Family Studies writing on a range of topics related to couple and family relationships.

Bryan Rodgers is Professor of Family Health & Wellbeing at the Australian National University. He is a psychologist and epidemiologist, and has over 40 years of research experience on general population studies, including research on vulnerable people. He has held several NHMRC Fellowships since moving to Australia in 1992. His research encompasses a range of mental health issues (including depression, anxiety, substance use, and eating disorders) and the interaction of family relationships with personal wellbeing.

Bruce Smyth is Associate Professor of Family Studies with the Centre for Social Research and Methods, Australian National University. He recently completed an Australian Research Council Future Fellowship on the high-conflict post-divorce shared-time family.

Matt Stubbs is the Head of Research and Service Development with Interrelate. Matt is a psychologist holding an Honours Degree in Psychology and a Postgraduate Diploma in Clinical Drug Dependence studies from Macquarie University. He has a wide range of experience in relationship services, youth work, alcohol and other drug work and mental health. He has operated as a counsellor, group worker, trainer, educational writer, manager and clinical director.

Jeromey Temple is Associate Professor with the Centre for Health Policy at the University of Melbourne. At the time of his involvement in this project, he was the Director of Demographic Insights – a private consulting company based in Canberra specialising in demographic and econometric modelling.

Maria Vnuk is a PhD candidate with the School of Demography, the Australian National University. She has a background and post-graduate degree in public policy, and recently left the Australian Public Service after 20 years of service. Her areas of interest include: child support policy, financial living standards, post-separation parenting, and family policy.

Abstract

The present study was commissioned by Interrelate with the financial support of the Australian Government Attorney-General's Department, which co-funded the study. Interrelate is a provider of family dispute resolution services throughout New South Wales, and has a strong interest in evaluating its family dispute resolution (FDR) processes and outcomes for families – particularly children.

The study was designed to explore elements of the operation of the certificate-issuing process created by s. 60I of the *Family Law Act 1975* (Cth)

(‘FLA’). Specifically, it sought to explore: (a) the number and categories of certificates issued, and the characteristics of those clients who do and do not receive them; (b) the factors and circumstances influencing the decision of Family Dispute Resolution Practitioners (FDRPs) to issue different categories of s. 60I certificates; and (c) clients’ understanding of the purpose of the certificate, and the various dispute resolution pathways (if any) used by families after receiving a s. 60I certificate.

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ANU Centre for Social Research and Methods
Research School of Social Sciences
The Australian National University

Foreword

Court processes, in Australia and abroad, have been characterised as slow, costly, and incomprehensible to litigants. In the area of family law, the adversarial nature of litigation often generates or intensifies parental acrimony, and erodes parents' ability to develop cooperative post-separation parenting arrangements. Children can suffer as a consequence.

In July 2006, sweeping changes to the Australian family law system were introduced to reduce parental conflict and encourage shared parenting. One aspect of the suite of changes of particular interest to policymakers and family law professionals is the introduction of mandatory family dispute resolution (FDR) as a pre-condition to initiating court proceedings in parenting matters—with exceptions (e.g., family violence or child abuse). Specifically, separated parents seeking a court listing are now required to obtain and present to the court a section 60I certificate. This certificate demonstrates either that mediation has been attempted but was unsuccessful, or that parties have attempted to participate in mediation but the dispute is deemed by practitioners to be inappropriate for mediation. Since the introduction of mandatory mediation in 2006, little empirical research into the process of issuing s. 60I certificates, and the dispute resolution trajectories of separated parents who receive a certificate, has been undertaken.

Drawing on mixed methods, this study provides a fascinating empirical snapshot of (a) separated parents' understanding of s. 60I certificates, (b) the dispute resolution decision-making processes surrounding the issuing of certificates, and (c) subsequent family dispute resolution trajectories after a certificate has been issued. As noted by the authors, the data suggest that a decade after implementation, a number of unresolved questions remain about the role of s. 60I certificates—particularly the purpose of the different categories of certificate.

I would like to thank Interrelate and the Australian Government Attorney-General's Department for co-funding this research, and for supporting the project through its duration. My hope is that the study will act as a springboard to further empirical work in this important area—work that will build on national administrative data, and national random samples of separated parents and family law system professionals (including family lawyers, family dispute resolution practitioners, judicial officers, and conflict and mental health specialists in related areas).

This report is the second of a series of Working Papers from the ANU Centre for Social Research and Methods. These reports aim to shed light on a range of important social and policy issues. One of the strengths of the Centre is its multi-disciplinary composition and foci. This report exemplifies the value of different disciplinary and institutional perspectives converging on complex social and/or policy issues—i.e., the so-called 'golden triangle' of research, policy and practice.

Socio-legal research—especially on families—remains an important strand of the Centre's work. I congratulate the research team on an excellent report, and am delighted that the ANU Centre for Social Research and Methods could be involved in the research resulting in this report.

Professor Matthew Gray

Director

ANU Centre for Social Research & Methods

November 2017

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First and foremost, we are extremely grateful to the Family Dispute Resolution Practitioners and the former clients of Interrelate who participated in this research. Without their help, this study would not have been possible.

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Of course, any shortcomings and errors remain our own. The views reported in this Working Paper are those of the authors and should not be attributed to any affiliated organisations.

Acronyms

AAT	Administrative Appeals Tribunal
ADR	Alternative Dispute Resolution
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
CLC	Community Legal Centre
FDR	Family Dispute Resolution
FDRP	Family Dispute Resolution Practitioner
FL	Family law
FLA	<i>Family Law Act 1975</i> (Cth)
FRC	Family Relationship Centre
LAC	Legal Aid Commission
LSSF	Longitudinal Study of Separated Families
MIAM	Mediation Information and Assessment Meetings (England)
NADRAC	National Alternative Dispute Resolution Advisory Council

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Executive summary

Background

The present study was commissioned by Interrelate with the financial support of the Australian Government Attorney-General's Department, which co-funded the study. Interrelate is a provider of family dispute resolution services throughout New South Wales, and has a strong interest in evaluating its family dispute resolution (FDR) processes and outcomes for families – particularly children.

The study was designed to explore elements of the operation of the certificate-issuing process created by s. 60I of the *Family Law Act 1975* (Cth) ('FLA'). Specifically, it sought to explore: (a) the number and categories of certificates issued, and the characteristics of those clients who do and do not receive them; (b) the factors and circumstances influencing the decision of Family Dispute Resolution Practitioners (FDRPs) to issue different categories of s. 60I certificates; and (c) clients' understanding of the purpose of the certificate, and the various dispute resolution pathways (if any) used by families after receiving a s. 60I certificate.

Section 60I Certificates

The stated object of section 60I of the *FLA* is to ensure that all persons who have a dispute about children's matters 'make a genuine effort to resolve that dispute by family dispute resolution' before an application can be made for an order under Part VII of the *FLA* (the Part that deals with children). The legislative method was to provide that unless one of a number of exceptions apply, parties cannot commence proceedings for orders relating to children unless they have filed a certificate issued by a Family Dispute Resolution Practitioner (FDRP) relating to the parties' participation in dispute resolution.

There are five different categories of certificate that can be issued by an FDRP. The full description of each category of certificate is set out in section 60I(8) of the *FLA*. They may be paraphrased as a certificate verifying that the person:

1. did not attend family dispute resolution, but this was because another party (or parties) to the dispute refused or failed to attend¹ ('failure or refusal to attend' certificate);
2. did not attend family dispute resolution because the FDRP considers that it would not be appropriate to conduct family dispute resolution² ('inappropriate for FDR' certificate);
3. attended family dispute resolution and all attendees made a genuine effort to resolve the dispute³ ('genuine effort' certificate);
4. attended family dispute resolution and that one or more of the attendees did not make a genuine effort⁴ ('not genuine effort' certificate);
5. began attending family dispute resolution, but the practitioner considers it would not be appropriate to continue with family dispute resolution⁵ ('no longer appropriate for FDR' certificate).

Interrelate's Family Dispute Resolution model, and practitioner and client characteristics

Between 2011 and 2015, Interrelate saw 10,848 clients seeking access to family dispute resolution services for children's matters. These clients accessed mediation at Interrelate services provided at 15 locations throughout New South Wales.

- The number of s. 60I certificates issued by Interrelate between 2011–12 and 2014–15 steadily increased, with a marked increase between 2011–12 to 2012–13 (from 1,716 to 1,986 certificates issued). The number and categories of certificates issued varied by geographical location.

- There were no discernible differences in the proportion of each category of s. 60I certificate issued by male or female FDRPs, or between legally qualified and non-legally qualified FDRPs. However, the most experienced practitioners were more likely than those with less than three years of experience to issue 'inappropriate for FDR' s. 60I certificates. They were also less likely to issue certificates for 'refusal or failure to attend'.

Family Dispute Resolution Practitioner interviews

In-depth telephone interviews exploring practitioners' experiences issuing s. 60I certificates were conducted with 27 FDRPs employed by Interrelate. Our findings are as follows:

- FDRPs spend considerable time and energy making decisions about the issue of s. 60I certificates, including decisions about which category of certificate to issue.
- Formal and informal discussions with peer FDRPs, and FDRPs in supervisory positions, prior to making decisions to issue a s. 60I certificate are very common.
- Regulation 25(2) of the *FDRP Regulations* specifies what has to be taken into account by FDRPs when determining whether FDR is appropriate. This regulation is prominent in FDRPs' decision-making process.
- However, some factors outside the legislative instruments appear to be affecting decisions. The factors include, in particular, best interests of the children (variously perceived by FDRPs), organisational policy, fear of complaints, and perceptions about what will lie ahead for the clients if a certificate (or particular category of certificate) is issued, particularly where the FDRP perceives that the client does not have financial resources to go to court.
- There were times when some FDRPs were unsure whether the category of certificate issued accurately reflected the particular circumstances of the case. For example, an 'inappropriate for FDR' certificate might be issued where FDR could be assessed as 'refusal or failure to attend', or when 'inappropriate for FDR' or 'genuine effort' certificates may be issued where parents could be assessed as 'not making a genuine effort'. These possible variations can arise for multiple reasons including FDRPs' perceived understanding of organisational practice, the inherent complexities in judging 'genuine effort', and the possible ramifications of issuing a particular category of certificate in the context of the parents' and children's overall circumstances.
- FDR is occurring in a sizeable number of families where a history of family violence is alleged.
- The issue of a s. 60I certificate is generally seen by FDRPs as a 'disempowering' act, which brings participation in FDR to an end, rather than an 'empowering' act, which permits clients access to litigation as an additional dispute resolution process.
- There is significant diversity of opinion among FDRPs about whether it is desirable for the category of certificate issued to impact on judicial decision-making and court process.
- Similarly, there is significant diversity in opinion about the idea of FDRPs providing more information about the reasons for their decision in relation to the issue of s. 60I certificates.
- Many FDRPs commented on the practical difficulties created by the complex wording of the 'refusal or failure to attend' clause of the s. 60I certificate.

Survey of clients issued with a Section 60I Certificate

The views and experiences of 777 former clients of Interrelate were obtained through a computer-assisted telephone interview (CATI) conducted between June and August 2016. Our findings are as follows:

- Just over half of those who recalled receiving a s. 60I certificate accurately stated that the purpose of the certificate was to enable them to file an application in court. When 'other' responses which approximate the purpose are included, around three quarters of those who recalled receiving a certificate could be seen as accurately stating the purpose of the certificate process.

- Moreover, half of all separated parents with a s. 60I certificate had been involved in an application for parenting orders in court; the other half had not.
- Of those who used a professional service, that most commonly used was a private lawyer, solicitor or similar, with over 80% of respondents hiring their services; around one-third (33–38%) of service users also made use of counsellors (38%), psychologists (34%) and Legal Aid (33%).
- Just over one quarter (28%) of separated parents who received a s. 60I certificate did not go to court or use any other professional services.
- By contrast, another quarter used three or more services (two-thirds of these also went to court).
- The most common category of s. 60I certificate issued, based on the administrative data for the sample and survey responses, was where the parenting dispute was deemed to be ‘inappropriate for FDR’ (40%). ‘Refusal or failure to attend’ and ‘genuine effort’ certificates were issued in equal proportions (~28%), whereas very few certificates were issued for ‘not genuine effort’ or ‘no longer appropriate’ (<1% and <3%, respectively).
- Those in cases deemed to be ‘inappropriate for FDR’ were more likely than others to seek parenting orders, whereas those in cases where one of the parents refused or failed to attend mediation were less likely than others to file an application in court.
- Those who received an ‘inappropriate for FDR’ certificate or ‘genuine effort’ certificate were more likely to receive a judicial determination (about 20%) compared to those in cases where one of the parents refused or failed to attend mediation.
- There was little variation in use of professional services by those who received the three most common categories of certificate (i.e., ‘inappropriate for FDR’, ‘refusal or failure to attend’, and ‘genuine effort’ certificates).
- Of the 298 individuals who used alternative methods to resolve their parenting dispute, a sizeable proportion (41%) of respondents indicated that they ‘worked it out together’; about 20% indicated continuing mediation after receipt of a s. 60I certificate.
- Respondents were generally positive about the mediation experience and felt parenting issues were appropriate for this forum. However, the majority of respondents also indicated they did not achieve the outcomes they set out to achieve. There was nonetheless a strong preference for continued mediation to resolve the parenting dispute.
- Surprisingly, for a group of parents who are facing significant challenges and high levels of stress, this group rated their own life satisfaction and health as high and equally expressed a level of satisfaction regarding their children’s wellbeing and achievement. This could point to a level of natural resilience in the face of significant adversity faced by this client group.

Separated parents’ general comments

Separated parents issued with a s. 60I certificate were also asked whether they wanted to raise any other general issues or add any specific comments about the service they received. In total, 485 respondents provided additional comments.

- Some respondents ($n=82$) wanted FDRPs to have more power to compel the other parent to attend FDR.
- Some respondents ($n=72$) also spoke about the particular challenges of FDR for families with complex needs (e.g., the way that mediation can be used to prolong abuse; whether safety concerns were adequately addressed).
- Perceived personal bias by an FDRP was also mentioned by some respondents ($n=55$).

Caveat

It is important to note that the present study’s findings may not be representative of the FDR client and practitioner population as a whole. This is because the study (a) is limited to the experiences of FDRPs and clients of a single family relationship service provider in one state of Australia (i.e., NSW); (b) excludes the experiences of people who participated in, or sought to participate in Family Dispute Resolution, but did not receive a certificate;

and (c) excludes the experiences of two other important groups in the process: lawyers and judicial officers. In addition, just over half the final useable sample completed the telephone survey. The extent to which those who participated in the survey differed to those who did not remains unclear.

The study nonetheless provides an interesting empirical snapshot of separated parents' understanding of s. 60I certificates, the dispute resolution decision-making processes surrounding the issuing of certificates, and subsequent family dispute resolution trajectories after a certificate has been issued.

Concluding thoughts

It is thus a complex matter to say whether the s. 60I certificate process is working well, and precisely what changes might be needed to improve it.

The data from the present study suggest that a decade after implementation, a number of unresolved questions nonetheless remain about the role of s. 60I certificates. Perhaps the most fundamental is to identify the purpose of the different categories of certificate. The findings of this study suggest that those whose task it is to issue certificates, the FDRPs, cannot readily glean the purpose from the legislation and guidelines available to them. In particular, while there are some indications that the purpose is to provide useful information to the court, this is not the stated purpose of s. 60I and there is no provision for the certificate to be admitted into evidence.

Once this purpose is identified, it might be possible to address some of the more specific issues that arise, including the following:

- Should the legislation require that a certificate be issued to everyone who participates, or attempts to participate, in FDR?
- Are the five categories of certificate useful?
- Is the wording of the 'refusal or failure to attend' clause of the certificates clear?

- Can the certification system be improved for families with complex needs, and for the family law system more broadly?
- Can FDRPs be better supported in issuing s. 60I certificates?
- What can be done to help disputing parents who do not appear to have the financial resources to pursue litigation?
- Do judicial officers make use of the s. 60I certificates in any way? Should they?

Several lines of inquiry warrant further investigation:

- Analysis of national administrative data on s. 60I certificates would be invaluable.
- Replicating both client survey and FDRP interviews with national random samples of clients (including those who did not receive a s. 60I certificate) and practitioners would also be valuable.
- Expanding the research design to include interviews with lawyers to clarify legal professionals' advice about obtaining, and views towards, s. 60I certificates constitute important pieces of the s. 60I jigsaw to be understood.
- A formal study of judicial practice in the use of s. 60I certificates is another important line of inquiry for future research.

More broadly, separated parents issued with a s. 60I certificate in the study rated their own levels of health and life satisfaction as high, as well as their children's wellbeing. They were also generally positive about the mediation experience and felt parenting issues were appropriate for this forum. However, the majority of respondents also indicated they did not achieve the outcomes they set out to achieve. There was nonetheless a strong preference for continued mediation to resolve the parenting dispute.



1 Background

Wendy Bonython, Elizabeth Keogh, Richard Chisholm, Bruce Smyth, and Bryan Rodgers

1.1 Introduction

On 1 July 2006, widespread reforms to the *FLA* took effect. Among the changes was introduction of a new network of 65 Family Relationship Centres. The role of the new Centres was to provide families experiencing relationship difficulties with support to strengthen relationships and to deal constructively with separation-related disputes, particularly pertaining to parenting arrangements. Specifically, the reforms focused on expanded use of FDRPs and mediation techniques to assist families in attempting to resolve their disputes without resorting to court hearings where possible, and to reduce children's exposure to entrenched conflict.

For families unable to resolve their parenting dispute through mediation, the reforms implemented a certification system whereby people seeking a court listing were required to obtain a certificate demonstrating either that mediation had been attempted but was unsuccessful, or that the dispute was inappropriate for mediation, for presentation to the court. Since the implementation of these reforms a decade ago, there has been little empirical evaluation of the role, use and function of s. 60I certificates.

The present study was commissioned by Interrelate. Interrelate is a provider of family dispute resolution services throughout New South Wales, and has a strong interest in evaluating its family dispute resolution (FDR) processes and outcomes for families – particularly children.

The study was designed to explore elements of the operation of the certificate-issuing process created by s. 60I of the *FLA*. The research team comprised staff from the University of Canberra, the Australian National University, Interrelate, and associates. Specifically, the study sought to explore: (a) whether s. 60I certificates (or particular categories of certificate) are on the rise; (b) whether those clients who receive a certificate have different characteristics from those who do not; (c) the factors and circumstances influencing the decision of FDRPs to issue a particular category of s. 60I certificate; and (d) clients' understanding of the purpose of the certificate, and the particular dispute resolution pathways (e.g., court) – if any – used by families after receiving a s. 60I certificate.

1.2 Purpose and operation of section 60I

The stated object of section 60I of the *FLA* is to ensure that all persons who have a dispute about children's matters 'make a genuine effort to resolve that dispute by family dispute resolution' before anyone makes an application for an order under Part VII of the *FLA* (the Part that deals with children).⁶ Subject to various exceptions, s. 60I provides that the court 'must not hear' an application under Part VII unless the applicant files 'a certificate given to the applicant by a family dispute resolution practitioner under subsection (8)'.⁷

1.3 Categories of section 60I certificates

There are five categories of certificates that can be issued by a family dispute resolution practitioner. The full description of each category is set out in s. 60I(8) of the *FLA*, but can be paraphrased as a certificate verifying that the person:

1. did not attend family dispute resolution, but this was because another party (or parties) to the dispute refused or failed to attend⁸ ('refusal or failure to attend' certificate);
2. did not attend family dispute resolution because the FDRP considers that it would not be appropriate to conduct family dispute resolution⁹ ('inappropriate for FDR' certificate);
3. attended family dispute resolution and all attendees made a genuine effort to resolve the dispute¹⁰ ('genuine effort' certificate);
4. attended family dispute resolution and that one or more of the attendees did not make a genuine effort¹¹ ('not genuine effort' certificate);
5. began attending family dispute resolution, but the practitioner considers it would not be appropriate to continue with family dispute resolution¹² ('no longer appropriate for FDR' certificate).

1.4 Family Law (Family Dispute Resolution Practitioners) Regulations 2008

The issue of s. 60I certificates is further governed by the *FDRP Regulations*. The *FDRP Regulations* stipulate that a certificate issued by an FDRP must be in accordance with the form provided in Schedule 1 to the *FDRP Regulations*. The wording of the Schedule 1 form largely mirrors the wording of s. 60I(8). Notably, the Schedule 1 form does not permit inclusion of the reasons for an FDRP's decision to issue a certificate; nor does it require identification of the FDRP issuing the certificate beyond their first name and registration number.

The *FDRP Regulations* stipulate that a certificate can only be issued and can only be filed within 12 months of the latest family dispute resolution or attempted family dispute resolution.¹³

1.4.1 Determining if family dispute resolution is appropriate

An FDRP must only provide FDR if satisfied that FDR is appropriate.¹⁴ In making a determination as to the appropriateness of FDR, an FDRP is required to take into account factors specified in Regulation 25(2) of the *FDRP Regulations*:

In determining whether family dispute resolution is appropriate, the family dispute resolution practitioner must be satisfied that consideration has been given to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters:

- (a) a history of family violence (if any) among the parties;
- (b) the likely safety of the parties;
- (c) the equality of bargaining power among the parties;
- (d) the risk that a child may suffer abuse;
- (e) the emotional, psychological and physical health of the parties;
- (f) any other matter that the family dispute resolution practitioner considers relevant to the proposed dispute resolution.

An FDRP is also required to terminate the family dispute resolution if the FDRP is no longer satisfied that family dispute resolution is appropriate.¹⁵

1.4.2 Requirements for the issue of 'inappropriate for FDR' and 'no longer appropriate for FDR' certificates

An FDRP may issue an 'inappropriate for FDR' certificate only after having regard to the matters set out in subregulation 25(2). Interestingly, there is no equivalent requirement under the *FDRP Regulations* that the matters set out in subregulation 25(2) be considered prior to the issue of a 'no longer appropriate' certificate.¹⁶

1.4.3 Requirements for the issue of a 'refusal or failure certificate'

An FDRP may issue a 'refusal or failure to attend' certificate only if the FDRP (or a person acting for the FDRP) has made at least two attempts to contact the other party, provided that party with reasonable options for attendance at FDR, and defined information in relation to the consequences of a failure or refusal to attend.¹⁷

1.4.4 Requirements for the issue of 'genuine effort' and 'not genuine effort' certificates

Neither the *FLA* nor the *FDRP Regulations* provide any guidance as to the circumstances in which 'genuine' or 'not genuine effort' certificates should be issued, or what factors should be considered in making a decision to issue such certificates.

1.5 Non-legislative influences on certificate-issuing process

The Commonwealth Attorney-General's Department maintains a webpage titled 'Information for family dispute resolution practitioners'.¹⁸ This webpage provides various documents developed to assist FDRPs in interpreting and applying the provisions of s. 60I and the *FDRP Regulations*, in particular decisions in relation to the issuing of s. 60I certificates. These documents cover issues such as: (a) whether both parties must be interviewed prior to the issue of a 'not appropriate certificate';¹⁹ (b) the meaning of 'genuine effort';²⁰ (c) how long a practitioner should wait for a response before issuing a 'refusal or failure to attend' certificate;²¹ and (d) appropriate processes for determining suitability for FDR.²²

It is likely that the certificate-issuing process will also be influenced by the formal and informal organisational processes and policies within the organisation in which an FDRP operates. Processes and policies adopted by Interrelate are detailed in Chapter 2 of this report.

1.6 Exceptions to the section 60I certificate requirement

As observed earlier, s. 60I defines certain circumstances in which the court may hear an application without requiring the filing of a s. 60I certificate. These exceptions are set out in s. 60I(9), and can be summarised as circumstances in which:

1. the orders are being sought by consent;²³
2. the orders are being sought in response to an application made by another party;²⁴
3. there is history, or future risk, of child abuse or family violence being perpetrated by one of the parties to the proceedings;²⁵
4. the orders relate to an alleged contravention of a recently made order;²⁶
5. the application is made in circumstances of urgency;²⁷
6. one or both parties are unable to participate effectively in dispute resolution services;²⁸ or
7. the regulations are otherwise satisfied.²⁹

There is considerable overlap between the content of some of the s. 60I(9) exceptions and the factors set out in regulation 25(2) as the matters to be considered in determining whether FDR is appropriate and whether an 'inappropriate' certificate should be issued. Consequently, in some circumstances a potential litigant has two pathways to their application for orders being heard by a court – the first being attendance upon an FDRP who determines that FDR is not appropriate, and the second being to seek a determination from a court that one of the specified exceptions applies.

In circumstances where there is a history, or a future risk, of family violence or child abuse, the two pathways operate in subtly but significantly different ways. An FDRP is required to consider a history of family violence and the risk that a child may suffer abuse in determining whether FDR is appropriate, but such a history or risk does not necessarily require the FDRP to conclude that FDR is not appropriate. In contrast, s. 60I(9)(b) provides, in substance, that there is no requirement to attend FDR if the court is satisfied that there are reasonable grounds to believe that there is any history or risk of family violence or child abuse. Where there is a

history or risk of family violence or abuse, therefore, a party may avoid participating in FDR in either of two ways: by submitting to the court that the requirement does not apply, or by undergoing an initial assessment in FDR, whereby their case may be assessed as ‘inappropriate for FDR’.

The legislation does not impose any particular requirements regarding what material an FDRP should use to conclude that there is a history or risk of family violence or abuse. Documentation on the AGD website asserts that FDRPs do not need to obtain any supporting evidence in relation to allegations of family violence or child abuse before making a determination as to the appropriateness of FDR.

1.7 Consequences of the issue (or non-issue) of a section 60I certificate

When a s. 60I certificate is issued, the primary consequence is that it enables the court to hear an application for orders under Part VII of the *FLA* provided that the certificate and application are filed within 12 months following the last – or attempted – FDR.³⁰

There is no impediment to continued voluntary participation in family dispute resolution after a s. 60I certificate is issued. The issue of a s. 60I certificate also does not mean that compulsory participation in family dispute resolution will necessarily be at an end, as the court has the power to order participation in family dispute resolution ‘at any stage in the proceedings’ that are before the court.³¹ The court’s power to order participation in FDR would also enable such an order to be made after a determination that a s. 60i(9) exception permits the hearing of an application without the filing of a certificate.

The s. 60I(9) exceptions do not encompass a situation in which a party has participated (or failed to participate due to the other party’s lack of co-operation) but has been unable for any reason to obtain a certificate from the FDRP who provided the service. Thus, for example, were an FDRP unreasonably to refuse to provide a s. 60I certificate to a person who has participated in FDR, the

court would not be able to hear an application for Part VII orders unless one of the other exceptions applied. This is because s. 60I(7) is mandatory – the court ‘must not’ hear an application – and the threshold for hearing the application is the filing of a s. 60I certificate, rather than proof of participation (or adequate reasons for non-participation) in FDR.

1.7.1 Consequences of category of certificate issued

A ‘note’ to s. 60I(8) is as follows:

Note: When an applicant files one of these certificates under subsection (7), the court may take the kind of certificate into account in considering whether to make an order referring to parties to family dispute resolution (see section 13C) and in determining whether to award costs against a party (see section 117).

In substance, s 13C allows the court to make orders requiring parties to attend counselling, family dispute resolution, or another program. Section 117 provides for the court to make costs orders, and sets out the matters to be taken into account.

The note to s. 60I implies that the category of certificate issued could impact upon the court’s decision-making in relation to costs, and on the ordering of further participation in FDR. This impression is consistent with Regulation 26(4)(b) (ii) which requires, prior to the issue of a ‘refusal or failure to attend’ certificate, that an FDRP tell the party who is being invited to attend FDR that a certificate that is likely to be issued may be taken into account in relation to the matters addressed by s 13C and s117. These potential consequences are also referred to in documentation found on the Attorney-General’s Department website. There may, however, be some doubt whether the category of certificate does indeed have these consequences.

A note to legislation may help to indicate the intention behind a provision, but it has no inherent legal effect. There is nothing in the provision of the *FLA* concerning the evidentiary status of the certificate. Section 13C and section 117 do not refer to s. 60I certificates. The fact that a document is

filed does not mean that it is admissible evidence. Under ordinary rules of evidence, statements in such a document (e.g., that a person did not make a genuine effort) would be hearsay. The rule forbidding the use of hearsay evidence does not normally apply in Part VII proceedings, but underlying the rule is a sense of fairness. Where there is a dispute between the parties about a matter stated in the certificate, a court might hesitate to make a finding of fact based on a certificate signed by a person who is not a witness in the case, since a party who disagreed would have no opportunity to challenge the writer of the certificate in cross-examination. If the parties accept the statement in the certificate, and it is relevant to the case, the ordinary practice would be to inform the court that the statement was an agreed fact. In that case, there would be no need for the court to rely on the certificate.

Presumably when no certificate is filed the court declines to hear the case unless one of the exceptions applies, as s.60I requires. But the legislation leaves it uncertain what if anything the court should do with the certificate once it is filed.

We had hoped to interview judicial officers formally in the course of this study about the impact of s. 60I certificates on the court, but unfortunately that was impracticable. As noted in Chapter 6, a future study of judicial practice in relation to s. 60I certificates would be an important line of inquiry for future research.

Informal inquiries by Chisholm suggest that judicial practice varies. Judges may or may not read the certificates before the hearing commences. Some might find it useful to read the certificate in advance to obtain some preliminary insight into what issues the case might present. It appears to be unusual for parties to attempt to rely on the certificates as evidence, and consequently unusual for judges to refer to the certificates in their judgments.

It is an important part of the background to the present research that the law does not specify what is to happen to certificates once they are filed, and that when practitioners make decisions about which category of certificate to issue, they do so with little or no indication whether the court will ever see the certificate, or what part it might play, if any, in the determination of the dispute.

1.8 Purpose and scope of the study

Little is known about the way in which decisions about the issuing of s.60I certificates are made, the way in which the certificate process is perceived by stakeholders, or the impact that these certificates (and the compulsion to participate in FDR, which underlies the certificate process) has on the resolution of disputes about the care and living arrangements of children. As the legislative framework created by the *FLA* and the *FDRP Regulations* creates a structure in which professionals who are not invested with judicial power are acting as gatekeepers to the legal system, it is important to understand how these processes are operating. It would be very helpful to have information that would enable the s.60I mechanism to be assessed, both as to whether it achieves its objectives and as to whether it produces unwanted consequences.

This report presents preliminary data about some aspects of the operation of the s.60I certificate process. The findings of this study must be approached with some caution because they are limited to the experiences of FDRPs and clients of only one service provider in New South Wales, and because they do not include the experiences of two other important stakeholders in the process, namely lawyers and judicial officers.

1.9 Aims and research questions

The present study primarily sought to explore: (a) the number and categories of certificates issued, and the characteristics of those clients who do and do not receive them; (b) the factors and circumstances influencing the decision of FDRPs to issue different categories of s.60I certificates; and (c) clients' understanding of the purpose of the certificate, and the various dispute resolution pathways (if any) used by families after receiving a s.60I certificate.

Several research questions guided the study:

1. Are s. 60I certificates, or certain categories of certificates, on the rise? Are there regional and temporal differences in the frequency and categories of certificate issued? Do those who receive s. 60I certificates differ from those who do not?
2. How do practitioners decide what category of s. 60I certificate to issue? What evidence do they use to inform their decision? What factors determine whether FDRPs decide that FDR is appropriate? What, if any, particular issues do FDRPs identify as arising from the s. 60I certificate process?
3. What do separated parents understand the purpose of s. 60I certificates to be, and do they make use of these certificates? If so, how far do they proceed along the dispute resolution pathway to final orders? Does the category of certificate issued influence the dispute resolution pathway they take?

To answer the above questions, we draw on:

- Interrelate's analysis of its administrative data (Research Question 1);
- interviews with FDRPs employed by Interrelate (Research Question 2); and
- a computer-assisted telephone interview (CATI) survey of separated parents who were issued with a s. 60I certificate (Research Question 3).

Chapter 4 presents CATI survey data on the experiences with family dispute resolution of 777 former Interrelate (NSW) clients who were issued with certificates between 2011 and 2015.

Chapter 5 summarises key themes identified from qualitative analysis of responses to an open-ended survey question regarding clients' experience of the mediation process more generally.

In the final chapter (Chapter 6), we discuss significant correlations between the findings, reflect on fundamental questions about the s. 60I certification process, and offer some ideas for future research.

1.10 Structure of report

The next chapter (Chapter 2) provides important context for the chapters that follow by setting out the nature of Interrelate's data. It describes Interrelate's four-step FDR model, along with the significant characteristics of Interrelate's FDRPs and client population. It also briefly examines the demographic differences between clients who were issued with a s. 60I certificate and those who were not.

Chapter 3 presents the findings of in-depth telephone interviews with 27 FDRPs about their understanding and experience of the s. 60I certificate process.



2 Interrelate FDR processes, practitioners and clients

Robyn Parker, Ross Butler and Matt Stubbs

Are s. 60I certificates on the rise, and are there regional and temporal differences in the categories of certificate issued? Are there differences between those who receive s. 60I certificates and those who do not? This chapter seeks to answer these questions using Interrelate administrative data. But first, as context for the chapters that follow, we briefly (a) describe the family dispute resolution model used by Interrelate, and (b) explore whether any practitioner characteristics are related to the issuance of different categories of s. 60I certificates.

2.1 Interrelate family dispute resolution services and processes

Interrelate's fundamental aim in the development of its FDR process has been to assist separated parents to resolve disputes and to reach agreement on sustainable and workable parenting arrangements, while continuing to work in the best interests of children.

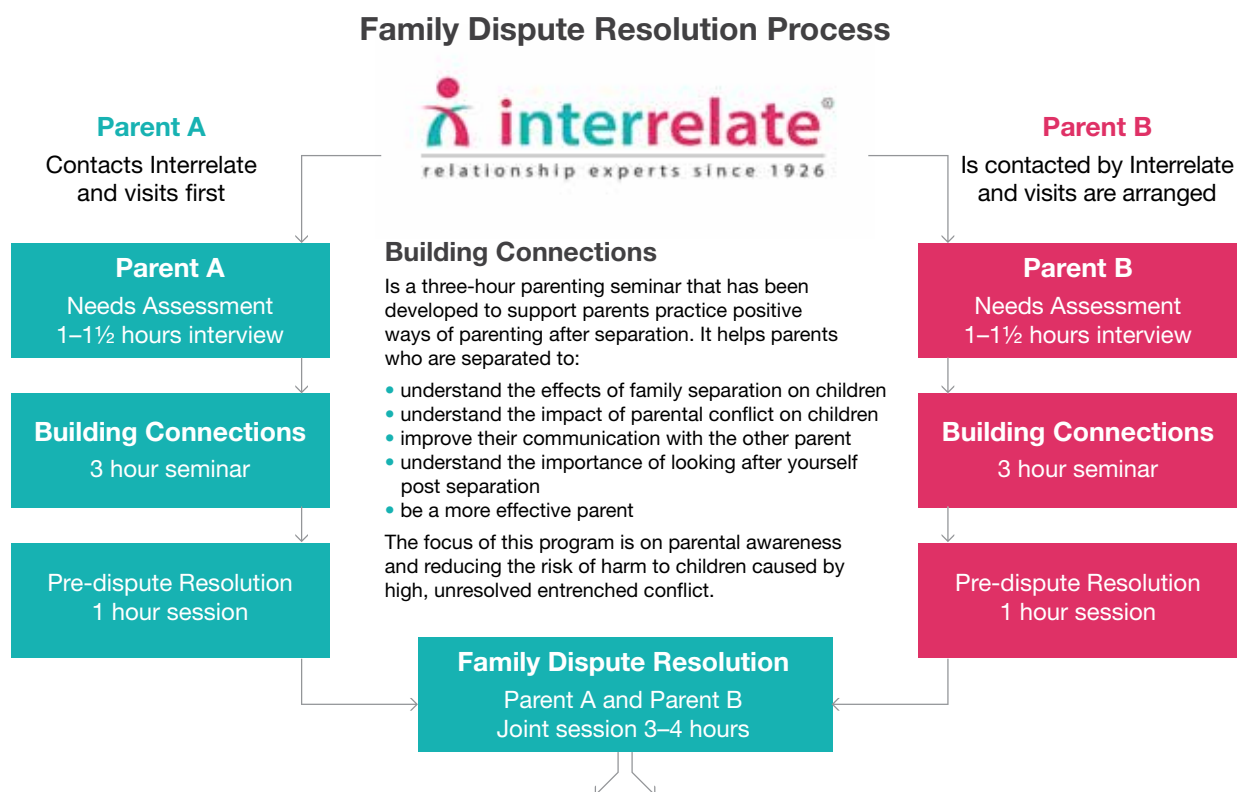
In this endeavour, Interrelate has developed and continues to conduct a child-focused FDR process in four sequential stages. This is based on best practice principles of FDR, and on ensuring that FDRPs fulfil their statutory obligations specified in the *FLA* and the *Family Law (Family Dispute Resolution Practitioners) Regulations*. In this context – and in the specific context of the assessment of risk as an integral and ongoing part of its FDR process – Interrelate FDRPs issue s. 60I Certificates appropriate to the circumstances of parents.

In most cases, parents wish for their FDR case to proceed as quickly as possible, and the intent is always to facilitate the parents' wishes and not to cause any unnecessary delays. In general terms, if all steps are undertaken, an FDR case is expected to be completed in a 12-week timeframe, depending upon client and practitioner availability and the absence of external delaying factors.

At all times for Interrelate, a major objective of the FDR process is ensuring the best interests of the separated parents' children. It seeks to achieve this by channelling parents' energy towards this end. To meet this goal takes differing amounts of time, as some parents find it challenging to engage with the FDR process, while others can be reluctant to negotiate arrangements for their children.

The Interrelate model of FDR is diagrammatically represented in Figure 2.1 below.

Figure 2.1 Interrelate's Family Dispute Resolution Model



2.1.1 Step 1: Intake and Assessment ('Needs Assessment')

Initially, parents entering the FDR process at Interrelate individually attend an intake and assessment session, which lasts for approximately an hour to an hour and a half. These sessions enable the FDRP to provide essential information to each parent in relation to the important elements of FDR and s.60I certificates, confidentiality and inadmissibility, family violence, child protection, and parenting plans. At the same time, each parent is invited to explain their family circumstances and the reason for seeking to participate in FDR.

At this point, based on their professional judgement, the FDRP may decide that an 'inappropriate for FDR' s.60I certificate be issued. Such judgement is based on an assessment of information gleaned during this appointment, together with documentation presented (e.g., an Apprehended Domestic Violence Order) or where a client may present with significant mental health or alcohol or drug issues.

On the other hand, it may be determined that it is appropriate for FDR to proceed and, using information supplied by the parent, the FDRP will invite the parent's former partner, in writing, to enter into the FDR process by their attendance at an intake and assessment session.

Subject to the response from the separated partner and further attempts to invite them to engage in the FDR process, the FDRP may issue a 'refusal or failure to attend' s.60I certificate. Interrelate's accepted practice is to make a minimum of three such attempts.

At further points in the FDR process, one or other parent may demonstrate or indicate that they no longer wish to continue with the FDR process, and, at that point, the FDRP may issue a 'refusal or failure to attend' certificate. Additionally, other information may come to light that results in the FDRP making a determination that FDR is not appropriate, and a certificate is issued.

If the separated partner accepts the invitation to enter into the FDR process and attends an intake and assessment session, the FDRP will again make an assessment as to whether FDR is appropriate to proceed, and may decide to issue an 'inappropriate for FDR' certificate.

2.1.2 Step 2: Parenting Program – 'Building Connections'

Once parents have attended their intake and assessment sessions, they attend a three-hour group program, *Building Connections*, designed to improve the lives of children by creating greater parental understanding of the effects of separation, and of the impact of entrenched parental conflict, on children.

2.1.3 Step 3: Pre-Dispute Resolution (Pre-FDR Session)

The third step of the Interrelate FDR process is the pre-FDR session, which the parents attend individually and which lasts for approximately one hour. This session focuses on the learning and impact of the *Building Connections* program and how parents can apply any insight to their personal situations and for the benefit of their children. The FDRP also reviews with the parent any changes or developments since the intake and assessment session, and provides an outline of the next part of the process, the FDR session. Each parent is encouraged to prepare for the forthcoming FDR session by composing notes summarising the matters the parent wishes to discuss during the FDR session and, as appropriate, to draft all or part of a parenting agreement.

During the pre-FDR sessions with each of the parents, the FDRP continues the process of assessment to determine if FDR is still appropriate, and may issue an 'inappropriate for FDR' certificate.

2.1.4 Step 4: Family Dispute Resolution Session (Joint Session)

The joint FDR session is the final step in Interrelate's FDR process, where both parents and the FDRP work together in a session, normally scheduled to last up to three hours. FDR sessions can be conducted by one FDRP, or by two FDRPs using a co-mediation model.

If parents reach agreement, a decision is made on whether that agreement will be oral or written, and if it will become a Parenting Plan, the criteria for which having been earlier explained to the parents. If parents reach an agreement, a 'genuine effort' certificate can be issued if requested by the parents, provided the request is made no more than 12 months after the FDR session.

An alternative to a 'genuine effort' certificate is a 'non-genuine effort' certificate, which is issued by the FDRP if it is assessed that either one or both parents have not made a genuine effort in their participation in the FDR process. It is a matter of professional judgement by the FDRP as to whether a 'non-genuine effort' certificate is issued.

Throughout the FDR session, the FDRP(s) continually assesses if it is appropriate for the FDR process to continue and, in certain circumstances, a decision may be made for the session to be discontinued and an 'inappropriate for FDR' certificate issued.

2.2 Section 60I Certificates: Distribution by time and location

Table 2.1 sets out the number of cases across Interrelate where a certificate was issued, according to year. This table suggests a slight but steady increase in the number of s. 60I certificates issued: from 1,716 in the 2011–12 financial year to 2,042 in the 2014–15 financial year. (But it is important to note that the 2014–15 data represent a break in series because of the use of a different data extraction method.)

Regional and temporal differences were also evident. For example, in the first three financial years of data,³² 'refusal or failure to attend' certificates were more likely to be issued in Newcastle and the Hunter Valley than in Far North Coast (2011–12: 33% vs. 15%; 2012–13: 36% vs. 20%; 2013–14: 30% vs. 10%). Both of these regions have relatively large client bases. Another example is 'genuine effort' certificates in Upper Mid North Coast and Greater Sydney regions, with 'genuine effort' certificates more likely to be issued in the Upper Mid-North Coast in the first

three financial years of data (2011–12: 61% vs. 40%; 2012–13: 57% vs. 43%; 2013–14: 52% vs. 42%). Aside from demographic differences, no obvious reason for these regional variations suggests itself, and this is not something the present study was designed to explore.

Across the four financial years of interest (2011–12 to 2014–15) the number of cases amounted to 10,848

and the number of s. 60I certificates issued across this period was 7,810 certificates. This suggests that of cases presenting for family dispute resolution, almost three quarters (72%) received a certificate across the four-year period. It should be noted that this incorporates all certificate categories including ‘genuine effort’ certificates, where clients may also reach a parenting plan/agreement, in part or in full.

Table 2.1 Certificate Category by Interrelate Location by Year of Issue (%)

Section 60I certificate category	Central Coast	Far North Coast	Newcastle & Hunter	Upper Mid North Coast	Greater Sydney	Central West	Port Macquarie	Taree	Grand Total
2011–12 FY	(n=216)	(n=331)	(n=500)	(n=180)	(n=261)	(n=120)	(n=23)	(n=85)	(n=1,716)
Attended – genuine effort	35	50	35	61	40	68	39	52	45
Attended – not gen effort	2	3	0	–	–	–	4	1	1
Refusal or failure to attend	30	15	33	16	22	22	35	35	25
Inappropriate for FDR	33	32	31	23	38	10	22	12	29
Total	100	100	100	100	100	100	100	100	100
2012–13 FY	(n=309)	(n=327)	(n=528)	(n=180)	(n=217)	(n=170)	(n=59)	(n=196)	(n=1,986)
Attended – genuine effort	34	42	32	57	43	63	32	32	40
Attended – not gen effort	3	1	1	–	–	–	–	1	1
Refusal or failure to attend	31	20	36	16	17	21	39	46	28
Inappropriate for FDR	32	37	32	27	41	16	29	22	31
Total	100	100	100	100	100	100	100	100	100
2013–14 FY	(n=292)	(n=276)	(n=581)	(n=155)	(n=384)	(n=145)	(n=102)	(n=131)	(n=2,066)
Attended – genuine effort	58	55	37	52	42	62	46	57	48
Attended – not gen effort	1	1	–	–	1	–	–	–	0
Began FDR but inappropriate	4	1	3	1	8	3	6	2	4
Refusal or failure to attend	22	10	30	13	26	17	30	22	23

Table 2.1 continued

Section 60I certificate category	Central Coast	Far North Coast	Newcastle & Hunter	Upper Mid North Coast	Greater Sydney	Central West	Port Macquarie	Taree	Grand Total
Inappropriate for FDR	15	32	31	34	23	19	18	18	25
Total	100	100	100	100	100	100	100	100	100
2014–15 FY#	(n=405)	(n=310)	(n=368)	(n=240)	(n=265)	(n=237)	Port M/ Taree (n=223)	(n=2,042)	
Attended – genuine effort	25	13	18	23	22	38	25	23	
Attended – not gen effort	1	1	–	1	–	–	–	1	
Began FDR but inappropriate	8	2	3	3	2	1	3	4	
Refusal or failure to attend	46	24	39	28	30	31	34	34	
Inappropriate for FDR	21	60	40	46	46	30	38	39	
Total	100	100	100	100	100	100	100	100	
Section 60I certificate category	Central Coast	Far North Coast	Newcastle & Hunter	Upper Mid North Coast	Greater Sydney	Central West	Port Macquarie	Taree	Grand Total
2011–12 FY	(n=216)	(n=331)	(n=500)	(n=180)	(n=261)	(n=120)	(n=23)	(n=85)	(n=1,716)

Notes: n = number of cases. # Break in series: the data reported for 2014–15 FY were extracted using a different method to that used for the three prior years.

2.2.1 Section 60I certificates and parenting agreements

The primary goal of FDR is for parents to come to an agreement on the arrangements for their children. Of course, it may not be possible for parents to reach agreement.

The latter turned out to be the most likely outcome for many families issued with a s.60I certificate between 2011 and 2015, with 84% of cases not reaching agreement on their parenting dispute; around 10% reached a partial agreement; 5% achieved full agreement (data not shown). It is noteworthy that where a certificate was issued for 'genuine effort', 44% of cases did not reach agreement; 36% reached a partial agreement; and 20% achieved full agreement (data not shown).

2.3 Interrelate family dispute resolution practitioner characteristics

Interrelate operates throughout NSW, in regional and country areas and also in the Sydney metropolitan area. Since 1990 Interrelate has provided federally-funded Family Dispute Resolution (i.e., mediation) services in areas such as Newcastle, Coffs Harbour, and Lismore. Until 2006 these services were delivered in conjunction with a range of other services designed to assist and support couples and families experiencing relationship difficulties.

In 2006, Interrelate was one of the first organisations to receive funding from the Australian Government Attorney-General's Department to operate two

Family Relationship Centres (FRCs) as part of the government's changes to Australia's family law system to provide tailored, professional support for families. In July 2006, Interrelate opened FRCs in Lismore and Sutherland, and in 2007 and 2008 a further five FRCs commenced operations on the Central Coast, Dubbo, Newcastle, Taree, and Coffs Harbour. As a consequence of this expansion Interrelate has brought together a team of over 40 FDRPs to deliver family dispute resolution services.

All FDRPs employed by Interrelate are practitioners registered with the Australian Government Attorney-General's Department, having satisfied the necessary accreditation requirements as set down in the Family Law (Family Dispute Resolution Practitioners) Regulations. As is the case in most FDR practices in Australia, in Interrelate there is an over-representation of women working as FDRPs: 78% of FDRPs are female.

Based on the funding for each FRC and separate family dispute resolution services, the full-time equivalent number of FDRPs in a region ranges from 7.3 to 3.0. FDRPs can fulfil managerial roles, or perform roles as clinical supervisors or senior practitioners. Most FDRPs employed by Interrelate work part-time. In accordance with their weekly hours of work, FDRPs deliver services to clients satisfying sector standards relating to time spent in face-to-face client interaction, and to the number of cases being managed.

2.3.1 FDRP qualifications and experience

In the vast majority of cases, family dispute resolution practitioners working for Interrelate have had prior careers before moving into FDRP roles. A number of FDRPs have previously worked in the community sector as counsellors, project workers, or administrative officers, while others have worked as teachers, lawyers, nurses, or in the police force. Although non-family dispute resolution qualifications are diverse, the majority of FDRPs hold a qualification in either law (28%) or social sciences (38%).

FDRPs may join Interrelate with prior FDRP experience at another similar organisation, or they may join having recently secured their registration with the Federal Attorney-General's Department. As might be expected in a large FDR practice that has been operating for over 25 years, there is a spread of experience among the FDRPs in Interrelate. Specifically, just under a quarter (23%) have less than three years of experience; just over a quarter (27%) have 3–5 years' experience; just under a third (30%) have 6–8 years' experience; and one-fifth (20%) have 9 or more years' experience.

2.3.2 FDRP characteristics and the issuance of section 60I certificates

We examined the personal characteristics of FDRPs to determine whether any FDRP demographic factors might be related to the category of s.60I certificate issued. Table 2.2 depicts demographic characteristics of gender, training background, and years of experience, by certificate category.

There were no discernible differences in the issuing of s.60I certificates between male and female FDRPs, or between legally qualified and non-legally qualified FDRPs. However, the most experienced practitioners were more likely than those with less than three years of experience to issue 'inappropriate for FDR' certificates. They were also less likely to issue certificates for refusal to attend or failure to attend.

One possible explanation is that as FDRPs become more experienced, they become more skilful in engaging parents in the process. Moreover, highly experienced FDRPs are likely to be better able to assess risk and manage any client behaviours intended to undermine the process or their ex-partner.

In summary, the administrative data suggest that practitioners' gender and training background were largely unrelated to the category of s.60I certificates issued. However, there were indications that years of experience was related to the category of certificate issued. Might client-related factors be related to the category of certificates issued? We explore this question next.

Table 2.2 FDRP Characteristics by Category of s.60I Certificate Issued, 2011–15

FDRP characteristic	Category of Section 60I Certificate Issued (%)					
	Refusal or failure to attend	Inappropriate for FDR	Genuine effort	Non-Genuine effort	Began FDR – inappropriate to continue	Grand Total
Gender						
Male	34	41	20	1	4	100
Female	29	47	21	1	2	100
Training						
Legally Qualified	23	48	26	1	2	100
Non-Legally Qualified	32	44	20	1	3	100
Years of experience						
0–2	41	33	23	0	3	100
3–5	32	45	20	1	2	100
6–8	32	42	22	1	3	100
9+	21	55	19	1	4	100

Source: Interrelate administrative data analysed by Interrelate.

Notes: $n=60$ practitioners.

2.4 Interrelate FDR client characteristics

It is worth noting that the data presented above (Table 2.1) regarding certificate category are extracted from a global administrative database, whereas the following section, which reports on characteristics of clients who received certificates, is drawn from specific service files and, as such, numbers across tables vary. The unit of analysis in this section is an FDR client. (Appendix G contains a brief description of the Interrelate administrative database.)

2.4.1 Demographic profile and key characteristics of all FDR clients

FDR clients are diverse and often present with multiple and complex needs that compound the difficulties of their separation and lead them to the point where a neutral third party is required to help them reach agreement over their parenting arrangements. The characteristics of the broader FDR client group are described below and, where possible, comparisons are made with data for the broader NSW region.

Slightly more Interrelate FDR clients are female (52%) than male (48%), with the former more likely to initiate the FDR process (i.e., designated as ‘Parent A’ in the administrative database). Clients are aged primarily in their 30s (34%) and 40s (35%), as would be expected given that their purpose in coming to FDR is to make arrangements for their children. Some older clients may be engaging in FDR in relation to grandchildren. Income is generally below the state average income of \$82,108 per annum (Australian Bureau of Statistics, 2015) and most earn less than \$50,000 per annum. Although not directly comparable, earnings are not dissimilar to the NSW population. The level of education completed by Interrelate clients varies from the broader state demographic; in particular, a much smaller proportion of clients have completed Years 11 and 12 (19.5 vs. 53.5%), but a slightly higher proportion have completed Years 9 and 10 (38.3 vs. 31.4%). Finally, at almost 5%, the overall proportion of Aboriginal and Torres Strait Islander (ATSI) clients is almost twice the proportion in the NSW population (2.5%) (Australian Bureau of Statistics, 2011 Census data). On a regional level, the percentage of Aboriginal clients ranges from 1.3% in the Greater Sydney region to 15.4% in the Central and Far West.

Referral sources

FDR clients come into the service from a wide range of referral sources, including community organisations, court and court-affiliated services, government departments and agencies, and other family and mental health services. In the reference period, the majority of clients were self-referred (29%); a further 19% of clients were invited to the process following their former partner initiating FDR at a Family Relationship Centre. Other significant pathways to FDR were via private legal practitioners (12%), and family/friends/neighbours (7%).

Presenting needs

The lives of FDR clients can be complex, with several demographic, financial, health and emotional factors contributing to the intensity and stress of the separation. This potential complexity is evident in the number of presenting needs reported by clients to practitioners at intake and throughout the FDR process.³³ Across the reference period, the number of presenting needs ranged from 0 to 35, with an average of 11.3 needs.

2.4.2 A comparison of the key characteristics of clients who received a s.60I certificate compared to clients who did not receive a s.60I certificate

Do those who receive s.60I certificates differ demographically from those who do not receive a certificate? This question is explored using the Interrelate administrative data.³⁴ These data need to be treated with some caution given the break in series in 2014–15.³⁵

Overall, there were no clear differences between FDR clients who were issued with a s.60I certificate and those who were not with respect to the age (Appendix Table 10.1), income (Appendix Table 10.2), education (Appendix Table 10.3), and Aboriginal and Torres Strait Islander status (Appendix Table 10.4). The one variable that showed some variation is disclosure of safety concerns during intake (Appendix Table 10.5). Initial safety concerns expressed by a client at intake are more likely to result in that client being issued with a s.60I certificate.

2.4.3 Demographic characteristics of clients receiving each category of certificate

This section examines the characteristics of clients who were issued with a certificate to explore whether certain categories of certificate are issued to clients in particular demographic groups.

Age

Table 2.3 examines the various categories of s.60I certificate by age group of clients.³⁶

The pattern for 'non-genuine effort' certificates is clearly different to that of the other certificates: parents aged 30–39 were nearly twice as likely as those aged 40–49 to be issued with a non-genuine effort certificate (50% vs. 27%). However, given only 36 such certificates were issued across the reference period, it is not possible to be definitive in commenting upon these percentages. Overall, the table shows a similar pattern of certificates being issued for each age group.

Gross personal income

Table 2.4 cross-tabulates the various categories of s.60I certificate with gross personal income. As income decreases, the likelihood of being issued with an 'inappropriate for FDR' certificate increases (e.g., from 5% for those on incomes above \$110,000 to 43% for those earning less than \$25,000). Those earning less than \$25,000 were also the most likely to be issued with a 'no longer appropriate' certificate.

Education

Clients are asked about the highest level of education they have completed.

It can be seen from Table 2.5 that those who had up to Year 10 education were more likely to be issued with a 'refusal or failure to attend' certificate than those with a Year 12 education (44% vs. 19%). They were also more likely to be issued with an 'inappropriate for FDR' certificate (44% vs. 3–35%). By contrast, those with a tertiary degree were the most likely group to be issued with a 'genuine effort' certificate (43% vs. 4–34% in the other education categories). These data, along with the income data in the previous table, point to a socio-economic status (SES) effect. Higher levels of education are likely to be related to higher income and more developed communication skills.

Table 2.3 Categories of s.60I Certificate by Age (n and %)

Age group	Category of Section 60I Certificate Issued					Total	n
	Refusal or failure to attend	Inappropriate for FDR	Genuine effort	Non-genuine effort	Began FDR – inappropriate to continue		
18–29	297	328	164	3	26		818
	15.3	11.6	10.2	8.3	12.8	12.4	
30–39	753	888	546	18	78		2,283
	38.8	31.4	34.0	50.0	38.2	34.6	
40–49	666	1,145	689	10	80		2,590
	34.3	40.5	43.0	27.8	39.2	39.2	
50–59	164	391	180	5	14		754
	8.5	13.9	11.2	13.9	6.9	11.4	
60–69	59	72	25	0	6		162
	3.1	2.6	1.6	0.0	2.9	2.4	
Total %	100	100	100	100	100	100	6,607
Total n	1,939	2824	1604	36	204		

Source: Interrelate administrative data (2011–15) analysed by Interrelate.

Table 2.4 Categories of s.60I Certificate by Personal Income (n and %)

Gross Personal Income	Category of Section 60I Certificate Issued					Total	n
	Refusal or failure to attend	Inappropriate for FDR	Genuine effort	Non-genuine effort	Began FDR – inappropriate to continue		
\$0 – \$25,000	522	1,047	472	11	63		2,115
	37.1	43.0	31.3	31.4	36.0	38.1	
\$25,001 – \$50,000	492	788	534	13	45		1,872
	35.0	32.4	35.4	37.2	26.0	33.7	
\$50,001 – \$110,000	321	475	390	9	50		1,245
	22.8	19.5	25.9	25.7	28.8	22.4	
\$110,001+	71	124	112	2	16		325
	5.1	5.1	7.4	5.7	9.2	5.8	
Total %	100	100	100	100	100	100	5,557
Total n	1,406	2,434	1,508	35	174		

Source: Interrelate administrative data (2011–15) analysed by Interrelate.

Aboriginal and Torres Strait Islander

Of Interrelate FDR clients in the reference period who were issued a s.60I certificate, five per cent identified as Aboriginal, Torres Strait Islander, or both. Table 2.6 indicates little variation across certificate category for those who identified as Aboriginal, Torres Strait Islander, or both (~3–6% received different types of certificates).

Safety Concerns

As mentioned previously, safety issues (disclosed either at intake or in later sessions) are a significant consideration in determining whether FDR is appropriate.

For many cases the initial disclosure by clients is further assessed by FDRPs in the subsequent sessions to gauge the level of safety for clients.

Table 2.5 Categories of s.60I Certificate by Education (n and %)

Education Level	Category of Section 60I Certificate Issued					Total	n
	Refusal or failure to attend	Inappropriate for FDR	Genuine effort	Non-genuine effort	Began FDR – inappropriate to continue		
Primary	33	63	56	0	1		153
	2.3	2.6	3.8	0.0	0.6	2.8	
Secondary Year 10	621	1,059	500	13	50		2,243
	44.0	43.7	33.5	40.6	28.4	40.5	
Secondary Year 12	265	456	299	6	34		1,060
	18.8	18.8	20.0	18.8	19.3	19.2	
Tertiary (University or Institutes)	492	844	638	13	91		2,078
	34.9	34.9	42.7	40.6	51.7	37.5	
Total %	100	100	100	100	100	100	5,534
Total n	1,411	2,422	1,493	32	176		

Source: Interrelate administrative data (2011–15) analysed by Interrelate.

Table 2.6 Categories of s.60I Certificate by Aboriginality (n and %)

Aboriginality	Category of Section 60I Certificate Issued					Total	n
	Refusal or failure to attend	Inappropriate for FDR	Genuine effort	Non-genuine effort	Began FDR – inappropriate to continue		
Aboriginal*	114	149	80	1	10		354
	5.7	5.3	5	2.6	5.2	5.4	
Not Aboriginal	1,882	2,645	1,506	37	182		6,252
	94.3	94.7	95	97.4	94.8	94.6	
Total %	100	100	100	100	100	100	6,606
Total n	1,996	2,794	1,586	38	192		

Source: Interrelate administrative data (2011–15) analysed by Interrelate.

Notes: * = includes clients who identified as Aboriginal, Torres Strait Islander, or both.

Decisions on whether and which particular certificate should be issued are made after this more detailed assessment has occurred. Additionally, there are some cases where, after thorough assessment and consultation with the parent(s) who have raised some concern, parents can make an effort to reach an agreement through shuttle or legally-assisted FDR; if the effort is ultimately unsuccessful, they can still be issued with a 'genuine effort' certificate. This is also reflected in the data below.

Table 2.7 indicates that only 5.8% of clients with a s. 60I certificate had their file flagged with safety concerns.³⁷ For this group, 24% received a 'refusal or failure to attend' certificate, and 42% were deemed inappropriate for FDR (as might be expected). Of those with a safety flag where FDR was continued, 86% were deemed to make a 'genuine effort' to resolve their dispute.³⁸

Overall, of those who reported safety concerns, only 4.2% were 'no longer appropriate to continue' after commencement of mediation. Another 29% were deemed to make genuine effort. These data point to nuanced judgement being exercised by FDRPs.

2.5 Summary

Interrelate's model of family dispute resolution is intended to support parents in their efforts to reach agreement regarding parenting arrangements; it seeks to achieve this by focusing their attention on their children's best interests, and by helping

them learn to communicate in a more business-like, effective manner. If, at any point in the process, it becomes apparent to the FDRP that FDR is inappropriate or unsuitable for the parents, then a s. 60I certificate will be issued. Parents then face a number of options in achieving some sort of workable arrangement (see Chapter 4 for common family dispute resolution trajectories following issue of a certificate).

At Interrelate, those issuing s. 60I certificates tend to have social science backgrounds and have been in the role for between three and eight years. FDRP experience and, to a lesser extent, background may have an impact on the category of certificate issued, although more data are required to understand the extent of any impact.

Clients engaging in FDR tend to be aged in their 30s and 40s, with below-average incomes and limited education. In some regions Aboriginal and Torres Strait Islanders are over-represented. Although clients' pathways to FDR were diverse, they typically found Interrelate themselves or via their ex-partner, or through legal practitioners and social networks. There are slight differences in the number of reported presenting needs within regions, suggesting further complicating factors impacting on client circumstances and the process of FDR.

Comparing the characteristics of clients who were issued with a s. 60I certificate with those who were not indicated no clear differences between these two groups with respect to their age, education, and ATSI status. Two variables, namely earnings and

Table 2.7 Categories of s.60I Certificate by Safety Concerns (n and %)

Safety Concerns	Category of Section 60I Certificate Issued					Grand Total
	Refusal or failure to attend	Inappropriate	Genuine effort	Non-genuine effort	Began FDR – inappropriate to continue	
No	1,731	1,637	2,725	37	117	6,247
	27.7%	26.2%	43.6%	0.6%	1.9%	100%
Yes	85	153	105	2	15	360
	23.7%	42.4%	29.1%	0.6%	4.2%	100%

Source: Interrelate administrative data (2011–15) analysed by Interrelate.

Notes: n=6,607

the disclosure of initial safety concerns by clients, revealed minor differences. Those who earned more were slightly less likely to be issued with a s.60I certificate. By contrast, as might be expected, those disclosing safety concerns at intake were slightly more likely to be issued a s.60I certificate.

Overall, client demographic characteristics had little association with the category of s.60I certificate an FDRP issued. There was some indication of differences between the highest and lowest earnings groups, and that a tertiary education was related to receiving a 'genuine effort' certificate, but little association was apparent for other demographic characteristics.

3 Section 60I Certificates: Family Dispute Resolution Practitioners' views

Wendy Bonython, Elizabeth Keogh and Bruce Smyth

This chapter presents qualitative data from semi-structured telephone interviews with 27 FDRPs employed by Interrelate. It begins by outlining the methodology and participant recruitment strategy, and the questions asked. Detailed analysis of participants' responses then follows.

3.1 Methodology

3.1.1 Recruitment

Participants were recruited by Interrelate from its employee database. The researchers drafted an initial approach email for distribution to FDRPs via Interrelate's internal FDRP email list, seeking expressions of interest to participate in the study. FDRPs were invited to contact the researchers directly to maintain confidentiality around their participation. Of the 41 FDRPs employed by Interrelate, 27 completed interviews – i.e., two-thirds participated.

3.1.2 Participants

Participating FDRPs included both part-time and full-time employees, as well as several who worked for other FDR providers, or in private practice, in addition to their employment at Interrelate (either concurrently or previously).³⁹ The sample included female ($n=22$) and male ($n=5$) FDRPs. Their length of experience varied ($M = 6$ years 5 months; range: ~0.5 to 20+ years). Prior career backgrounds also varied, with a majority ($n=15$) possessing a social science background. A small minority ($n=7$) had a legal background, including some who held this in combination with a social science background. Some practitioners also cited career backgrounds other than law or social

science. The participants resided and worked at a broad range of sites operated by Interrelate throughout New South Wales, and had undertaken FDR and mediation training with a dozen different training providers.

3.1.3 Interview design and content

The semi-structured interview guide was developed by the research team specifically for this investigation (see Appendix C). Interrelate provided feedback on the questions, after which a pilot test of the survey was conducted with 3 FDRPs who were not, and had never been, employees of Interrelate.

Questions were open-ended, allowing FDRPs to recount their own experiences and provide examples of cases in which they had been involved. A final open-ended question invited FDRPs to raise any issues they felt had not been adequately canvassed during the interview, and provided participants with an opportunity to debrief.

The interview guide comprised five sections, generally reflecting the categories of certificate available to FDRPs for issuance under the Family Law Regulations:

- I 'Genuine effort'
- II 'Not genuine effort'
- III 'Not appropriate for FDR'
- IV 'Refusal or failure of a party to attend'
- V General questions

Each of the first four sections asked participants about their experiences in issuing certificates of the respective category, including perceived frequency, circumstances under which they had, or would consider, issuing a certificate of that class,

and any particular challenges associated with that category of certificate. In addition, section III – ‘Not appropriate for FDR’ – required participants to consider Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*, and the impact those regulations have on their practice. Section 5: ‘General questions’ canvassed a range of other issues, including: resolution of cases where the choice of category was difficult, peer and superior mentoring and support, organisational process associated with issuing certificates, suggestions for reform, and applicability of the ‘best interests of the child’ test to FDR.

There were 16 questions asked throughout the five sections of the interview. In addition, practitioners were asked some basic demographic information: how long they had been practicing as FDRPs; who provided their training in FDR; and what their employment and study background prior to becoming an FDRP had been.

3.1.4 Recording, transcription, and analysis

All interviews were conducted by the same interviewer (Bonython). They were audio recorded with participants’ permission, and transcribed. Verbatim transcripts were subject to thematic analysis in hard copy, and then coded using industry-standard qualitative analysis programming software *HyperResearch*. Thematic analysis was performed independently by three members of the research team (Bonython, Smyth, and Keogh). Each team member’s analyses were discussed at a meeting, and then collated by Bonython. Significant themes are summarised below.

3.2 Results

The thematic analyses of the FDRP interviews are presented in nine sections.

FDRPs do not necessarily issue a s. 60I certificate to every client. In the first section of the results (3.2.1) we discuss the factors that influence FDRPs’ threshold decision about whether to issue a certificate at all.

In the next four sections (3.2.2–3.2.5) we explore issues that arise in the decision-making of FDRPs when determining which category of certificate to issue. Specifically, in Section 3.2.2, we present findings about decisions to issue ‘refusal or failure to attend’ certificates. We then present the findings about the issue of ‘inappropriate for FDR’ certificates and ‘no longer appropriate’ certificates (3.2.3). Section 3.2.4 reports observations from FDRPs regarding the potential for variation of assessment of cases between, for instance, ‘refusal or failure to attend’ certificates and ‘inappropriate for FDR’ certificates. In the final of these four sections (3.2.5), we present findings on the issuing of ‘genuine effort’ and ‘not genuine effort’ certificates.

The subsequent two sections (3.2.6–7) reports on two influences on decision-making that were raised by FDRPs in response to a range of questions in the survey. The first is the role of intuition and professional experience (3.2.6); the second relates to considerations about the best interests of children (3.2.7).

There was considerable commentary from FDRPs concerning the formal and informal peer support and mentoring processes that assist them in decision-making about s. 60I certificates. This commentary is presented in Section 3.2.8.

In the final section of the results (3.2.9), we summarise FDRPs’ comments about their perceptions of the impact of the certificate process, and other certification issues the FDRPs raised.

3.2.1 When FDRPs issue a certificate

As explained in Chapter 1, s. 60I(8) stipulates that an FDRP ‘may’ issue a certificate. Consistent with the discretionary nature of this clause, the FDRPs who participated in this study do not all automatically, or always, issue certificates to clients, and there is significant variation in the factors influencing their decision whether or not to issue a certificate.

Do practitioners only issue certificates if a client explicitly asks for one?

A number of FDRPs said that they only issue s. 60I certificates when the clients explicitly ask for one.

One practitioner stated simply:

I wouldn't issue it unless either party requested it.⁴⁰

Some of these practitioners noted that clients are made aware of the option to request a certificate, with one stating:

I do make them aware of it as part of our pre-mediation process.⁴¹

Another FDRP explained that their practice varies depending upon the category of certificate, stating:

they would need to request a clause A certificate, but if it's assessed as inappropriate, or at times if they've made a genuine effort but just can't come to any resolution, or if I've terminated the session, then I automatically issue them both with a section 60I certificate.⁴²

Do practitioners issue certificates even when parties have reached an agreement?

A number of FDRPs spoke of issuing certificates in cases where agreements had been reached, with one practitioner referring to clients

...who've developed a parenting plan and found down the track it's not working and come back and ask for a certificate.⁴³

Do practitioners issue certificates after speaking to only one party?

'Genuine effort certificates', 'Not genuine effort certificates' and 'No longer appropriate certificates' by definition can only be issued when both parties have participated in the process and hence cannot be issued without the practitioner speaking to both parties.

However, 'refusal or failure to attend' certificates and 'inappropriate for FDR' certificates can potentially be issued after interaction with only one party to a dispute. As noted in Chapter 3, the four-step FDR process employed by Interrelate begins with an individual 'Needs Assessment' of each party.

Many FDRPs stated that it was very unusual to issue an 'inappropriate for FDR' certificate without having conducted a Needs Assessment with both parties.

As one FDRP explained:

Generally speaking we try to do the assessment with both parents before we assess it as 'inappropriate', but in some circumstances the information that we're given in the assessment with the first parent so clearly makes it not appropriate that there would be no point in proceeding to an assessment – or it might even be unsafe to proceed to an assessment with the second parent for the first parent: for example, in situations where there's family violence or there's child safety issues that are revealed to us by the first parent, then I would be more likely to assess that it's inappropriate and not proceed to an assessment even with the Parent B.⁴⁴

The reasoning behind the approach of generally conducting interviews with both parties was explained by one FDRP as follows:

If we're neutral well then we have to at least extend the invitation to the other parent.⁴⁵

(In Section 3.2.4 we discuss the potential for variation in assessment when 'refusal or failure to attend' certificates are issued with minimal or no engagement with the other party.)

Discussions with third parties

Some FDRPs mentioned speaking (with the client's consent) to other professionals when making a determination about the issue of a certificate. One FDRP stated:

Sometimes – well rarely – I can gather evidence. For example, a very basic case would be where there are some child safety issues and Child Protection is involved...I would get permission – I wouldn't need to get that but I would ring because we ask that question if Child Protection has ever been involved and I have had time to actually ring the Child Protection and ask for some clarification if an investigation was current and the child was at risk, so I could make that assessment.⁴⁶

Another circumstance where consultation with another professional might occur was explained as follows by one practitioner:

[I]f I have questions about the competency of the client, I normally get a written authorisation to make contact with their counsellor, psychiatrist, or whoever. And it's then through that that I'll then make a decision as to whether or not mediation can take place.⁴⁷

Do FDRPs' personal safety impact decisions to issue certificates?

The safety of themselves and other staff were sometimes cited as a contributing factor in an FDRP's decision-making to issue a s. 60I certificate. As one FDRP explained:

There's been a few occasions in the last 12 months as a manager where I've had to see a client who is extremely affected [by crystal methamphetamine – i.e., 'ice'], who is angry, who is violent, who is a risk to staff, and what they want is a s. 60I and I will give them a piece of paper because I think that piece of paper is less valuable than me.⁴⁸

Decisions not to issue a certificate

One FDRP stated:

I don't have to issue a certificate, and I have exercised that right a half a dozen times.⁴⁹

This FDRP provided two examples of contexts in which she had refused to issue a certificate, stating:

I will not issue the certificate when the conversation I have with one party indicates that they're using the process to continuously abuse the other.⁵⁰

And:

I suppose there are some instances where I will sometimes not issue a certificate and ask them to go and seek counselling and come back, when the counsellor ticks the box to say that they can come back.⁵¹

These three comments, of course, represent the practice of a single FDRP, and hence this approach might be isolated.

A number of FDRPs spoke of decisions to proceed with FDR, rather than issuing an inappropriate certificate. These are discussed below in Section 3.2.3.

3.2.2 'Refusal or failure to attend' certificates

As detailed in Chapter 1, one category of certificate that an FDRP can issue is a certificate stating that a party did not attend FDR as a result of the other party's (or both parties') refusal or failure to attend.⁵² It also detailed requirements within the *Family Law (Family Dispute Resolution Practitioner) Regulations 2008* regarding minimum attempts to contact the other party that are required prior to the issue of a 'refusal or failure to attend' certificate.⁵³ Chapter 2 details Interrelate's practice of three minimum attempts to contact the other party, which is more onerous than those set out in the *FDRP Regulations*.

There were two issues in relation to these certificates that were raised by multiple FDRPs. The first of these was logistical, and concerned the difficulties associated with contacting the other party.

One FDRP commented:

[T]here's lots of issues I confront: one is contacting the other party. Increasingly I am finding Party A doesn't have the postal address for Party B so that raises all sorts of questions about being able to contact Party B.... Quite often Party A just doesn't have the contact details to where Party B's gone or is, and the guidelines say we can't issue a Section 60I just because we haven't got the contact details.⁵⁴

Another stated:

We're relying on Party A to give us correct contact information for the other party. We don't cross-reference or investigate or anything like that, so if Party A wants the certificate but they don't want to participate in mediation what they could do is they could give a false address or maybe even an address of someone they

know and if we send the two letters to that address they can get a certificate and kind of circumvent the process.⁵⁵

The second commonly raised issue was frustration with clients who appeared to be stalling. As one practitioner explained:

It's really difficult when you've got somebody who quite obviously does not want to participate in mediation.... They'll take ages to respond to your letters or invitations. When they do respond they'll make an appointment for two months later and then they'll reschedule that appointment for another two months or whatever it is, but you can't issue the certificate because they've got an appointment booked in. So that is a real challenge with those cases.⁵⁶

There were other challenges raised by a small number of FDRPs. The first of these was a practitioner who reported discovering that a person refusing to participate was doing so on the basis of a misconception that the FDRP would be swayed by the other party, as a result of the other party having initiated contact. This practitioner stated:

I've had one woman who I contacted to say I'm not coming to you because you've already seen him, and you'll be biased.⁵⁷

Another FDRP spoke of struggling to decide if a 'refusal or failure to attend' certificate was warranted when a person refused to participate in a part of the four-step process.⁵⁸ The FDRP pondered:

[I]f the party comes to the intake but then refuses to do the three-hour educative component, does that mean we issue a refusal / failure to attend?⁵⁹

This same FDRP also queried whether rigidity about the issues a person was willing to discuss would warrant the issue of a 'refusal or failure to attend' certificate, stating:

Party B will try and put an agenda on the mediation, try and impose restrictions on what the mediation will cover, so that begs the question: 'Well is that a refusal?'.⁶⁰

3.2.3 'Inappropriate for FDR' certificates and 'No longer appropriate for FDR' certificates

In Chapter 1 we explained that prior to commencing FDR, an FDRP must determine if FDR is appropriate; the factors that must be taken into account in making that determination are set out in subregulation 25(2) of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth). That chapter also explained that FDRPs must not provide FDR if it is determined to be inappropriate and that they must terminate FDR if, after commencing FDR, they are no longer satisfied that FDR is appropriate. Chapter 1 further explained that where an FDRP has made a determination that FDR is not appropriate, they may issue a certificate evidencing this.

There are two different certificates – one to be issued when the determination of inappropriateness is made prior to the commencement of FDR, and one to be issued when the determination is made after FDR has started. The distinction between these two certificates is not as clear-cut as one might think, because of uncertainty about whether 'FDR' incorporates the first three steps of the four-step process, or just the joint mediation session which occurs at Step Four. As one FDRP explained:

...it is not clear whether it is the FDR process or the FDR session, so in fact if I were to issue a not-appropriate certificate I would have to do it after the process had begun and after assessment of the parents.⁶¹

A number of FDRPs commented about the ongoing nature of the assessment of the appropriateness of FDR. One candidly articulated this:

Because there are three steps before they go to the actual mediation. So all of those are an assessment and that is quite normal to kind of think 'oh, I'm not sure if it's appropriate' but then you see through the various steps and then make a decision.⁶²

‘No longer appropriate certificates’ are unusual

Overall, Interrelate FDRPs perceive that they issue very few ‘no longer appropriate certificates’. The administrative and survey data support this perception (see Chapters 2 and 4).

Indeed, a number of the FDRPs interviewed stated that they had never issued a ‘no longer appropriate’ certificate. Where FDRPs had issued this certificate, they described the impetus for this decision as the surfacing of significant problematic information during the joint session, a significant change in the behaviour of one of the parties during the joint session, or a new awareness of the relational dynamics between the parties that they had not seen before the joint session. One FDRP provided this example:

It became very apparent to me that as we progressed Dad was becoming more and more agitated, and he actually erupted, so I thought that’s enough, no more, we’re not going any further.⁶³

Another example related to a decline in the mental health of one of the parties. The FDRP stated:

The mother had schizophrenia and she had been fairly stable right through the assessment process, but the day of the mediation obviously was stressful for her and she wasn’t capable of proceeding.⁶⁴

Another FDRP stated:

...most commonly it’s that the balance of power is lost because when we actually get people in tandem, there’s one party that’s actually a real bully that we haven’t been able to pick up prior to that.⁶⁵

Another FDRP stated:

... there was one where a child safety issue came up in the mediation that was quite serious and I hadn’t actually been aware of that.⁶⁶

‘Inappropriate for FDR’ certificates becoming more common

When asked about the frequency with which ‘not appropriate for FDR’ certificates are issued, most FDRPs reported that they are a frequently-issued, if not the *most* frequently issued category of certificate. (This observation is consistent with the administrative and survey data.) Some practitioners perceived that the volume of ‘not appropriate’ certificates issued has increased substantially in recent years, and a number of FDRPs attributed this to an increasingly complex caseload. This FDRP’s statement was typical:

[T]he people that we are getting are presenting with much more complexities now than ever before – so we’re getting a lot more ICE in this particular area, an epidemic which you know severely impacts on people’s capacity to negotiate... also the levels of domestic violence in the [location] is quite high – we have a high rate of removal of children from Family Community Services here too.⁶⁷

Emphasis on ability to negotiate and safety of clients

When asked what generally informs their decision to issue a certificate, most FDRPs identified specific factual matters such as family violence, substance abuse issues, mental health concerns, and child abuse. However, these matters were almost always raised in the context of overarching statements about assessing both the ability of the parties to negotiate freely, and the safety of the parties and children.

One FDRP stated that she:

Makes sure that people are safe. I have to look to see that there is some kind of level playing field in terms of people’s ability to say what they want to say without fear or that they’re not railroaded by the other person.⁶⁸

Another stated:

If the parties are confident in being able to have a discussion with assistance at the same level then I am all for giving it a go.⁶⁹

Another practitioner emphasised safety in particular, stating:

I have to make sure that I'm not putting them in any more harm than when they came in.⁷⁰

Divergent views about when FDR is, and isn't, appropriate

For some FDRPs the presence of some of the factors set out in subregulation 25(2) result in an automatic determination that FDR is not appropriate; although, in relation to family violence, this was typically linked to the perceived severity of the violence.

As one FDRP stated:

[I]f there was severe violence or child abuse attached, for me that's an instant it's not appropriate to go ahead.⁷¹

Some FDRPs spoke of situations in which participation in FDR was clearly not possible and hence a determination that it is not appropriate was easy to make. One FDRP said:

I can think of occasions where someone had a physical incapacity that just would have meant that they couldn't sit still, stand up, do whatever for the period of time it was required for mediation. That person actually went off and did assisted negotiations through solicitors and it never went to court anyway. Mental incapacity – so where somebody just doesn't have the capacity to mediate and on occasions there's been situations where people are so hostile to each other that we can't even get agreement on what day they will come in, and clearly if you can't even get an agreement on what day they will come in they don't have the capacity to do a mediation.⁷²

Many FDRPs did not generally consider factors (such as drug and alcohol abuse, mental illness, or a history of domestic violence) as determinative of a dispute's inappropriateness for FDR. These practitioners often erred on the side of providing FDR, and were often motivated by a perception that the family did not have the financial resources needed to pursue orders in court, or that the court

system would be more damaging than participation in FDR.

One FDRP stated:

I don't like giving people a s. 60I to go to court. I try to push through as far as I can because I think paying the huge amount of money that they have to pay for court – puts more stress on the family and more stress on the kids, and the kids miss out and it just comes back to that all the time. So I will push a bit further than most practitioners to get a result.⁷³

Another FDRP said:

[I]n another context it's: 'Gee, if we don't have a mediation where would this family go?' So in those cases we think maybe it's not really suitable; maybe it is going to be nothing; no outcome maybe, and often it is the case families have no access to legal help. You know they might fall in that crack where they can't afford further legal proceedings but they're not eligible for Legal Aid. Then if there's a question mark 'Can we do anything for that family by going ahead?' even though we might feel we might be – not taking risks, but, well, considering is it worth it, is it worth the energy and that – but usually we'll have a go in that circumstance.⁷⁴

Many FDRPs spoke of using alternate or adapted processes to enable FDR to occur in circumstances which others might characterise as being inappropriate for FDR. As one practitioner stated:

I don't think I've issued a 'not-suitable [for FDR]' certificate. The reason is because I really believe that our organisation is a specialist organisation which should be going out of its way to accommodate people and we have several models we can use and rely on for mediation. If you can't have people face-to-face which I think is the best arrangement, but if there are reasons – one person is too fearful, or the other person is simply clearly too violent –

you can have an arrangement where they talk on the telephone. Or we can do shuttle mediation...we had a telephone mediation where we had each party in separate rooms and a mediator with each party and then halfway through the mediator swapped so we came – went to the other room, and both mediators sat in on the private session with each party. And that was a successful mediation and I'm very pleased about that because the woman involved really didn't want to – she felt too fearful to confront him and be in the same room, so she wanted shuttle mediation and I don't, I'm not a great fan of shuttle mediation. It takes too long and it doesn't properly engage the parties, so she agreed to telephone mediation and it worked and she ended up being quite assertive on the phone about various issues that she wanted addressed and looked at and resolved. And I was very pleased about that.⁷⁵

Another spoke of looking for alternative processes, both within and outside FDR, as an alternative to issuing a certificate for families she believed did not have the resources to seek court orders. She stated:

Sometimes issuing a certificate is not the best thing to do, because practitioners will issue the certificate and then it'll sit there in a drawer and clients do nothing with it. Whereas if we try to do a co-mediation perhaps or a legally assisted mediation or collaborative law, any other way to try and resolve the situation, rather than have the clients go away with a certificate, do nothing with it and their situation becomes worse.⁷⁶

Some FDRPs also spoke of referral to support services such as family counselling, case workers and the like as a means of bringing families to a point where they would be able to participate effectively in FDR, rather than determining that FDR would be inappropriate. One practitioner stated:

It's quite frequently, for example, here that I will have a client that comes in and I'll say to them well it's best if we don't

attempt to do mediation yet. I want you to go and engage in this program or that program and then when you complete that we'll take the next step sort of thing.⁷⁷

Some FDRPs spoke of the challenge of making a decision that FDR would be inappropriate when the families wanted to participate. One stated:

It is hard when parents are disappointed about us saying 'Sorry, we can't give you the service'. But that didn't lead me to change my decision so it wasn't agonising, sometimes it's difficult to communicate with parents about the 'not-appropriate [for FDR]' certificate.⁷⁸

For another FDRP the client's desire to participate caused making the decision itself challenging. She said:

...especially around domestic violence and the party that is the victim is usually saying 'I really don't want to go to court. I want to try and do something. I want to try and make a parenting plan with them, I don't want to go to court, I can't afford to go to court.' That makes it very hard to try and make that decision because you know that they don't have any other options.⁷⁹

Some FDRPs saw the decision about appropriateness of FDR as more a case of determining what would be the best process for the particular family. One FDRP stated:

My view is that we are here to make an assessment about the best dispute resolution process for the clients when they are sitting in front of us, what is the best way that these people can resolve their dispute in the best interests of their child.... I don't see us as a be-all-and-end-all, and I just think there are lots of occasions where it's not suitable.⁸⁰

Another practitioner stated:

I'm not comfortable with the court's response to DV but I don't think that we have the resources or the screening that a court process has to deal with significant domestic violence perpetrators. Because we don't have any decision-making authority or power as well, the most that we can do is get legally-assisted mediation to occur and hope it will assist – but the court has so much more resources available to it that we have to hope that if we set them up with a Community Legal Centre Advocate or we set them up with a Victims' Group, or something like that, that they'll be able to have someone assist them to get those other resources.⁸¹

Or as one FDRP simply put it:

Sometimes it's beyond us. We can't tell people what to do. Some people need to be told by a judge that this is how they have to do it.⁸²

Family Violence and Apprehended Violence Orders

Almost all the FDRPs in the study spoke of conducting FDR with families where there is a history of family violence. As one practitioner stated:

Ninety per cent of the clients if not more that I see will always tell me that there is violence in the relationship, and so then it's a case of weeding out what level of violence, how long, and whether or not the person's capable of coming to mediation.⁸³

For some practitioners it appeared that the threshold was very high for determining that family violence warranted the issue of an inappropriate certificate. As one FDRP explained:

I issue them rarely but it would be in the case of severe, really severe domestic violence and I mean really severe domestic violence or child abuse. That's kind of entrenched stuff.⁸⁴

Another FDRP emphasised the preference of a family violence victim, stating:

Where there's domestic violence it's borderline as to whether it would be suitable but the woman informs me that she doesn't feel okay about mediation then I would issue not appropriate, I wouldn't ever force somebody who's been in a DV situation to enter into mediation.⁸⁵

A few practitioners raised concerns about issuing 'inappropriate for FDR' certificates without being sure of the truth of the family violence allegations. As one FDRP explained:

What made it difficult is that I've listened to a story from one party and not believed it 100%...but I've acted on what I've been told about perhaps domestic violence in the past so I have said it's not appropriate to mediate, but I'm not 100% convinced that that story was actually real.⁸⁶

Apprehended violence orders ('AVO') were raised by a number of FDRPs as a significant factor in their decision-making in relation to whether FDR could be provided. It was clear from some FDRPs' comments that, even in the presence of an AVO, the question of the appropriateness of FDR is sometimes a discretionary matter. As one FDRP stated:

I think that you can still do a parenting agreement when there's an AVO depending on the things that are on the AVO and supervised visits, so something that's supervised – contact often happens in those circumstances. It would be when there's no level playing field, when the person who's the victim is so traumatised that they're not, no matter what you did in terms of trying to level the playing field in the mediation process that that person would have no power.⁸⁷

Some practitioners explained, however, that the matter is more clear-cut where children are included on the AVO, with one practitioner stating:

Interrelate's policy in general, if the children are named on the AVO, is we don't normally proceed.⁸⁸

Interrelate practice on issuing 'inappropriate for FDR' certificates

Many FDRPs spoke of an Interrelate practice of consultation with management prior to the issue of an inappropriate certificate. These comments varied in relation to the degree of compulsion. According to one practitioner:

We would not issue an inappropriate certificate without talking to the Senior Manager of the FDR.⁸⁹

Another FDRP described a far more informal process:

We need to just flag it, and say 'Look I'm going to call this one "inappropriate"... have a quick chat and then my boss will go, 'Yep that's fine', and then we go from there.'⁹⁰

Others spoke of this policy as historical, with one explaining:

A couple of years ago Interrelate asked us to have our managers assess any inappropriate certificates before they were issued, but that isn't the case anymore as far as I'm aware.⁹¹

Reference to Regulation 25(2)

During our interviews, practitioners were asked how often they refer to Regulation 25 of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008*.⁹² Several practitioners, including some with 5–10 years of experience,⁹³ spoke of referring to it frequently, using phrases such as: 'Generally a lot'⁹⁴ and 'All the time'.⁹⁵ Other practitioners spoke of the regulation guiding their thinking, without specific reference. For example, one FDRP explained:

It's uppermost in our minds when determining when it's 'not-appropriate' – even though we don't remember that it's Regulation 25 that we're thinking about.⁹⁶

The extent to which the regulation is in the thought processes of the practitioners was evidenced by the considerable number of practitioners who referred to its presence in their decision-making, even before being asked the question designed to explore this issue.

A few practitioners spoke of the benefits of the final 'catch-all' sub-paragraph of Regulation 25(2), with one explaining:

the last one, any other reason, I mean most reasons would fall into the other categories, but it is good to have that practitioner discretion as well, where you think that this is just wildly not appropriate but it doesn't really fit with the others.⁹⁷

Some practitioners explained that the Regulation assists them in explaining to clients why FDR cannot proceed. For example, one practitioner explained:

I used it to explain to parents why I've made an assessment, because quite often it would breach confidentiality in some way to tell parents the exact reason why I've assessed it as 'inappropriate', so I often refer to that regulation and the examples that it gives there. So then they can sort of see, you know, the overall picture of what we base our assessment of 'inappropriate' on, and the kinds of things without me having to give them an exact reason.⁹⁸

A few practitioners also spoke of a perceived practice, amongst solicitors, of sending clients to obtain an inappropriate certificate, rather than applying to have a case heard without a certificate, pursuant to a s.60I(9) exception.⁹⁹ As one FDRP said:

[S]ometimes I get a little frustrated where it's clearly 'inappropriate' and the solicitor could file for exceptions, but they don't – they automatically send them over to us, so it's sort of time-consuming. But I also understand that for a lot of the solicitors they don't get paid for filing the exemptions if they're going under a Legal Aid [grant] – and that's why they do it [send them over to us]. So that's one thing I find a little bit frustrating, because it's very time-consuming for us, particularly when they tell the client to 'Just go over to the Relationship Centre and get a certificate' – as if we're doling them out at the front desk.¹⁰⁰

3.2.4 Challenges in deciding which certificate to issue

A number of practitioners spoke of instances in which behaviour that on its face appeared to be a refusal or failure to participate concealed circumstances that would make FDR inappropriate. These practitioners emphasised the importance of persisting with clients in an attempt to engage with them, as this would provide the information needed to ensure that the correct category of certificate is issued.

As one FDRP explained:

I've had instances where a party has gone through a lot of litigation and a lot of stress, and then one parent is initiating again and there's a lot of questions around the motive for that. I don't look at that, but the other parent will not have any faith or goodwill in the other parent to trust them, and so the refusal at that point becomes a tricky thing, because unless I get that parent in to talk to me and actually do an intake, my understanding is that I should issue a refusal, when really it might be an inappropriate certificate, but they just don't go to that step. And a lot of people, you know where they've been in significant domestic violence relationships – it might have been six years ago, but it's very real for one of their victims. And you will just get disengagement because they don't want to talk to that other parent – there's too much that's gone on.¹⁰¹

Another practitioner spoke of the particular risk of not considering the implications of issuing a certain category of certificate in family violence situations, stating:

It can be that women who have been in a DV situation are too scared to talk to us, so on those occasions I would try to have that conversation and I would probably issue a 'not suitable' rather than a 'did not attend'.¹⁰²

3.2.5 'Genuine effort' certificates and 'not genuine effort' certificates

As discussed in Chapter 1, where FDR has been able to proceed because it has been deemed appropriate by the FDRP and both – or all – parties have participated, an FDRP is able to provide either of two certificates, specifying that all parties made a genuine effort, or that one or more parties did not make a genuine effort. For either certificate to be issued requires a determination as to whether each of the parties has made a 'genuine effort' and hence the decision-making about these certificates is inextricably interconnected. As mentioned in Chapter 1, there is no legislative guidance as to the meaning of 'genuine effort', although some guidance is provided in the Fact Sheet available on the Attorney-General Department's website.¹⁰³

Overall, FDRPs perceive that 'not genuine effort' certificates are very rarely issued. This view is supported by the administrative data covered in Chapter 2.

From the comments made by the FDRPs, the greater incidence of issuing 'genuine effort certificates', rather than 'not genuine effort certificates' is attributable to a range of reasons.

Impact of the four-step process

For some FDRPs, the decision to issue a 'genuine effort certificate' appears straight-forward. One stated:

If they turn up they get a 'genuine effort' [certificate].¹⁰⁴

This initially appears to be a fairly low threshold for issuing a 'genuine effort' certificate. However, when set in the context of Interrelate's four-step intake process (see Chapter 2) it becomes apparent that rather than merely 'turning up', parties have actively engaged in a sustained, intrusive program with the FDRPs prior to attending the joint session, which arguably justifies the finding that they have made a 'genuine effort'.

One FDRP stated:

Well basically [they've] turned up to the mediation, but then it's taken for granted that they've been through the prior process – the previous process, and arrived at that point, so they turn up and they are reasonably proactive in the mediation.¹⁰⁵

Similar to an earlier observation concerning the likelihood of 'inappropriate' cases being identified during the first three stages of the four-step process, some FDRPs observed that a person unwilling to make a genuine effort would be unlikely to reach the final joint-mediation stage, and hence it is unlikely that a situation would arise in which a 'not genuine effort' certificate would be warranted. One FDRP commented:

...it's just never happened that people did make it to mediation and then, for example, walked out straight away or just refused to participate then and there. So I think for those cases where it would be question-marked, that you should get picked up before the actual mediation session.¹⁰⁶

Many FDRPs described a minimum level of engagement and/or flexibility as a pre-condition to the issue of a 'not genuine effort' certificate. For example:

If they just show up and they're not willing to at least think about it, or engage with what the other parent is talking about, they have this miscommunication, they're not willing to communicate at all with them, then that's not genuine in my mind.¹⁰⁷

Another FDRP was specifically concerned with motivation:

...it's to do with the intent and whether there is a degree of malevolence or intent to subvert the process or undermine the process or the other party, then to me it's a pretty clear line once it's stepped over.¹⁰⁸

In describing minimum engagement, others took into consideration the limitations of the client:

...they've made some attempt to actually negotiate, within their capacity.¹⁰⁹

Belief that 'genuine effort' cannot (or should not) be judged

Some FDRPs expressed the view that it was inappropriate, or impossible, for them to judge whether an individual is making a genuine effort. In some instances, the reason given was the divergence in behaviours evincing 'genuine effort' determined by the varied capacities of clients to participate effectively:

I don't think I'd ever issue a 'not genuine effort' certificate. I find it very difficult to. I think that every person's ability to mediate is different, and it's very difficult to say what a genuine effort is for each individual person. I don't feel comfortable to actually make that decision, so I have never issued a certificate that said 'not genuine effort'.¹¹⁰

A few FDRPs similarly felt that assessing 'genuine effort' is a subjective value judgement outside the scope of an FDRPs role – that it compromises the FDRP's independence and the FDR process as a whole:

I think it actually undermines my mediator role for me to be placing that judgement on a person that somebody didn't make a genuine effort. Because it could come down to me having had a bias or a really bad connection with one of the parties. I'm really careful of that, but I think you can never be absolutely certain that the reason I'd issued a 'non genuine effort' certificate didn't come down to some of those factors – I think he was making a genuine effort now that I think about it, it was just in my opinion a poor effort. But for him it was genuine.... It was genuinely poor but it was still genuine.¹¹¹

Notably, the FDRPs who considered it difficult or inappropriate to assess 'genuineness' resolved this difficulty by erring on the side of assessing 'genuineness' in a positive way, and issuing a 'genuine effort' certificate, rather than erring on the side of a negative assessment of 'genuineness'.

Fear of complaints

A common reason for not providing 'not genuine effort' certificates was the fear of complaints from clients:

[I]t just throws open the door for parents who are quite litigious to make complaints, and it can really stir up – you know really poke the 'ants nest' even in terms of the potential impact on that other parent.¹¹²

Organisational policy

Many FDRPs also cited their understanding of Interrelate practice as a primary reason for not issuing these certificates, with some indicating that the fear of complaints from clients is believed to underlie organisational policy:

Making that decision is hard because we are not supported to do those, to give that reason. It's always been – the fear of the complaint I think.... I could've done a lot more, I'm always advised, even though I know it's my decision, advised that it's not sort of kosher with Interrelate... instead of just saying 'it's up to you, it's your decision and we'll support you', it's [a] 'well it's your decision and you know we don't want complaints' attitude....¹¹³

Another FDRP suggested that Interrelate's practice is not unusual:

[I]t's not to do with this organisation – it's every organisation I've worked with. All have said 'Don't issue those', because there's possible legal fallout and how do you prove it's true? How do you prove that somebody hasn't put in a 'genuine' effort or has put in a 'non-genuine' effort?¹¹⁴

Circumstances when 'Not genuine effort' certificates have been issued

Where FDRPs spoke of issuing a 'not genuine effort' certificate the circumstances have involved a very clear lack of engagement in the process.

For example:

I remember one case in particular where Dad wasn't interested in negotiating, he told me that he came particularly to get a section 60I certificate to give to his solicitor, and he really wasn't interested in negotiating in any way.¹¹⁵

Another FDRP said:

I'm thinking of one case in particular and one of the parties blew up straight away, didn't engage like they said that they were going to, got totally off-track – they were in there to have an argument. They weren't in there to mediate.¹¹⁶

Issuing 'inappropriate for FDR' certificates instead of 'not genuine effort' certificates

A few FDRPs described cases in which they had issued 'inappropriate for FDR' certificates where, arguably, a 'not genuine effort' certificate would have better described the FDR session. For one FDRP, this possible variation was the result of organisational practice:

It's not really a decision because we don't issue 'non-genuine effort'. I would be more likely to go 'genuine effort' or if I've called the mediation because one party just doesn't want to play ball, I just say 'not suitable to proceed' – I use that one.¹¹⁷

Another FDRP's decision was motivated by the interests of the clients:

What I do remember was thinking I really should issue a 'non-genuine effort', but that would just bring them back here, or back through the mediation process somewhere, so I think I made it 'inappropriate'.... For some people you can send them around that roundabout over and over again – it doesn't make any difference. In fact, it'll make the conflict worse.¹¹⁸

Desire to issue ‘not genuine effort’ certificate

A few FDRPs expressed a desire to issue ‘not genuine effort’ certificates:

I’d like to be able to use ‘non-genuine effort’ without the fear it could have some legal fallout for the organisation.¹¹⁹

Another FDRP explained the motivation behind her desire to be freer to issue ‘not genuine effort’ certificates, stating:

I’d like to have a bit more power to say if you don’t come in and make a genuine effort then these are the consequences – not a threat, but just make it clear that one [a non-genuine effort certificate] can be issued.¹²⁰

3.2.6 Intuition and experience

A number of FDRPs described using their intuition and experience in making decisions about the issuing of certificates, particularly in relation to determining whether FDR is appropriate, or deciding to terminate FDR because it has become inappropriate. One stated:

Using all that background and having the ability to pick up on those little nuances that say to me there’s a problem here – I don’t know exactly what it is but I know there’s a problem.¹²¹

Another explained:

You’ve got to go with your gut if you’re feeling that this is not going to be workable.¹²²

3.2.7 ‘Best interests’ of the child

FDRPs frequently referred to considering the interests of children in their decision-making. These comments arose in many parts of the in-depth telephone interviews.

When speaking about decisions regarding the appropriateness of FDR, one practitioner explained:

Sometimes you might want to continue because you think ‘I really want to

help this child’, and that might blur the lines of ‘is it appropriate?’¹²³

Another FDRP, again in the context of considering the appropriateness of FDR, stated:

For me it’s always going to be dictated by what’s going to be in the children’s best interests.¹²⁴

When speaking of a desire to be freer to issue ‘not genuine effort’ certificates, one FDRP spoke of a wish for greater support from management to

...do the right thing by the children. You know there’s a lot to take into consideration about the kids – how’s this going to impact on children?¹²⁵

Another practitioner considered the balancing of autonomy and organisational oversight in decision-making about certificates:

I think as FDRPs we’re given that responsibility to make those decisions and, hopefully, I’d like to think that I do it in the best interests of the child or children, but also [while] thinking of keeping the family unit, with some form of communication that’s going to be reasonably healthy.¹²⁶

3.2.8 Making difficult decisions about certificates

Formal and informal discussions

FDRPs spoke extensively of informal peer-to-peer discussions concerning difficult cases, as well as formal supervision processes. In most interviews these processes were raised prior to the target questions in the interview. As one FDRP observed:

We definitely use a lot of clinical supervision and group supervision to do these decisions.¹²⁷

One particular interchange with a practitioner indicates the ambiguity attaching to notions of formality and informality in professional discussions regarding decisions about certificates:

Interviewer: Are those discussions normally formal or informal?

FDRP: Generally informal

Interviewer: So who would you have those discussions with?

FDRP: I might go to the manager and that might be a bit more formal behind closed doors. And it could be just the way that we're set up and the fact that we're so busy. Basically it's grab someone at their desk and run it by them and go 'what do you think?' It might be more than one person... 'what do you all think of this?' [and we] throw it around. Sometimes we'll do it in case management, so that might be a more formal way of doing it. We'll actually map it on the board, map the issues, map what you've been told, talk about what you're picking up on, and what the impact on the children [might be]. I think we're pretty picky about what we do. People don't make decisions lightly.¹²⁸

Some of the more experienced FDRPs observed they no longer relied as extensively on peer review and mentoring in resolving their own dilemmas as they did early in their careers:

As a manager sometimes I will speak to another manager, but mostly I don't – it depends on the case: some are very clear-cut, and others I think 'yeah let me just run this by someone'.¹²⁹

3.2.9 FDRP views about the section 60I certificate process

Should the category of certificates be taken into account by the Courts?

A number of FDRPs were concerned about whether there is any benefit to the time they spent determining which category of certificate to provide:

[P]robably the more relevant issue is – does it matter? Do judicial officers actually look at Section 60I certificates and see there are different ones being issued, and does it matter? because generally the feeling is that we're spending not inconsiderable amounts of time anguishing over what sort of Section

60I certificate to issue when at the end of the day, it doesn't matter...anyway.¹³⁰

FDRPs varied in their views about whether it would be beneficial or detrimental for judicial officers, or other court staff, to pay attention to the category of certificate that had been issued.

Some practitioners believed that the certificates should play a very limited role, with one stating:

I think it's appropriate that the certificate isn't used as evidence of anything other than that they've made an attempt at family dispute resolution.¹³¹

Some FDRPs wanted the court to take greater notice of the category of certificate issued. As one FDRP contended:

If it says that there was a 'non-genuine effort', I think they should take that into consideration because there's something wrong there.¹³²

Some FDRPs suggested that the category of certificate could be used to assist in early identification of cases requiring specific case-management processes. For example:

I think if a certificate is there saying it's inappropriate, perhaps initial screening by a registrar of both parties to see what the issues are that fall within that Regulation 25 [would be worthwhile] – whether there are mental health issues there, whether there are drug and alcohol issues there, whether there's a history of family violence, whether there's child safety issues, and they [these issues] can be identified early on – but not that this information comes from us.¹³³

Another stated:

I think it would be more beneficial if there was a clause, or something to do with the clause, where if the court had seen that we were to issue that type of certificate that they may need to look into the case in a bit more depth [to ascertain] why it was inappropriate.¹³⁴

Should FDRPs provide reasons?

FDRPs also varied in their views about whether it would be appropriate for them to provide additional information in relation to the reasons for choosing a particular certificate category.

A number of FDRPs expressed concern that they may be the only holders of information about family violence and child abuse and wished that they could provide additional information to the court. For instance:

I think the inappropriate certificate needs to be changed in a way that indicates what the issue is a bit more. Like a flag about what the, whether it's DV or maybe it might be quite severe, or whether it might be somebody who can't attend because they are living in another state.¹³⁵

Other FDRPs were uncomfortable with the idea of providing specific reasons for their decisions regarding the category of certificate, citing concerns that their reasons could be challenged by disgruntled parties in the courts, or result in complaints being made against them:

So if we were to issue an 'inappropriate', and a particular client had a really sassy lawyer, we can be subpoenaed to explain why we made an 'inappropriate'. So you might see why we're a bit shy of doing that.¹³⁶

They also acknowledged additional information about their reasons would potentially be contestable, and could also compromise the role and independence of the practitioner in the FDR process.

One practitioner avowed:

I think that it would wreck the mediation process if we were empowered to give them any more than what we do already.¹³⁷

Some FDRPs specifically mentioned that they liked the protection afforded by only being required to provide their FDRP registration number on certificates:

I like the option that you don't have to put a surname or sign it; it protects practitioners,

particularly against ones that you may be making 'inappropriates' for, for example.¹³⁸

A number of FDRPs spoke of the challenges of explaining to parents the reason for issuing an 'inappropriate for FDR' certificate:

It's really tricky talking to parents about why you've issued the certificate. That's one of the hardest things we've had to do because we have to protect people's confidentiality in the process of doing that, and so all we can tell them is that we've issued it under that regulation and what that regulation says, and that leaves people wondering and jumping to conclusions. I think it's one of the hardest parts of the job.¹³⁹

Another FDRP observed:

I think it still leaves people feeling a bit hollow about what exactly the reason is and they often fill in their own blanks and maybe even say that to the other parent – you know, accuse the other parent of saying that they're abusive or something like that. That's happened where you're explaining Reg 25 reasons, and they just hang onto one of those and they're convinced that's the one that the other parent's accused them of. But it does allow you...a framework to kind of say there's a variety of reasons. We don't make this decision lightly, but it could be one of these.¹⁴⁰

A 'not yet appropriate' certificate?

A few FDRPs expressed the desire for a certificate suitable for situations in which parties might be able to participate in FDR in the future, with one practitioner suggesting the value of having

...another reason on a certificate: We're not mediating at the moment, come back in three months or something.¹⁴¹

Wording of ‘refusal or failure to attend’ certificates

Many FDRPs commented upon the confusion created by the wording of the portion of the s.60I certificate relating to ‘refusal or failure to attend’ certificates. The relevant clause of the certificate states:

a. _____ (party or parties) did not attend family dispute resolution with me and the other party or parties to the proceedings but that person’s failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend.

As one practitioner explained:

I think the way it’s written is very confusing for a non-legal person.... The first section when you say someone did not attend, it actually sounds like you’re saying that person didn’t attend when they read it.¹⁴²

The difficulties this creates for practitioners was evident in this comment from another FDRP:

Often you can have a half-hour conversation with someone trying to convince them that you haven’t written it wrong.¹⁴³

The most common suggestion proposed by FDRPs for reform of the s.60I certificate process was a recommendation to redraft the wording of the ‘refusal or failure to attend’ clause on the certificates.

Concerns about forgery of certificates

One practitioner raised a concern about the possibility of parties presenting fake certificates to the court:

I am not sure that there’s any real check and balances in the system as to whether a certificate is actually valid.¹⁴⁴

3.3 Summary

It is apparent from the interviews with practitioners that FDRPs spend considerable time and energy making decisions about the issuing of s.60I certificates, and the underlying decision regarding the appropriateness of providing FDR to some families. It is also abundantly clear that these decisions are sometimes very challenging to make. For some FDRPs the determinations required of them in the s.60I certificate process is in conflict with – and compromises – the neutrality of their role as a mediator.

The FDRP data suggest that for the most part FDRPs are adhering to – and being guided by – the legislative instruments defining the issuing of certificates. This is evidenced by the FDRPs’ explicit references to the requirements of *Regulation 25*, both when asked, and unprompted. It is also demonstrated by the considerable degree to which the FDRPs’ own descriptions of what governs their decision-making correspond with the regulation wording.

That said, there are also instances where matters external to the legislative instruments are influencing the decisions made about the issuing of certificates. In some instances, particularly in relation to issuing ‘not genuine effort’ and ‘inappropriate for FDR’ certificates, FDRPs appear to be influenced by their perceptions of organisational processes and the fear of complaints from clients. They are also attentive to the best interests of children – a factor that FDRPs are not directed to take into account despite its prominence elsewhere in the *FLA*. In addition, FDRPs are inclined by their assessments of what may lie ahead for the client if such a certificate were to be issued, especially where the client lacks the financial resources to pursue judicial resolution – this is frequently in relation to decisions about the appropriateness of FDR, although it sometimes relates to decisions about which category of certificate to issue.

The preponderance of FDRPs' comments about their reluctance to issue 'inappropriate' certificates – and the appreciable effort they undertake to engage Party B prior to issuing a 'refusal or failure to attend' certificate – reveals an understanding of the practitioners that issuance of a s. 60I certificate is a 'disempowering' act: one that halts further participation in FDR. However, this view is not confirmed by any applicable regulatory provision – a s. 60I certificate, even an 'inappropriate' certificate, does not prohibit participation in FDR. Rather, consistent reading of *Regulation 25(2)* supports the view that issuance of a s. 60I certificate is an 'empowering' act, in that it preserves access to FDR while also granting the right to use the additional dispute resolution process of litigation.

It would thus seem from the FDRPs' responses that FDR is frequently being conducted in families where there is a history of family violence. FDRPs are clearly considering carefully the capacity of these family violence victims to represent their own interests adequately in the FDR process, and expending considerable effort to find ways to overcome or correct the power imbalances that result from such histories.

It is especially important to note that there was significant diversity in the views of FDRPs in relation to some matters. In particular, the respondents varied in: their desire, or lack of desire, to be able to issue 'not genuine effort' certificates; their views about when FDR should be determined to be inappropriate; and opinion as to whether it would be helpful or otherwise for FDRPs to furnish reasons for their decisions in relation to issuing each certificate.

The FDRP data presented in this chapter provide valuable insight into some of the practical challenges of the certificate-issuing process that might not be visible to an outsider, or to a legislative drafter. To sum up: the three main challenges raised by the FDRPs were: (a) the wording of the 'refusal or failure to attend' part of the certificates; (b) the absence of a certificate to use when a person does not know the other party's contact details; and (c) the difficulty of dealing with people who appear to be stalling rather than directly refusing to participate in FDR.



4 Survey of separated parents issued with a section 60I certificate

Jeromey Temple, Bruce Smyth, and Bryan Rodgers

4.1 Introduction

This chapter presents the results from the Section 60I Mediation Certificate Survey conducted between mid-June and early August 2016. Separated parents were interviewed by telephone about their s. 60I certificate, and their use of services after receiving it. Specifically, the survey sought to determine whether separated parents understood the purpose of the certificate; whether they had indeed used it to go to court; whether they accessed other professional services post-mediation to try to resolve their parenting dispute; and their understanding of, and experience with, the mediation process itself.

This chapter is divided into several substantive sections, which inform the broader research aims of the study. In Section 4.2 we discuss the survey design and describe key characteristics of the sample. We then examine the distribution of s. 60I certificate categories among the target population – those undertaking post-separation parenting dispute mediation in NSW – in order to ascertain whether these groups differed by a range of demographic and other characteristics. In Section 4.3 we analyse clients' understanding of the s. 60I certificate by investigating the match between clients' perceived certificate category and their issued certificate category, as recorded in the Interrelate administrative data. A number of self-reported questions are used to gauge respondents' understanding of the use of the s. 60I and broader FDR process. In Section 4.4, we investigate the number and types of professional services used after receipt of a s. 60I certificate. We also classify service use by a range of demographic and relationship measures in addition to certificate category. In Section 4.5, we explore the prevalence, characteristics and alternatives

to parenting orders obtained through the courts, and whether these vary among the s. 60I recipients. We then develop a typology of dispute resolution service pathways (including court) following receipt of a s. 60I certificate – that is, responding to the all-important question 'what did respondents do post-s. 60I certificate?' (Section 4.6). In the final section, significant findings are summarised.

4.2 Survey design and sample characteristics

It is important to describe the survey methodology because the results are consequential on, among other things, the questions asked, the respondents, the way in which they were recruited, and the method of their response. This section briefly sets out the important methodological issues affecting this research.

The University of Canberra contracted Wallis Consulting in Melbourne to conduct the computer-assisted telephone interview (CATI) fieldwork. Wallis has considerable experience conducting social research on sensitive topics with specialised populations, e.g., separated parents in entrenched conflict. A small team ($n=6$) of CATI interviewers experienced with family law research worked on this project. Interviews were conducted on either landline or mobile phones, depending on respondents' contact information and/or preference.

Benefits of CATI

Computer-assisted telephone interviews offer a number of practical benefits, including substantial cost efficiencies (especially in sampling hard-to-reach specialised populations, such as separated parents with a s. 60I certificate); a relatively fast turnaround from data collection to readiness for analysis; considerable flexibility in question sequencing; a degree of anonymity for respondents; quality

control (e.g., supervision, and monitoring where permitted); and relatively high response rates where the issues are of particular salience to respondents.

Development of the CATI survey: The interview schedule was developed by the research team (see Appendix D). Wallis then refined the instrument to accommodate the various survey requirements (filters, skips, response sets, etc.). A small pre-pilot ($n=9$) and a subsequent pilot test ($n=20$) were conducted in May 2016 to review interview length and skips, question clarity, etc. No changes were made from the pilot test to fieldwork proper, and so the 20 pilot interviews were included in the final useable sample.

Ethics approval

The Human Research Ethics Committees of both the University of Canberra and the ANU approved the final materials and the conduct of the study (UC protocol: HREC 15-265; ANU protocol: 2016/194).

Survey content

The survey included modules on (a) s. 60I certificate category recollection, (b) knowledge and views of the mediation process more broadly; (c) use of formal services (including filing an application for parenting arrangements in court) following mediation; (d) post-mediation parenting arrangements; (e) child and parent wellbeing; and (f) demographic information. In addition to measuring important components of the s. 60I experience of participants, the survey thus provides interesting insight into the characteristics and post-mediation behaviour of certificate recipients.

Sample selection and recruitment: The population of cases issued with a s. 60I certificate between 2011 and 2015 financial years was extracted by Interrelate from its administrative caseload. This sampling frame was provided to Wallis – but only where respondents had previously given their consent to be contacted for research purposes ($n=1,379$) (see Appendix E).¹⁴⁵ Potential respondents received a hardcopy (Primary Approach) letter and email from Interrelate containing information from the University of Canberra concerning the nature of the research. The target sample was 1,000 separated parents with a s. 60I certificate. This target n influenced our decision to recruit from the

population of cases between 2011 and 2015 (i.e., a four-year timeframe). We needed several years of cases with a s. 60I certificate, but did not want to include years too removed from the present day that respondents would be unlikely to recall crucial aspects of the certificate and mediation process.

Data collection period and final useable sample:

The survey was conducted between 16 June and 3 August 2016 – a period in-field of about seven weeks (see Appendix F). A total of 757 sample members were interviewed, with the average interview running for 16.8 minutes (range: 10–60 minutes). Thus, with the pilot tests included, the final useable sample comprised 777 interviews (362 men, 415 women) (see Table 4.1 for basic demographic information). The average time since mediation ended for respondents was 2 years, 8 months (range: 1 month to 9 years, 11 months).

Target sample and total response rate

Although not meeting the desired target sample of 1,000 interviews, 777 interviews constituted a significant effort based on the useable sample.¹⁴⁶

The breakdown of certificate categories in the sample of completed interviews was:

- a. Certificate A – ‘Refusal or failure to attend’ ($n=216$; 28% of interviews);
- b. Certificate B – ‘Inappropriate for FDR’ ($n=305$; 40% of interviews);
- c. Certificate C – ‘Genuine effort’ ($n=213$; 28% of interviews);
- d. Certificate D – ‘Not genuine effort’ ($n=6$; 1% of interviews); and
- e. Certificate E – ‘No longer appropriate for FDR’ ($n=22$; 3% of interviews).

The above distribution of certificate categories closely matched the numerical breakdown of certificate categories in the total sample pool.

A total response rate of 56% was achieved, spread reasonably evenly across the potential sample groups.¹⁴⁷ This response rate is consistent with the first wave of the Longitudinal Study of Separated Parents conducted by the Australian Institute of Family Studies (see Kaspiw et al., 2009).¹⁴⁸

A total of 13,774 calls were made, with an average of six calls required where the outcome was an interview. Close to half of all interviews were achieved with three or fewer calls; 22% of sample members required 10 or more calls to achieve an interview.

Statistical tests

As our aim in this chapter was to examine differences in prevalence rates across a range of variables, we conducted tests of *differences* rather than tests of *association*. Specifically, in order to examine differences among demographic and parenting groups, we proposed hypothesis tests using linear Wald tests of proportions of the form: $p_1 - p_2 = 0$. Given the existence of small cells, Wald tests of this nature are better at capturing differences when compared to traditional tests of association such as χ^2 .

4.2.1 Demographic and geographic characteristics of the sample

As the median age of divorce in Australia is about 45 for males and 42 for females (Australian Bureau of Statistics, 2015), it is not surprising that the bulk of this sample is made up of those aged 35–44 (44%) and 45–54 (29%) (Table 4.1). There were slightly more women than men in the sample (53% vs. 47%). In addition, 20% of the full sample reported government

benefits as their main source of income. Half the sample was single at the time of the survey. A further 34% of separated parents were in a relationship and living in the same dwelling, while just under 15% were in a relationship but not living together. The distributions for ‘Parent A’ (the parent who first made contact with the mediation service) and ‘Parent B’ (the other parent) are roughly consistent by gender. That is, mothers and fathers were equally likely to be the first person in the relationship to make contact with the mediation service.

Results in Table 4.1 also cross-classify other demographic factors by gender. In summary, relative to men, women were: (a) more likely to hold a university education; (b) more likely to be in receipt of a government benefit, and less likely to be self-employed; (c) less likely to have repartnered; and (d) more likely to be represented in the 25–34 age group, and less likely to be represented in the 45–54 or 55–64 year-old age group.

As the sampling frame for this study is drawn from the Interrelate administrative database, the geographic distribution of the sample reflects the offices in which Interrelate operate throughout NSW (Table 4.2). The largest proportion of respondents (just under 20%) is from Newcastle.

Table 4.1 Demographic Characteristics of the Sample, 2016

		Male	Female	Total	Total
	Demographic Factors	%	%	<i>n</i>	%
Age	18–24	0.8	2.2	12	1.6
	25–34	15.5	21.5**	145	18.7
	35–44	41.0	46.3	340	43.8
	45–54	33.5	26.3**	230	29.6
	55–64	8.6	3.1***	44	5.7
	65+	0.6	0.7	5	0.6
	Total	100	100	776	100.0
Education	High School	30.4	22.4**	203	26.1
	Trade/Certificate/Diploma	47.2	44.6	356	45.8
	University	22.4	33.0***	218	28.1
	Total	100	100	777	100.0

Table 4.1 continued

		Male	Female	Total	Total
	Demographic Factors	%	%	<i>n</i>	%
Main Income Source	Wages	65.5	62.4	496	63.8
	Self-Employed	20.4	7.5***	105	13.5
	Government Benefits	13.0	26.5***	157	20.2
	Other	1.1	3.6**	19	2.5
	Total	100	100	777	100.0
Repartnered	Not repartnered	37.6	60.7***	388	49.9
	Living Together	44.5	25.5***	267	34.4
	Living Apart Together	16.6	13.0	114	14.7
	Don't Know	1.4	0.7	8	1.0
	Total	100	100	777	100.0
Parent	Parent A	71.3	71.8	556	71.6
	Parent B	28.7	28.2	221	28.4
	Total	100	100	777	100.0

Source: Section 60I Mediation Certificate Survey 2016.

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; 'Males' is the comparison case for test of proportions.

Table 4.2 Geographic Characteristics of the Sample, 2016

	<i>n</i>	%
Caringbah	94	12.10
Coffs Harbour	72	9.27
Dubbo	54	6.95
Erina	101	13.00
Grafton	2	0.26
Lismore	100	12.87
Mudgee	4	0.51
Muswellbrook	12	1.54
Newcastle	145	18.66
Port Macquarie	43	5.53
Sutherland	2	0.26
Taree	47	6.05
Tweed Heads	31	3.99
Wyong	16	2.06
Other	49	6.31
Don't know/Can't say	5	0.64
Total	777	100.00

Source: Section 60I Mediation Certificate Survey 2016.

4.2.2 Parenting characteristics of the sample

Over the past 10 years, on average, divorce cases involving children have included 1.8 to 1.9 children per divorce (Australian Bureau of Statistics, 2015). The survey results are consistent with these statistics, with 78.3% of respondents having one or two children with their former partner (Table 4.3).

Just under 40% of the respondents reported their relationship with their former partner involved 'lots on conflict' or was 'fearful' over the past 12 months. By contrast, around 23% reported their relationship was 'friendly' or 'cooperative'; just over a third (37%) reported a 'distant' relationship or no contact with the other parent.

The rate of conflict in this sample is somewhat higher than in the general population of separated parents (see, e.g., Kaspiw et al. 2009), which likely reflects the nature of the population sampled: mediated parenting disputes.

Around two-thirds (65%) of separated parents in the sample believed they had a high degree of involvement with their children, whereas the corresponding figure for their former partner's involvement with their children was significantly lower at 38%.

Results in Table 4.3 also cross-classify parenting factors by gender. In summary, relative to men,

female respondents were: (a) more likely to describe their relationship as 'fearful' and less likely to report it being 'distant'; (b) more likely to report higher levels of child-parent involvement; (c) less likely to report higher levels of child-former partner involvement; and (d) more likely to report own- and child- satisfaction with the parenting arrangement.

Table 4.3 Parenting Characteristics of the Sample, 2016

		Males	Females	<i>n</i>	%
Parenting Factors					
Number of Children With Former Partner	1	38.7	38.3	299	38.5
	2	39.0	40.5	309	39.8
	3 or more	21.6	20.2	162	20.9
	Don't Know	0.8	1.0	7	0.9
	Total	100	100	777	100.0
Relationship Quality	Friendly	6.9	7.0	54	7.0
	Co-operative	17.1	14.5	122	15.7
	Distant	29.8	22.2**	200	25.7
	Lots of Conflict	24.6	24.8	192	24.7
	Fearful	9.4	16.6***	103	13.3
	No contact	9.9	12.5	88	11.3
	Don't Know	2.2	2.4	18	2.3
	Total	100	100	777	100.0
Child-Parent Involvement	High	42.3	84.3***	503	64.7
	Moderate	22.7	5.5***	105	13.5
	Little/No	32.9	9.6***	159	20.5
	Don't Know/Refused	2.2	0.5**	10	1.3
	Total	100	100	777	100.0
Child-Former Partner Involvement	High	59.7	19.5***	297	38.2
	Moderate	17.4	22.9*	158	20.3
	Little/No	15.2	55.2***	284	36.6
	Don't Know/Refused	7.7	2.4***	38	4.9
	Total	100	100	777	100.0

Table 4.3 continued

		Males	Females	<i>n</i>	%
	Parenting Factors				
Child Satisfied w/Arrangement	0–3 (Dissatisfaction)	39.5	24.6***	245	31.5
	4–7	29.8	29.2	229	29.5
	8–10 (Satisfaction)	27.9	41.5***	273	35.1
	Don't Know/Refused	2.8	4.8	30	3.9
	Total	100	100	777	100.0
Own Satisfaction Arrangement	0–3 (Dissatisfaction)	41.7	22.9***	246	31.7
	4–7	29.8	30.1	233	30.0
	8–10(Satisfaction)	27.4	44.1***	282	36.3
	Don't Know/Refused	1.1	2.9*	16	2.1
	Total	100	100	777	100.0
Time in Arrangement	0–12 Months	26.5	31.3	226	29.1
	13–30 Months	32.0	30.1	241	31.0
	>30 Months	38.7	35.7	288	37.1
	Don't Know/Refused	2.8	2.9	22	2.8
	Total	100	100	777	100.0

Source: Section 60I Mediation Certificate Survey 2016.

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; 'Males' is the comparison case for test of proportions.

4.2.3 Child and wellbeing characteristics of the sample

Complementing these relationship variables, a number of single-item child and personal wellbeing questions were included in the survey (Table 4.4). Respondents were asked the following questions about a (randomly selected) focal child:

[M2] Thinking of your (youngest/middle/eldest) child you have with your former partner, and using a scale of 0 to 10 – where 0 means 'Totally Dissatisfied' and 10 means 'Totally Satisfied', how satisfied or dissatisfied are you currently with how your (youngest/middle/eldest) child is:

- Getting along with others (his/her) age?
- Doing at school or child care?
- Doing in most areas of (his/her) life?

Across these three measures, separated parents were generally satisfied with how their (focal) child was faring (Table 4.4). Specifically, 65–72% of parents reported being satisfied with how their child was: (a) getting along with peers (~72%); (b) progressing at school or childcare (~65%); and (c) doing generally (~70%). (Levels of dissatisfaction were very low– ranging from 5.7% for measure c to 7.7% for measure b.)

Parents were also asked to rate their own life satisfaction and general health (Q M3 & M4, respectively). Again, overwhelmingly parents in this sample were satisfied with their lives in general (~70%), with fewer than 8% being dissatisfied. It is not surprising then that over 80% of the sample rated their health as 'good', 'very good' or 'excellent'.

Table 4.4 Child and Parent Wellbeing Characteristics of the Sample: Parent Reports, 2016

	<i>n</i>	%
<i>a. Child Getting Along with Others?</i>		
Dissatisfied (score 0–3)	51	6.60
Neither (score 4–6)	97	12.50
Satisfied (score 7–10)	558	71.80
Don't know/Can't say/Ref	71	9.10
Total	777	100.00
<i>b. Child Doing at School/Childcare?</i>		
Dissatisfied (score 0–3)	60	7.72
Neither (score 4–6)	107	13.77
Satisfied (score 7–10)	508	65.38
Don't know/Can't say/Ref	102	13.13
Total	777	100.00
<i>c. Child Doing in Most Areas of Life?</i>		
Dissatisfied (score 0–3)	44	5.66
Neither (score 4–6)	125	16.09
Satisfied (score 7–10)	543	69.88
Don't know/Can't say/Ref	65	8.37
Total	777	100.00
<i>Parents' Satisfaction with Life Overall?</i>		
Dissatisfied (score 0–3)	60	7.70
Neither (score 4–6)	153	19.70
Satisfied (score 7–10)	555	71.40
Don't know/Can't say/Ref	9	1.20
Total	777	100.00
<i>Parents' Self-Rated Health</i>		
Excellent	165	21.20
Very Good	249	32.10
Good	226	29.10
Fair	94	12.10
Poor	41	5.30
Don't know/Can't say/Ref	2	0.30
Total	777	100.00

Source: S 60I Mediation Certificate Survey 2016.

Notes: percentages may not sum to 100.0 due to rounding error.

4.3 Certificate Detail

4.3.1 Certificate category

As shown in Table 4.5, the most common category of s. 60I certificate issued was where the parenting dispute was deemed to be ‘inappropriate for FDR’ (40%). ‘Refusal or failure to attend’ certificates and ‘genuine effort’ certificates were issued in equal proportions (~28%), whereas very few certificates were issued for ‘not genuine effort’ or ‘no longer

appropriate for FDR’) (<1% and <3%, respectively). The low prevalence of ‘not genuine effort’ certificates perhaps reflects an understandable reluctance by practitioners to suggest that a party has not made a genuine effort to resolve a parenting dispute, given that this designation may itself be open to legal challenge.

These survey results benchmark very closely to the distribution of certificate category within the Interrelate administrative data (Table 4.6).¹⁴⁹

Table 4.5 Certificate Category by Survey Cell Size and Population Distribution, 2016

Certificate Category		<i>n</i>	%
A	Refusal/Failure of one party to attend/participate in FDR	216	28.35
B	Dispute not appropriate for FDR	305	40.03
C	Both parties attended and made a genuine effort	213	27.95
D [†]	Both parties attended, but one did not make a genuine effort	6	0.79
E [†]	Both parties attended but dispute became inappropriate for FDR	22	2.89
Total		762*	100.00

Source: Section 60I Mediation Certificate Survey 2016.

Notes: * Excludes 15 cases where respondent did not allow communication of administration data. † Category to be used with great caution due to low sample size.

Table 4.6 Certificate Category According to Interrelate Administrative Data, 2016

Certificate Category		2015 FY	2011–15 FY [#]
A	Refusal/Failure of one party to attend/participate in FDR	33.9	30.2
B	Dispute not appropriate for FDR	39.1	42.3
C	Both parties attended and made a genuine effort	22.7	24.1
D	Both parties attended, but one did not make a genuine effort	0.3	0.5
E	Both parties attended but dispute became inappropriate for FDR	3.9	2.9
Total		100.0	100.0

Source: Aggregate administrative data provided by Interrelate.

Notes: 2015 FY Figures for the 2015 financial year; 2011–15 FY Figures for full period covering 2011–2015 financial years. # % calculated by summing population counts by certificate category across each year, and calculating a distribution (i.e., population-weighted prevalence by certificate category).

4.3.2 Certificate category: Spontaneous versus prompted recall

To measure respondents' understanding of the s. 60I certificate and the FDR process generally, the actual certificate category was not made apparent to respondents or interviewers during the interview. A series of questions measured spontaneous or subsequently prompted recall of the certificate category. In the first instance, respondents were asked 'Do you remember being issued with the certificate?' (Q C4). The vast majority (84%; $n=652$) of separated parents recalled being issued with a certificate, with a further 14% ($n=107$) not recalling this.¹⁵⁰

Importantly, of the total 652 separated parents who recalled receiving a s. 60I certificate, only 12% ($n=81$) could spontaneously recall the category (Table 4.7). Of these 81 respondents, only 41 correctly recalled their certificate category. Thus only 4.4% of the total sample ($n=41$ of 762^{151}) could correctly and spontaneously (i.e., unprompted) identify the category of certificate with which they were issued.

Table 4.7 Spontaneous Recollection of Certificate Category, 2016

Responses	<i>n</i>	%
Yes	81	12.4
No	498	76.4
Don't have it	1	0.2
Never received it	2	0.3
Don't know/Can't say	70	10.7
Total	652	100.0

For those respondents who could not spontaneously respond, the interviewers reminded respondents of the five possible s. 60I categories and briefly described each. Even when prompted, 13% of respondents could not recall their certificate category (Table 4.8). Importantly, of those who identified a certificate category when prompted, only 56% did so correctly ($n=273$ of 483). In summary, when either spontaneously recalled or reminded of the S 60I certificate categories, just over 41% of the sample could correctly recall their certificate category ($n=314$ of 762).

Table 4.8 Prompted Recall of Certificate Category, 2016

Certificate Category		<i>n</i>	%
A	Refusal/Failure of one party to attend/participate in FDR	184	32.9
B	Dispute not appropriate for FDR	83	14.9
C	Both parties attended and made a genuine effort	112	20.0
D	Both parties attended, but one did not make a genuine effort	55	9.8
E	Both parties attended but dispute became inappropriate for FDR	52	9.3
	Don't Know	73	13.1
Total		559	100.0

The low level of accurate recall yields the question: Do some s. 60I recipients recall their certificate category better than others? Results in Table 4.9 suggest they do. The shaded diagonal in this table identifies the percentage of respondents in each certificate category who correctly recalled their certificate category. For example, 80% of those issued with a 'refusal or failure to attend' certificate correctly recalled their certificate category, compared with 42% of those who received an 'inappropriate for FDR' certificate and 54% of 'genuine effort' certificate recipients respectively. Just over one-quarter (27%) of 'inappropriate for FDR' certificate recipients believed they were actually a recipient of a 'refusal or failure to attend' certificate, while one-fifth (20%) of 'genuine effort' certificate recipients believed they received the converse: a 'not genuine effort' certificate. In summary, apart from those who were issued a s. 60I certificate because one party refused or failed to attend, there appears to be considerable confusion among other recipients of the actual certificate category they received.

Table 4.9 excludes 73 cases of individuals who recalled receiving a certificate, but 'Didn't Know' its category (i.e., they could not nominate a category even when prompted), and 107 cases where they could not remember receiving a certificate. These two groups are likely to have the poorest understanding of the s. 60I certificate-issuing process.

To examine this further, we derived a variable:

- 0 = Correctly recalled their certificate category spontaneously or when prompted ($n=314$)
- 1 = Incorrectly recalled their certificate category spontaneously or when prompted ($n=241$)
- 2 = Recalled receiving a certificate but even when prompted, couldn't specify the certificate category ($n=73$)
- 3 = Didn't know they had a certificate ($n=107$)

Table 4.10 depicts the results of this more comprehensively derived recall variable. Reading across the table from 'Recollection Group' 0, this is the adjusted diagonal in Table 4.9 below. Those issued with a s.60I certificate because one party refused or failed to attend were significantly more likely to recall their certificate category correctly than any other groups. Among the population of those who do and do not recall receipt

of a certificate, two-thirds of 'refusal or failure to attend' certificate recipients correctly recalled their certificate category compared to about one-third (32%) of 'inappropriate for FDR' and two-fifths of 'genuine effort' certificate recipients. Although there appears to be variation in certificate category recall by those in 'Recollection Group' 2 and 3, there is insufficient statistical power to state this definitively.

Finally, we consider whether demographic or parenting characteristics play a part in explaining individuals' understanding of their certificate status. Excluding 'Other' and 'Don't Know' categories, there is very little variation in correct certificate recall by demographic factors (Table 4.11). The only significant difference was between Male Parent A applicants who were more likely than Male Parent B to recall their certificate status correctly. This makes sense given the more proactive role of the initiating parent in the FDR process (recorded in the administrative caseload as 'Parent A').

Similarly, there is very little statistically significant variation in correct certificate recall by parenting characteristics (Table 4.12).

Table 4.9 Actual Certificate Category Tabulated by Spontaneously and Prompted Recall of Certificate Category, 2016

	Actual Certificate Category (%)					
	A	B	C	D†	E†	Total
Prompted and Spontaneous Recall						
A. Refusal/Failure of one party to attend/participate in FDR	80.2#	26.7	9.3	25.0	7.7	
B. Dispute not appropriate for FDR	2.4	42.1***	2.7	25.0	7.7	
C. Both parties attended and made a genuine effort	10.8	8.1	54.0***	50.0	15.4	
D. Both parties attended, but one made no genuine effort	4.8	8.1	20.0	0.0	23.1	
E. Both parties attended but dispute became inappropriate	1.8	14.9	14.0	0.0	46.2***	
Total (%)	100.0	100.0	100.0	100.0	100.0	
N	167	221	150	4	13	555

Notes: Category A = 'Refusal or failure to attend'; Category B = 'Inappropriate for FDR'; Category C = 'Genuine effort'; Category D = 'Not genuine effort'; Category E = 'FDR began but inappropriate'; Excludes cases where respondent did not allow access to administrative data, individuals who refused/didn't know or didn't recall receipt of a certificate; † Categories to be used with great caution due to low sample size. *** $p < 0.01$; # Comparison case for test.

Table 4.10 Recall Variable by Certificate Category, 2016

Recollection Group			Certificate Category (%)						
Recalled Certificate	Nominated Category	Corr-ect	Ref / failure	Inapp	Gen effort	Not gen [†]	Began but inapp [†]	Total %	Total (n)
0-Yes	Yes	Yes	66.3	31.8****	39.7***	0.0***	27.3***	43.3	314
1-Yes	Yes	No	16.3	43.8***	33.8***	80.0***	31.8	33.2	241
2-Yes	No	N.a.	6.4	9.9	10.8	0.0***	31.8**	9.8	71 [#]
3-No	N.a.	N.a.	10.9	14.4	15.7	20.0	9.1	13.7	99 ^{##}
Total			100.0	100.0	100.0	100.0	100.0	100.0	725

Notes: N.a. = Not applicable; † Categories to be used with great caution due to low sample size; # 2 missing cases as respondent did not allow communication of administrative data; ## 8 missing cases as respondent did not allow access to administrative data. Statistically significant difference in proportion *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$.

Table 4.11 Correct Recall of Certificate Category by Demographic Characteristics, 2016

Demographic Factors		<i>n</i>	% Correct
Age	18–24	8	62.5
	25–34	116	62.1
	35–44	236	54.7
	45–54	163	55.8
	55–64	27	59.3
	65+	4	25.0
Education	High School	138	57.2
	Trade/Certificate/Diploma	260	56.2
	University	157	56.7
Main Income Source	Wages	361	57.6
	Self-Employed	72	50.0
	Government Benefits	110	55.5
	Other	12	75.0
Relationship	No relationship	276	54.7
	Living Together	190	59.5
	Living Apart	83	54.2
	Don't Know	6	83.3*
Gender	Male	256	53.1
	Female	299	59.5
Parent	Male – Parent A	185	57.8
	Male – Parent B	71	40.8**
	Female – Parent A	223	61.0
	Female – Parent B	76	55.3

Notes: The population of this table comprises Categories 0 and 1 from Table 4.10 above. Statistically significant difference in proportion *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.12 Correct Recall of Certificate Category by Parenting Characteristics, 2016

	Parenting Factors	<i>n</i>	% Correct
Number of Children With Former Partner	1	220	58.2
	2	215	59.1
	3 or more	116	50.0
	Don't Know	4	25.0
Relationship Quality	Friendly	29	51.7
	Co-operative	83	61.4
	Distant	143	60.8
	Lots of Conflict	151	57.0
	Fearful	73	53.4
	No contact	63	47.6
	Don't Know	13	46.2
Child–Parent Involvement	High	352	55.4
	Moderate	81	61.7
	Little/No	116	56.9
	Don't Know/Refused	6	50.0
Child–Former Partner Involvement	High	216	58.3
	Moderate	107	58.9
	Little/No	205	56.1
	Don't Know/Refused	27	37.0**
Child Satisfaction with Arrangement	0–3 (Dissatisfaction)	179	56.4
	4–7	172	58.1
	8–10 (Satisfaction)	183	53.6
	Don't Know/Refused	21	71.4
Own Satisfaction Arrangement	0–3 (Dissatisfaction)	172	58.1
	4–7	179	59.2
	8–10 (Satisfaction)	195	52.3
	Don't Know/Refused	9	66.7
Time in Arrangement	0–12 Months	167	56.9
	13–30 Months	172	58.1
	>30 Months	204	55.9
	Don't Know/Refused	12	41.7

Notes: The population of this table comprises Categories 0 and 1 from Table 4.10 above. Statistically significant difference in proportion; *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

4.3.3 Understanding of the certificate purpose and FDR process

Given that less than half the sample population was able to spontaneously recall or recall when prompted their certificate category, what proportion of the population understood the purpose of the certificate and the broader FDR process? When asked this question, just over half (~55%) of respondents who recalled receiving a certificate accurately stated the purpose of the s.60I certificate: to file an application in court (Table 4.13).

Table 4.13 Reported Purpose of the s.60I Certificate, 2016

Purpose	<i>n</i>	%
To allow people to file an application in court	355	54.5
Other	269	41.3
Don't Know / Can't Say	28	4.3
Total	652†	100.0

Notes: † Includes only those who recalled being issued with a certificate.

Over 40% ($n=269$) of those who recalled receiving a certificate indicated a different reason (i.e., not explicitly about filing an application in court) for the certificate, which was captured in the survey as a verbatim 'Other (specify)' response (summarised in Table 4.14¹⁵²). Of these 269 cases, about 30% of responses can be categorised as 'Proof for Court' – that is, proof they had participated in mediation. Indeed, other categories, such as 'Proof with Fault', 'Just in Case', 'Stop Mediation' and at 'Impasse or Stuck', all share a theme of providing proof that mediation was at least attempted. In total these categories account for about 57% of the 'Other' reasons for the purpose of a s.60I certificate. A further 22% can be categorised as mandating an event or behaviour. For example, 'Forcing mediation', 'Better for the child', 'Step in process' and 'Solicitor directive'. Only a very small number of respondents ($n=8$) believed the certificate served 'no purpose' or was a 'pointless exercise'.

Table 4.14 Reported Purpose of the s.60I Certificate – 'Other (specify)' Category, 2016

Certificate Purpose	Descriptor	<i>n</i>	%
Forcing mediation	Certificate process complies or encourages participation in mediation / negotiation / communication	33	12.3
Better for the child	Certificate process is intended to create a process / outcomes that are better for children	14	5.2
Proof for court	Provides proof that participated in FDR, but not stated as being a requirement to be done before able to go to court	73	27.1
Proof with fault	Provides proof that one party participated well / was willing to participate while other didn't / wasn't	32	11.9
Just in case	Not expecting to go to court but certificate is so that they are able to if they need to	4	1.5
Impasse/stuck/out of steam	s.60I to show FDR reached a point where no more could be done (e.g., unable to reach an agreement despite trying)	12	4.5
Stop mediation	E.g., 'to stop any further mediation' – including certificate is to show that mediation would be inappropriate	32	11.9
Step in process	E.g., 'to tick a box'; part of separation process	9	3.3
Solicitor directive	E.g., 'only did it because my solicitor told me to'	3	1.1

Table 4.14 continued

Certificate Purpose	Descriptor	<i>n</i>	%
Parenting agreement	To get agreement / to get to see children / to make arrangements about parenting time / to enable application for divorce	25	9.3
No purpose/pointless	Pointless exercise	8	3.0
Other	E.g., 'just like a certificate you get for completing a course'	1	0.4
Indeterminate	Response unclear and/or does not answer the question	20	7.4
Don't know / Can't say		3	1.1
Total		269	100.0

When 'other' responses¹⁵³ which approximate the purpose are included, around three quarters of those who recalled receiving a certificate could be seen as accurately stating the purpose of the certificate process.

An important question is does the understanding of the certificate purpose differ by individuals' characteristics. In the following tables (Tables 4.15–4.17), three categories measuring understanding the purpose of the certificate are used:

- Group 1 = 'Yes' – correctly determined the purpose of the certificate;
- Group 2 = 'No' – offered an alternative purpose for the certificate; and
- Group 3 = 'Don't Know' – which included those who didn't know what the purpose of the certificate is and those who could not recall receiving a certificate at all.

Importantly, using this measure of understanding the certificate's purpose, there are variations in understanding by certificate category, demographic characteristics and parenting characteristics.

Comparing across certificate categories, 'inappropriate for FDR' certificate recipients had a lower proportion of respondents who correctly understood the certificate's purpose. For example, 42% of 'inappropriate for FDR' certificate recipients correctly determined the use compared to 54% of 'refusal or failure to attend' certificate recipients (Table 4.15).

Of the demographic factors, age, education, main income source, relationship status, and gender appear important in explaining a correct understanding of the certificate's purpose (Table 4.16: row %). (column % can be found in Appendix Table 10.11.) Those with a university education or Trade/Certificate/Diploma were more likely to have a correct understanding of the certificate's purpose than those with a high school education (54% & 49% vs. 35%). Similarly, half the females had a correct understanding of the certificates compared with 43% of males. Moreover, respondents aged 25–44 were twice as likely to be correct than those aged 18–24 years of age (49–52% vs. 25%). In addition, respondents living with a partner were more likely to understand the certificate's purpose than were singles (51% vs. 44%), as well as those on wages or salaries (compared with self-employed participants: 49% vs. 48%). (Those on reliant on income support were more likely to say 'Don't know' than those on wages and salaries: 24% vs. 16%).

Table 4.15 Understanding of the Purpose of the s.60I Certificate by Certificate Category, 2016

Understood the Purpose?	Certificate Category (%)					Total
	Refusal or failure to attend	Inappropriate for FDR	Genuine effort	Not genuine effort	Began but inappropriate	
1. Yes	54.2	42.1***	46.3	50.0	54.5	47.2
2. No	32.1	39.8*	34.1	33.3	31.8	35.8
3. Don't Know [†]	13.7	18.1	19.5	16.7	13.6	17.1
Total %	100.0	100.0	100.0	100.0	100.0	100
n	212	299	205	6	22	744

Notes: Category A = 'Refusal or failure to attend'; Category B = 'Inappropriate for FDR'; Category C = 'Genuine effort'; Category D = 'Not genuine effort'; Category E = 'FDR began but inappropriate'; † Includes those who recall being issued with a certificate but 'Didn't know' and those who did not recall receiving a certificate at all. Statistically significant difference in proportion *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.16 Understanding of the Purpose of the s.60I Certificate by Demographic Characteristics, 2016 (row %)

Demographic Characteristics		Understanding of Certificate						Total	n
		Yes		No		Don't Know			
Age	18-24	25.0	-	41.7	-	33.3	-	100.0	12
	25-34	52.1	**	31.9		16.0		100.0	144
	35-44	49.2	*	33.9		16.8		100.0	327
	45-54	42.7		38.3		18.9		100.0	227
	55-64	37.2		41.9		20.9		100.0	43
	65+	40.0		40.0		20.0		100.0	5
Education	High School	34.7	-	40.2	-	25.1	-	100.0	199
	Trade/Certificate/Diploma	49.1	***	35.5		15.4	***	100.0	344
	University	54.2	***	31.0	*	14.8	***	100.0	216
Income Source	Wages	48.6	-	36.0	-	15.5	-	100.0	484
	Self-Employed	47.5	*	33.7		18.8		100.0	101
	Government Benefits	40.1		36.3		23.6	**	100.0	157
	Other	52.9		23.5		23.5		100.0	17
Relationship	No relationship	44.0	-	36.6	-	19.4	-	100.0	382
	Living Together	50.8	*	33.6		15.6		100.0	262
	Living Apart	46.3		36.1		17.6		100.0	108
	Don't Know	57.1		28.6		14.3		100.0	7
Gender	Male	43.4	-	40.0	-	16.6	-	100.0	355
	Female	49.8	*	31.4	**	18.8		100.0	404
Parent	Male A	44.4	-	41.7	-	13.9	-	100.0	252
	Male B	40.8		35.9		23.3	**	100.0	103
	Female A	50.2		33.2	**	16.6		100.0	289
	Female B	48.7		27.0	***	24.3	**	100.0	115

Notes: † Includes those who recall being issued with a certificate but 'Didn't know' and those who did not recall receiving a certificate at all. Statistically significant difference in proportion; - = base case for test of proportion; *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Correct understanding of the certificate purpose also varied by parenting characteristics (see Table 4.17: row %). (column % can be found in Appendix Table 10.12.) Not surprisingly perhaps, respondents who described their relationship with their former partner as having ‘lots of conflict’, ‘fearful’ or who had no contact with a former partner were more likely to know the purpose of the s.60I certificate than were those who reported a ‘friendly’ relationship. This was also the case for those who reported low levels of satisfaction (0–3 on a 10-point scale) with the parenting arrangement – both for themselves and their children – compared with those who reported high levels of satisfaction (8–10) (Child satisfaction: 51% vs. 42%; Respondent satisfaction: 49% vs. 41%).

As around half (47%) the sample correctly knew the purpose of the s.60I purpose (see Table 4.15), it is useful to understand whether respondents themselves thought they had a poor understanding.

To gauge respondents’ self-reported understanding of the FDR process more generally, the following question was asked: ‘I understood the (mediation/ FDR) process and my progression through the process. Do you agree or disagree?’ (Q D0).

Table 4.18 displays respondents’ self-reported understanding of the FDR process on a scale from ‘Strongly Agree’ to ‘Strongly Disagree’. Despite the significant proportions of respondents not recalling what their certificate category was or what the certificate was for, about 92% of the sample believed they understood the FDR process. This suggests a strong mismatch between perception and reality in relation to the s.60I certificate component of FDR. Parents issued with an ‘inappropriate for FDR’ certificate were less likely to indicate a strong understanding of the FDR process compared with those issued with a ‘refusal or failure to attend’ certificate (41% vs. 51%).

Table 4.17 Understood the Purpose of s.60I Certificate by Parenting Characteristics, 2016 (row %)

		Understanding of Certificate						Total	n
		Yes		No		Don't Know			
Number of children with former partner	1	46.4	-	36.1	-	17.5	-	100.0	291
	2	45.7		35.9		18.4		100.0	304
	3 or more	49.4		34.2		16.5		100.0	158
	Don't Know	50.0		16.7		33.3		100.0	6
Relationship Quality	Friendly	31.5	-	40.7	-	27.8	-	100.0	54
	Co-operative	40.0		40.8		19.2		100.0	120
	Distant	43.3		34.5		22.2		100.0	194
	Lots of Conflict	57.7	***	29.6		12.7	**	100.0	189
	Fearful	47.5	**	39.6		12.9	**	100.0	101
	No contact	46.4	*	36.9		16.7		100.0	84
	Don't Know	58.8	**	23.5		17.6		100.0	17
Child/Parent Involvement	High	46.8	-	34.6	-	18.6	-	100.0	489
	Moderate	47.1		40.2		12.7		100.0	102
	Little/No	45.6		34.8		19.6		100.0	158
	Don't Know/Refused	60.0		40.0		0.0		100.0	10

Table 4.17 continued

		Understanding of Certificate						Total	n
		Yes		No		Don't Know			
Child/Partner Involvement	High	44.5	-	37.0	-	18.5	-	100.0	292
	Moderate	46.4		36.6		17.0		100.0	153
	Little/No	50.7		32.6		16.7		100.0	276
	Don't Know/Refused	36.8		39.5		23.7		100.0	38
Child Satisfaction Arrangement	0-3	51.0	-	33.6	-	15.4	-	100.0	241
	4-7	49.8		34.4		15.8		100.0	221
	8-10	41.6	**	38.2		20.2		100.0	267
	Don't Know/Refused	36.7		33.3		30.0	*	100.0	30
Own Satisfaction Arrangement	0-3	49.0	-	32.0	-	19.1	-	100.0	241
	4-7	51.5		32.9		15.6		100.0	231
	8-10	40.6	*	41.0	**	18.5		100.0	271
	Don't Know/Refused	50.0		31.3		18.8		100.0	16
Time in Arrangement	0-12 Months	46.6	-	37.7	-	15.7	-	100.0	223
	13-30 Months	53.0		30.6		16.4		100.0	232
	>30 Months	41.7		37.8		20.5		100.0	283
	Don't Know/Refused	47.6		33.3		19.0		100.0	21

Notes: † Includes those who recall being issued with a certificate but 'Don't know' and those who do not recall receiving a certificate at all. Statistically significant difference in proportion; - = base case for test of proportion; *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.18 Self-Reported Understanding of the FDR Process, 2016

Certificate Category (%)						
Responses	Refusal or failure to attend	Inappropriate for FDR	Genuine effort	Not genuine effort†	Began but inappropriate†	n
Strongly Agree	51.4	40.7**	46.0	50.0	68.2	351
Agree	44.0	46.9	49.3	33.3	31.8	352
Neither Agree/Disagree	0.5	1.3	0.5	0.0	0.0	6
Disagree	1.4	4.3**	1.9	0.0**	0.0**	20
Strongly Disagree	2.3	3.9	1.9	16.7	0.0**	22
Refused	0.0	0.0	0.5	0.0	0.0	1
Don't know/Can't say	0.5	3.0	0.0	0.0	0.0	10
Total %	100.0	100.0	100.0	100.0	100.0	
N	216	305	213	6	22	762

Notes: † Categories to be used with high caution due to low sample size. Statistically significant difference in proportion *** $p < 0.01$

** $p < 0.05$ * $p < 0.1$

4.3.4 FDR experience

Given the mismatch between respondents' self-reported degree of understanding of the s.60I certificate and the measured degree of understanding of the process, how did they rate the overall FDR experience? Three self-rated questions were included (see Table 4.19). When asked if they had achieved the outcomes they wanted through mediation (Q D0a), the majority of respondents' experience did not accord with this statement. For example, about two-thirds (65%) of those with a 'refusal or failure to attend', 'inappropriate for FDR' or 'genuine effort' certificate disagreed or strongly disagreed with this statement. Conversely, when asked whether mediation was a positive experience (Q D1) about 60% of 'refusal or failure

to attend' certificate recipients and about 45% of 'inappropriate for FDR' and 'genuine effort' certificate recipients agreed or strongly agreed with this statement. Although the majority felt that parenting issues were appropriate for mediation, higher proportions of 'refusal or failure to attend' certificate recipients believed this was the case when compared to other certificate categories. One possibility is that the parent participating in mediation felt heard and supported by the process of being able to talk to someone. Another is that the non-participation of the other parent might help to expedite a s.60I certificate, thus facilitating the filing of a parenting application in court.

Finally, respondents were asked, in retrospect, how they would have preferred to resolve their particular

Table 4.19 Self-Reported Rating of the FDR Process, 2016

Certificate Category (%)						
Responses	Refusal / failure to attend	Inappropriate for FDR	Genuine effort	Not genuine effort†	Began but inappropriate†	All
Achieved Outcomes?						
Strongly Agree	9.7	11.8	8.0	16.7	9.1	10.1
Agree	20.3	14.8	19.7	0.0	13.6	17.6
Neither Agree/Disagree	1.4	2.7	5.6	16.7	0.0	3.2
Disagree	24.2	24.2	21.6	33.3	27.3	23.6
Strongly Disagree	42.0	41.8	43.7	33.3	50.0	42.6
Don't know/Can't say/Ref	2.4	4.7	1.4	0.0	0.0	3.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
Positive Experience?						
Strongly Agree	28.2	18.7	15.5	33.3	18.2	20.6
Agree	31.9	26.9	28.6	16.7	22.7	28.6
Neither Agree/Disagree	8.3	7.5	9.4	0.0	13.6	8.4
Disagree	14.8	20.3	22.1	16.7	13.6	19.0
Strongly Disagree	15.7	21.3	23.9	33.3	31.8	20.9
Don't know/Can't say/Ref	0.9	5.2	0.5	0.0	0.0	2.5
Total	100.0	100.0	100.0	100.0	100.0	100.0
Parenting Issues Appropriate?						
Yes	80.1	67.2	75.1	66.7	72.7	73.2
No	17.6	29.2	22.1	33.3	27.3	23.9
Don't know/Can't say/Ref	2.3	3.6	2.8	0.0	0.0	2.9
Total	100.0	100.0	100.0	100.0	100.0	100.0

Notes: † Categories to be used with great caution due to low sample size.

parenting dispute (Q D3). The vast majority still would have preferred to resolve their dispute via mediation (Table 4.20). That said, compared to ‘refusal or failure to participate’ certificate recipients, all other certificate category recipients were less likely to express a desire to continue with mediation. Parents whose disputes were deemed to be ‘inappropriate for FDR’ were slightly more likely to indicate a preference to resolve their parenting dispute through

court. Nonetheless, 41% of ‘inappropriate for FDR’ certificate recipients preferred to resolve their dispute by continuing with mediation.

Although the response option ‘by another method’ comprises only 7% of total responses, a range of preferences was communicated (Table 4.21). Of the measurable methods, the largest category mentioned by respondents was a desire to ‘work it out together’ (21%).¹⁵⁴

Table 4.20 Preference for Resolving Dispute, 2016

Responses	Certificate Category (%)					All
	Refusal / failure to attend	Inappropriate for FDR	Genuine effort	Not genuine effort†	Began but inappropriate†	
Continuing with mediation	54.1	41.1**	46.0*	16.7**	31.8**	45.6
Going to court	17.4	23.6*	16.0	16.7	9.1	19.2
Dispute unresolvable	21.7	25.9	23.9	50.0	50.0**	25.1
By another method	4.8	6.4	10.3**	0.0***	9.1	7.1
Don’t know / Can’t say	1.9	3.0	3.8	16.7	0.0**	3.0
Total (%)	100	100	100	100	100	100
N	207	297	213	6	22	745

Notes: Category A = ‘Refusal or failure to attend’; Category B = ‘Inappropriate for FDR’; Category C = ‘Genuine effort’; Category D = ‘Not genuine effort’; Category E = ‘FDR began but inappropriate’; † Categories to be used with high caution due to low sample size. Statistically significant difference in proportion *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.21 Alternative Methods of Family Dispute Resolution Used, 2016

Alternative method	Descriptor	n	%
Worked it out together	Resolving through direct communication, including communication with children	12	21.4
Conciliation	e.g., ‘something between mediation and court’; ‘a more hard-nosed brokered deal’	2	3.6
Arbitration		1	1.8
Social science decision-maker / parenting co-ordinator		1	1.8
Other person to change / counselling	Comment reflected wanting an intervention that would bring about change in the other person	6	10.7
Police intervention		1	1.8
Other method – unspecified	Respondent indicated would have liked a different intervention, but gave no indication what that intervention should be	7	12.5
Other method – miscellaneous	e.g., let things naturally progress; family report prior to mediation; questionnaire prior to mediation; wanting more guidance and advice	4	7.1
Indeterminate – history	Respondent told what interventions had been used, not what interventions they wished had been used	19	33.9
Indeterminate	Respondent not answer question, or answer was ambiguous or uncertain such that no other code could be confidently assigned	3	5.4
Total		56	100.0

4.3.5 Who are the different certificate category holders?

To improve understanding of the characteristics of different certificate category recipients, we examine whether certificate category varied by a range of

demographic and parenting characteristics. Of the demographic characteristics, there were variations in certificate category according to age, education, main source of income, relationship, and parent status (Table 4.22).

Table 4.22 Certificate Category by Demographic Characteristics, 2016

Certificate Category [#]								
		Ref / failure	Inappr	Gen effort	Not gen effort [†]	Began but inappr [†]	Total	<i>n</i>
Demographic Factors								
Age	18–24	2.8	1.3	0.9	0.0**	0.0**	1.6	12
	25–34	24.5	16.4**	16.4**	33.3	9.1**	18.7	142
	35–44	44.9	43.4	41.3	66.7	63.6*	44.0	335
	45–54	21.3	32.2***	34.7***	0.0***	27.3	29.4	224
	55–64	6.0	6.3	5.2	0.0***	0.0***	5.7	43
	65+	0.5	0.3	1.4	0.0	0.0	0.7	5
	Total	100.0	100.0	100.0	100.0	100.0	100.0	761
Education	High School	26.4	29.2	22.1	16.7	18.2	26.0	198
	Trade/Certificate/Dip	51.9	44.9	41.8**	33.3	45.5	45.9	350
	University	21.8	25.9	36.2***	50.0	36.4	28.1	214
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Main Income Source	Wages	69.4	59.0**	64.3	66.7	81.8	64.2	489
	Self-Employed	9.7	12.8	18.3**	0.0***	13.6	13.4	102
	Government Benefits	19.0	25.6*	15.0	0.0***	4.5**	19.9	152
	Other	1.9	2.6	2.3	33.3	0.0**	2.5	19
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Repartnered	Not repartnered	44.9	54.8**	50.2	33.3	40.9	50.1	382
	Living Together	40.7	30.5**	31.5**	66.7	36.4	34.1	260
	Living Apart Together	13.0	14.4	16.4	0.0***	22.7	14.7	112
	Don't Know	1.4	0.3	1.9	0.0*	0.0*	1.0	8
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Gender	Male	45.4	45.2	47.9	50.0	54.5	46.3	353
	Female	54.6	54.8	52.1	50.0	45.5	53.7	409
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Parent	Male A	40.7	32.5*	27.7***	33.3	22.7*	33.2	253
	Male B	4.6	12.8***	20.2***	16.7	31.8*	13.1	100
	Female A	46.3	39.7	29.1***	33.3	31.8	38.3	292
	Female B	8.3	15.1**	23.0***	16.7	13.6	15.4	117
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762

Notes: # Excludes 15 cases where respondent did not allow communication of administration data. † Categories to be used with great caution due to low sample size. Statistically significant difference in proportion *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

In summary:

- Parents issued with a 'refusal or failure to attend' certificate were younger on average when compared to 'inappropriate for FDR' and 'genuine effort' certificate recipients. They were also more likely to be cohabiting.
- 'Inappropriate for FDR' certificate recipients comprised a higher proportion of persons reliant on government benefits compared to 'refusal or failure to attend' and 'genuine effort' certificate recipients. Compared to 'refusal or failure to attend' certificate recipients, 'inappropriate for FDR' certificate recipients were also most likely to be living alone and not in a new relationship. 'Inappropriate for FDR' certificate recipients were also more likely to be a Parent B applicant (i.e., not the initiator of FDR) compared with those who received a 'refusal or failure to attend' certificate, regardless of gender.¹⁵⁵
- 'Genuine effort' certificate recipients were unique with respect to their level of education. About 36% of 'genuine effort' certificate recipients had a university education compared to 22% of 'refusal or failure to attend' certificate recipients and 26% of 'inappropriate for FDR' certificate recipients. Higher levels of education, of course, might translate into increased communication and conflict resolution skills, being more child-focused and more capable of proceeding towards resolution with the benefit of a stronger resource base. The latter might also explain why 'genuine effort' certificate recipients had a much more equal distribution of parent applicant categories compared to other groups.

There were also differences in the issued certificate category by reference to parenting factors, specifically with respect to relationship quality and time in the current parenting arrangement (Table 4.23).

- Compared to either 'refusal or failure to attend' or 'genuine effort' certificate recipients, 'inappropriate for FDR' certificate recipients were more likely to report being in a 'fearful' relationship (18% compared with 10.6% and 9.9%, respectively). Of course, safety concerns typically trigger the issuing of an 'inappropriate for FDR' certificate.

- Compared to either 'inappropriate for FDR' or 'genuine effort' certificate recipients, 'refusal or failure to attend' certificate recipients were less likely to report being in the same parenting arrangement for 12 months or less. While possible reasons for this are not obvious, it could be that the status quo holds where one parent will not engage in the FDR process.

4.4 Use of professional services following receipt of a s.60I certificate

Following termination of mediation and issue of a s.60I certificate, respondents were asked about the range of professional services used (Q E0iii). In this section, we examine the types and numbers of professional services used, and whether professional service use differs by respondents' characteristics, including their s.60I certificate category. In the previous section, the focus was on certificate issue and recall, and therefore all certificate categories were examined. Due to the small cell sizes in the 'not genuine effort' and 'FDR began but no longer appropriate' certificate categories, further analysis of these individual groups is unreliable. Thus 'not genuine effort' recipients are omitted from further analyses, while 'FDR began but no longer appropriate' certificate recipients are included with the 'inappropriate for FDR' recipient group.

4.4.1 Use of professional services post-FDR by certificate category

Of the sample of 756 recipients of either a 'refusal or failure to attend' 'inappropriate for FDR' or 'genuine effort' certificate, approximately 61% had used some type of professional service post-mediation ($n=458$). Proportions using professional services only slightly varied by certificate category (Table 4.24). 'Inappropriate for FDR' certificate recipients were more likely than 'refusal or failure to attend' certificate recipients (63% vs. 56%) to use other professional services post-mediation.

Table 4.23 Certificate Category by Parenting Characteristics, 2016

		Certificate Category [#]						
		Refusal / failure to attend	Inappro	Genuine effort	Not genuine effort†	Began but inappro†	Total	<i>n</i>
Parenting Factors								
Number of Children With Former Partner	1	41.7	36.7	37.1	50.0	50.0	38.7	295
	2	35.6	42.3	39.4	33.3	40.9	39.5	301
	3 or more	21.8	19.7	23.0	16.7	9.1*	20.9	159
	Don't Know	0.9	1.3	0.5	0.0	0.0	0.9	7
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Relationship Quality	Friendly	6.0	9.2	4.7	16.7	0.0***	6.8	52
	Co-operative	16.7	13.8	18.8	16.7	4.5**	15.7	120
	Distant	30.1	21.3**	25.4	16.7	40.9	25.5	194
	Lots of Conflict	23.1	24.3	27.7	33.3	22.7	24.9	190
	Fearful	10.6	18.0**	9.9	0.0***	13.6	13.4	102
	No contact	11.6	12.1	10.3	16.7	13.6	11.5	88
	Don't Know	1.9	1.3	3.3	0.0**	4.5	2.1	16
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Child–Parent Involvement	High	61.6	62.6	70.9**	66.7	68.2	64.8	494
	Moderate	13.4	14.1	11.3	16.7	18.2	13.3	101
	Little/No	23.1	21.6	17.4	16.7	13.6	20.6	157
	Don't Know/Refused	1.9	1.6	0.5	0.0**	0.0**	1.3	10
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Child–Former Partner Involvement	High	41.2	32.5**	42.7	50.0	36.4	38.1	290
	Moderate	18.5	20.3	22.5	16.7	22.7	20.5	156
	Little/No	36.1	40.7	31.5	16.7	40.9	36.6	279
	Don't Know/Refused	4.2	6.6	3.3	16.7	0.0***	4.9	37
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Child Satisfaction with Arrangement	0–3 (Dissatisfaction)	33.8	33.1	26.8	50.0	36.4	31.8	242
	4–7	29.6	26.9	33.3	16.7	31.8	29.5	225
	8–10 (Satisfaction)	31.5	37.0	36.2	33.3	31.8	35.0	267
	Don't Know/Refused	5.1	3.0	3.8	0.0***	0.0***	3.7	28
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762
Own Satisfaction Arrangement	0–3 (Dissatisfaction)	34.3	32.5	27.7	50.0	31.8	31.8	242
	4–7	29.2	28.2	36.2	16.7	18.2	30.3	231
	8–10 (Satisfaction)	34.3	38.0	34.7	33.3	45.5	36.2	276
	Don't Know/Refused	2.3	1.3	1.4	0.0**	4.5	1.7	13
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762

Table 4.23 continued

Certificate Category [#]								
		Refusal / failure to attend	Inappro	Genuine effort	Not genuine effort†	Began but inappro†	Total	<i>n</i>
	Parenting Factors							
Time in Arrangement	0–12 Months	23.6	30.2*	31.9**	33.3	45.5*	29.3	223
	13–30 Months	28.7	29.8	34.3	0.0***	45.5	31.0	236
	>30 Months	44.4	37.7	31.5***	66.7	9.1***	37.3	284
	Don't Know/Refused	3.2	2.3	2.3	0.0***	0.0***	2.5	19
	Total	100.0	100.0	100.0	100.0	100.0	100.0	762

Notes: # Excludes 15 cases where respondent did not allow access to administrative data. † Categories to be used with great caution due to low sample size. Statistically significant difference in proportion compared to Category A *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.24 Use of Any Professional Services by Certificate Category, 2016

Certificate Category (%)					
Responses	Refusal or failure to attend	Inappropriate for FDR / began but inappropriate	Genuine effort	Total	n
No	44.0	36.7*	39.0	39.4	298
Yes	56.0	63.3*	61.0	60.6	458
Total	100.0	100.0	100.0	100.0	756

Notes: Statistically significant difference in proportion compared to Category A *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

4.4.2 Types of professional services used

Of those who engaged a professional service, the most used was a private lawyer, solicitor or similar, with over 80% of respondents hiring their services (Table 4.25). Counsellors (38%), Psychologists (34%), and Legal Aid professionals (33%) also share moderate service use. Several differences emerged in service use between the categories of s.60I certificate. 'Genuine effort' certificate recipients, for instance, were more likely to seek the services of psychologists, and 'inappropriate for FDR' certificate recipients were more likely to consult with case workers or other professionals when compared to 'refusal or failure to attend' certificate recipients. These differences are likely to reflect SES variables (e.g., education, income).

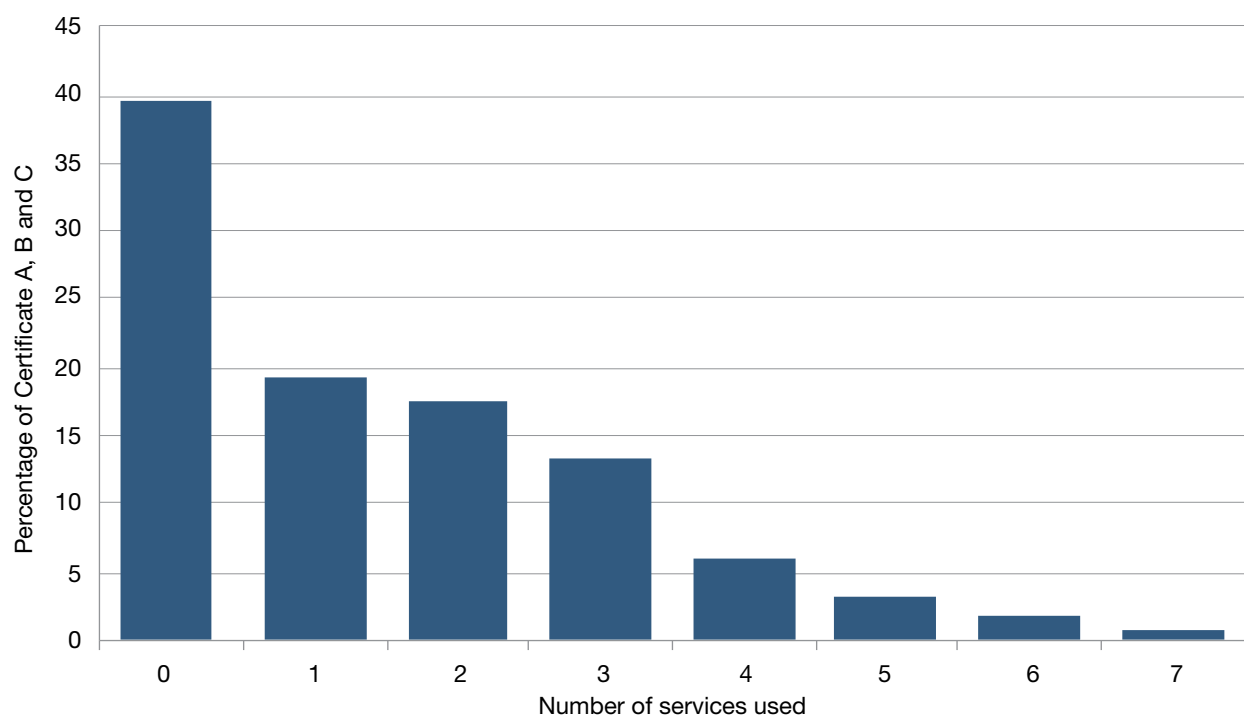
4.4.3 Number of professional services used

By applying the variables measuring the types of professional services engaged by respondents, it is possible to construct a measure of the total number of types of services used. Just under 40% of the sample comprising 'refusal or failure to attend', 'inappropriate for FDR', and 'genuine effort' certificate recipients used one or two professional service types, and this percentage drops off considerably to just over 5% using five or more services (Figure 4.1).

Table 4.25 Use of Professional Service Types by Certificate Category, 2016

Service Types†	Certificate Category (%)				<i>n</i>
	Refusal failure to attend	Inappropriate / began but inappropriate	Genuine effort	Total	
Private Lawyer/Solicitor/Legal Practitioner/Barrister	84.30	80.57	86.15	83.12	384
Community Legal Centre	19.01	16.11	16.15	16.88	78
Legal Aid	33.88	36.49	26.92	33.12	153
Other Mediation Service	12.4	11.37	9.23	11.04	51
Counsellor	36.36	37.91	38.46	37.66	174
Psychologist	27.27	35.55	39.23**	34.42	159
Case Worker	7.44	14.69**	12.31	12.12	56
Other Professional	6.61	12.32*	6.15	9.09	42

Notes: Compared to 'Refusal or failure to attend' certificate *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; † Table excludes those with no service use.

Figure 4.1 Distribution of Professional Services Used, 2016

Those who used multiple service types were more likely to use Legal Aid, counselling, and case worker services than other services (Table 4.26). For example, of those who used only one service type, approximately 6% used Legal Aid compared with 31% of those using two services and 47% of those who used three services.

Of the demographic factors, there were few differences in any use of services (Table 4.27). However, about 70% of those with a university education used some kind of service compared to just 54% of those with a high school education. The self-employed were marginally less likely to use any services when compared to salaried workers or those reliant on government benefits.

Table 4.26 Use of Professional Service Types by Services Used, 2016

	Number of Services Used [†]						
	1	2	3	4	5	6	7
Priv Lawyer/Solicit/Legal Pract/Barrister	81.3	78.6	87.9	93.3	91.7	81.8	100.0
Community Legal Centre	2.1	10.7	20.2	33.3	66.7	54.5	100.0
Legal Aid	6.3	31.3	47.5	60.0	62.5	90.9	100.0
Other Mediation Service	2.8	9.2	11.1	13.3	33.3	72.7	50.0
Counsellor	4.2	30.5	53.5	86.7	91.7	90.9	100.0
Psychologist	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Case Worker	1.4	29.8	51.5	68.9	87.5	100.0	100.0
Other Professional	0.0	7.6	13.1	24.4	41.7	81.8	75.0
N	144	131	99	45	24	11	4

Notes: † Table excludes those with no service use.

Table 4.27 Any Service Use by Demographic Factors, 2016

		% Any Help	n
Age	18–24	58.3	12
	25–34	60.7	140
	35–44	62.8	331
	45–54	59.8	224
	55–64	44.2	43
	65+	80.0	5
Education	High School	54.3	197
	Trade/Certificate/Diploma	58.0	348
	University	70.6***	211
Main Income Source	Wages	60.2	485
	Self-Employed	54.9*	102
	Government Benefits	67.8	152
	Other	41.2	17
Repartnered	Not repartnered	63.7	380
	Living Together	54.3**	256
	Living Apart Together	63.4	112
	Don't Know	75.0	8
Gender	Male	59.1	350
	Female	61.8	406
Parent	Male – Parent A	58.6	251
	Male – Parent B	60.6	99
	Female – Parent A	60.3	290
	Female – Parent B	65.5	116

Notes: Statistically significant difference in proportion *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Interestingly, those cohabiting in a new relationship were less likely to use services compared to other relationship types.

Similarly, of the parenting factors, few variations were found in any service use (Table 4.28). About 70% of those who reported their relationship

involved 'lots of conflict' were likely to engage some kind of service, compared with those in a 'friendly' relationship (54.9%). Not surprisingly, half (50%) of those who had been in the same arrangement for over 30 months had used a service compared to 70% of those who had been in the same arrangement for a year or less.

Table 4.28 Any Service Use by Parenting Factors, 2016

		% Any Help	n
Number of Children With Former Partner	1	62.3	292
	2	59.5	299
	3 or more	60.1	158
	Don't Know	42.9	7
Relationship Quality	Friendly	54.9	51
	Co-operative	53.8	119
	Distant	57.5	193
	Lots of Conflict	69.1*	188
	Fearful	65.7	102
	No contact	54.0	87
	Don't Know	68.8	16
Child-Parent Involvement	High	61.0	490
	Moderate	68.0	100
	Little/No	53.8	156
	Don't Know/Refused	70.0	10
Child-Former Partner Involvement	High	58.2	287
	Moderate	64.5	155
	Little/No	61.5	278
	Don't Know/Refused	55.6	36
Child Satisfaction Arrangement	0-3 (Dissatisfaction)	59.4	239
	4-7	61.2	224
	8-10 (Satisfaction)	60.4	265
	Don't Know/Refused	67.9	28
Own Satisfaction Arrangement	0-3 (Dissatisfaction)	61.9	239
	4-7	61.7	230
	8-10 (Satisfaction)	58.4	274
	Don't Know/Refused	61.5	13
Time in Arrangement	0-12 Months	70.1	221
	13-30 Months	64.4	236
	>30 Months	50.0***	280
	Don't Know/Refused	57.9	19

Notes: Statistically significant difference in proportion *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

4.4.4 Satisfaction with professional services used

Those who had sought professional services were asked to rank their level of satisfaction by service type (Q E0iv). There appears to be little variation by certificate category, with about 22% of all respondents 'totally satisfied' with the services they received from a lawyer, community legal centre or Legal Aid (Table 4.29). In total, about 58% reported a score of 7 or more – indicating satisfaction.

The same satisfaction ranking question was asked of those who used another mediation service, counsellor, and psychologist or case worker (Q E0v) (Table 4.30). General satisfaction levels were greater than those for legal services, with over 70% reporting levels of general satisfaction.

4.5 Use of court adjudication following certificate receipt

Following termination of mediation and issue of certificate, respondents were asked whether they or their partner had lodged an application for parenting orders with the court (Q E1). In this section, we examine the prevalence of court applications, characteristics of those applications, and how the propensity to be involved in a court application differs by the respondent's characteristics, including their issued certificate category.

Table 4.29 Satisfaction with Private Lawyer, Community Legal Centre, Legal Aid, by Certificate Category, 2016

Rating	Certificate Category (%)			
	'Refusal or failure to attend'	'Inappropriate for FDR'	'Genuine effort'	All
0 – Total Dissatisfaction	14.2	9.6	9.8	10.8
1	0.9	3.2	1.6	2.2
2	0.0	4.3	3.3	2.9
3	6.6	5.3	0.8	4.3
4	1.9	2.7	4.9	3.1
5	5.7	12.8	15.4	11.8
6	6.6	7.4	8.1	7.4
7	13.2	8.0	12.2	10.6
8	16.0	20.7	15.4	18.0
9	9.4	5.3	8.9	7.4
10 – Total Satisfaction	25.5	20.7	19.5	21.6
Total	100.0	100.0	100.0	100.0
N	106	188	123	417

Table 4.30 Satisfaction with Other Mediation Service, Counsellor, Psychologist, Case Worker, by Certificate Category, 2016

Rating	Certificate Category (%)			
	'Refusal or failure to attend'	'Inappropriate for FDR'	'Genuine effort'	All
0 – Total Dissatisfaction	3.3	1.7	2.8	2.4
1	1.6	0.8	0.0	0.8
2	0.0	2.5	2.8	2.0
3	1.6	4.2	0.0	2.4
4	0.0	3.3	5.6	3.2
5	6.6	9.2	11.1	9.1
6	11.5	7.5	8.3	8.7
7	8.2	11.7	5.6	9.1
8	32.8	17.5	19.4	21.7
9	13.1	17.5	8.3	13.8
10 – Total Satisfaction	21.3	24.2	36.1	26.9
Total %	100.0	100.0	100.0	100.0
N	61	120	72	253

4.5.1 Application for Parenting Orders

As only around 50% of respondents correctly stated that the purpose of the s. 60I certificate is to enable them to pursue action through the courts to finalise their dispute, it is important to understand the propensity for those with a certificate to lodge a parenting order with the court. Across this sample, approximately half have been involved in a lodged application (Table 4.31).

Importantly, there are variations in applications by certificate category. 'Inappropriate for FDR') certificate recipients were more likely than others to be involved in an application, whereas 'refusal or failure to attend' certificate recipients were less likely.

Given that almost the same percentages are involved in an application as those who understand the use of the s. 60I certificate, are these groups closely associated? Results in Table 4.32 show this hypothesis to be partially correct. About 50% of those who correctly determine the use of the certificate (52.9%) or who see an alternative use of the certificate (51.5%) are involved in an application. This is significantly higher than the 36% of those who simply don't know what the purpose of the certificate is, or even recall receiving a certificate.

Table 4.31 Did You or Your Former Partner Lodge an Application for Parenting Orders, by Certificate Category, 2016

Responses	Certificate Category (%)			All
	'Refusal or failure to attend'	'Inappropriate for FDR'	'Genuine effort'	
Yes	43.1	54.7**	47.4	49.3
No	56.5	44.0**	51.2	49.6
Don't Know / Can't Say	0.5	1.2	1.4	1.1
Total %	100.0	100.0	100.0	100.0
N	216	327	213	756

Notes: Statistically significant difference in proportion compared to 'refusal or failure to attend' certificate recipients; *** $p < 0.01$

** $p < 0.05$ * $p < 0.1$

Table 4.32 Court Application by Understanding of s.60I Use, 2016

	Involved in Application			Total
	Yes	No	Don't know	
File and Application	52.9	46.6	0.6	100.0
Other	51.5	47.0	1.5	100.0
Don't know [#]	36.5***	61.9***	1.6	100.0
n	366	364	8	738

Notes: # includes those who reported 'Don't Know' as to the purpose of the certificate and those who didn't recall holding a certificate at all.

4.5.2 Application for Parenting Orders by demographic and parenting factors

Interestingly, there are few differences in the propensity to be involved in a court application by either demographic or parenting characteristics. Of the demographic characteristics, only gender is statistically significant in explaining differences in court applications (Table 4.33). About 56% of males were involved in a court application compared with about 45% of women.

There are some differences in court applications by parenting factors, specifically with respect to relationship quality and time in the arrangement (Table 4.34):

- Those who reported feeling 'fearful' or having 'lots of conflict' with their former partner were more likely to be involved in a court application than those with a 'friendly' relationship. For example, 42% of the 'friendly' relationship group were involved in a court application compared with about 60% of the 'fearful' or 'lots of conflict' groups.
- The longer the time in the current arrangement, the lower the likelihood of court applications.

Table 4.33 Court Application Propensity by Demographic Groups, 2016

		% Court	<i>n</i>
Demographic Factors			
Age	18–24	33.3	12
	25–34	50.0	138
	35–44	48.8	328
	45–54	53.6	222
	55–64	45.2	42
	65+	40.0	5
	Total	49.9	747
Education	High School	49.0	194
	Trade/Certificate/Diploma	46.7	345
	University	56.0	209
	Total	49.9	748
Main Income Source	Wages	50.2	478
	Self-Employed	53.9	102
	Government Benefits	45.0	151
	Other	58.8	17
	Total	49.9	748
Relationship	No relationship	46.8	374
	Living Together	53.1	254
	Living Apart	51.8	112
	Don't Know	62.5	8
	Total	49.9	748
Gender	Male	56.1	346
	Female	44.5***	402
	Total	49.9	748
Parent	Male – Parent A	53.6	248
	Male – Parent B	62.2	98
	Female – Parent A	43.2**	287
	Female – Parent B	47.8	115
	Total	49.9	748

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.34 Court Application Propensity by Parenting Factors, 2016

		% Court	<i>n</i>
Parenting Factors			
Number of Children with With Former Partner	1	51.9	287
	2	50.0	298
	3 or more	46.2	156
	Don't Know	42.9	7
	Total	49.9	748
Relationship Quality	Friendly	42.0	50
	Co-operative	50.0	118
	Distant	44.0	191
	Lots of Conflict	58.6**	186
	Fearful	59.8**	102
	No contact	39.5	86
	Don't Know	33.3	15
	Total	49.9	748
Child-Parent Involvement	High	48.2	483
	Moderate	58.0*	100
	Little/No	49.0	155
	Don't Know/Refused	60.0	10
	Total	49.9	748
Child-Former Partner Involvement	High	52.6	285
	Moderate	49.7	151
	Little/No	46.4	276
	Don't Know/Refused	55.6	36
	Total	49.9	748
Child Satisfaction Arrangement	0-3 (Dissatisfaction)	54.0	237
	4-7	48.6	222
	8-10 (Satisfaction)	47.9	261
	Don't Know/Refused	42.9	28
	Total	49.9	748
Own Satisfaction Arrangement	0-3 (Dissatisfaction)	55.0	238
	4-7	49.3	227
	8-10 (Satisfaction)	46.7*	270
	Don't Know/Refused	30.8*	13
	Total	49.9	748
Time in Arrangement	0-12 Months	58.5	217
	13-30 Months	50.4*	234
	>30 Months	45.3***	278
	Don't Know/Refused	10.5***	19
	Total	49.9	748

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

4.5.3 Characteristics of the application

About 75% ($n=279$ of 373) of those involved in an application had finalised their application. Respondents in this group were questioned to determine whether they received a ruling by a judge (Q E1iii) or whether the application was resolved through the use of consent orders (Q E1iv) (Table 4.35). Category B ('Inappropriate for FDR') and Category C ('Genuine effort') recipients were more likely to receive a judicial ruling (~20%) compared to Category A ('Refusal or failure to attend') certificate recipients (about 10%). Category C ('Genuine effort') recipients were also more likely to specify consent orders (about 4%). However, this rarely occurred, with only four individuals citing this as a means of resolving their dispute.

Those whose application was finalised by a judge's ruling were also asked on a scale of 0 ('Totally dissatisfied') to 10 ('Totally satisfied') to rate their satisfaction with the outcome of their parenting application with the court (Q E1vi) (Table 4.36). Over half of all respondents were 'satisfied' or 'totally

satisfied' with the outcome (54.3%). By contrast, about 30% were 'totally dissatisfied' or 'dissatisfied' with their experience. There was little variation in rates of satisfaction across certificate categories.

Of those with completed applications, almost one-quarter (~24%) indicated that they were likely to seek further orders from the court; a further 8% were unsure (Table 4.37). There is no statistically significant difference in the likelihood of seeking further court orders by certificate category. In other words, those who received a s.60I certificate because the dispute was deemed to be inappropriate for FDR were no more likely to consider seeking further orders from the court than were those who appeared to make a 'genuine effort' to resolve their parenting dispute. Of course, returning to court is likely to involve considerable time, money and stress, and thus would be unappealing to most separated parents – apart from the small (~10–25%) but significant group of parents in entrenched high conflict, which is believed to occupy an inordinate amount of family courts' and family law system professionals' time and resources (Neff & Cooper, 2004; Stacer & Stemen, 2000).

Table 4.35 Ruling by Judge or Consent Order, 2016

	Certificate Category (%)			
	'Refusal or failure to attend'	'Inappropriate for FDR'	'Genuine effort'	All
Ruling by Judge	9.9	18.5*	20.0*	16.7
No Ruling or Consent Order	90.1	80.8*	76.3**	81.9
Consent Order	0.0	0.8	3.8*	1.4
Total	100.0	100.0	100.0	100.0
N	71	130	80	281

Notes: statistically significant difference in proportion compared to 'refusal or failure to attend' certificate group; *** $p<0.01$ ** $p<0.05$ * $p<0.1$

Table 4.36 Satisfaction with Application to Court, 2016

	Certificate Category (%)			
	'Refusal or failure to attend'	'Inappropriate for FDR'	'Genuine effort'	All
Totally Unsatisfied	16.9	11.9	15.6	14.3
Unsatisfied	10.8	17.8	15.6	15.2
Neither	18.5	16.8	12.5	16.1
Satisfied	23.1	32.7	34.4	30.4
Totally Satisfied	30.8	20.8	21.9	23.9
Total %	100.0	100.0	100.0	100.0
n	65	101	64	230

Notes: completed applications with a ruling by a judge.

Table 4.37 Likelihood of Seeking Further Orders from the Court, 2016

	Certificate Category (%)			
	'Refusal or failure to attend'	'Inappropriate for FDR'	'Genuine effort'	All
Yes	23.9	26.2	20.0	23.8
No	63.4	66.2	72.5	67.3
Refused	0.0	0.0	1.3	0.4
Don't Know/Can't say	12.7	7.7	6.3	8.5
Total %	100.0	100.0	100.0	100.0
n	65	101	64	230

Notes: completed applications

4.5.4 Alternatives to Parenting Orders

Those who had not been involved in court proceedings or whose court order had not been finalised were asked how else they tried to resolve their dispute apart from going to court (Q E2) ($n=375$ without a parenting order; $n=92$ with orders not finalised) (see Table 4.38). Of this group, just under two-thirds (63%) had attempted alternative methods. Category B ('Inappropriate for FDR') certificate

recipients were marginally more likely to seek an alternative method.

The responses for the 298 individuals who cited alternative methods to resolve their parenting dispute are shown in Table 4.39.¹⁵⁶ Once more, the vast majority of respondents indicated 'working it out together' (41%). A further 20% indicated continuing mediation.

Table 4.38 Alternatives to Parenting Orders, 2016

	Certificate Category (%)			
	'Refusal or failure to attend'	'Inappropriate for FDR'	'Genuine effort'	All
Other Methods Tried	57.2	66.0*	63.9	62.7
Didn't Try Anything	41.4	33.5	35.3	36.4
Refused/Don't Know	1.4	0.5	0.8	0.8
Total %	100.0	100.0	100.0	100.0
<i>n</i>	145	197	133	475

Notes: *** $p<0.01$ ** $p<0.05$ * $p<0.1$

Table 4.39 Attempts to Resolve the Dispute Other Than Court, 2016

Attempts other than Court	Descriptor	<i>n</i>	%
Work it out together	The parents communicating with each other was the only answer provided	122	40.9
Continue mediation	Continuation of mediation (working it out together may have been included as well)	59	19.8
Mediation with lawyers	Mediation, but with lawyers present (working it out together may have been included as well)	4	1.3
Counselling / parenting courses	Counselling, parenting course (working it out together may have been included as well)	8	2.7
Lawyer negotiation / advice	Lawyers negotiating on their behalf, or advice provided by solicitors (working it out together may have been included as well)	21	7.0
Court	Court (working it out together may have been included as well)	12	4.0
Expert involvement	Reports/advice obtained from experts, e.g., family consultants, psychologists (working it out together may also have been included)	4	1.3
Written communication	Written communication, through lawyers or directly between parents (working it out together may also have been included)	2	0.7

Table 4.39 continued

Attempts other than Court	Descriptor	<i>n</i>	%
One parent ceased involvement in family	E.g., 'walked away'; other parent incarcerated; other parent relocated with children (working it out together may have been included)	5	1.7
Multi: Med'n + counselling	Both mediation and counselling mentioned (working it out together may have been included as well)	2	0.7
Multi: Lawyers + mediation	Both lawyer involvement and mediation mentioned (working it out together may have been included as well)	6	2.0
Multi: Court + mediation	Both court and mediation mentioned (working it out together may have been included as well)	3	1.0
Multi: Med'n + family go b/w	Both mediation and family members acting as a go-between mentioned (working it out together may have been included as well)	1	0.3
Multi: Tried everything else	Respondent stated that had 'tried everything else' (working it out together may have been included as well)	1	0.3
Multi: Counselling + lawyers	Both counselling and lawyer involvement mentioned (working it out together may have been included as well)	1	0.3
Multi: Med'n/lawyers experts	All of mediation, lawyers and expert involvement mentioned (working it out together may have been included as well)	1	0.3
Multi: Lawyers + court	Both lawyers and court mentioned (working it out together may have been included as well)	1	0.3
Acquiesced /live with conflict	Given up on resolving conflict & either had acquiesced or respondent working within/around the conflict (working it out together may have been included as well)	12	4.0
Friend mediation	A friend conducted an informal mediation (working it out together may have been included as well)	1	0.3
Police involvement	Involved police in attempt to resolve dispute (working it out together may have been included as well)	4	1.3
Child protection	Involved child protection in attempt to resolve dispute (working it out together may have been included as well)	2	0.7
Friend or family go between	A friend or family member acted as a go-between (working it out together may have been included as well)	6	2.0
Comm'n through children	Have tried to resolve dispute by communication with / through children (working it out together may have been included as well)	3	1.0
Just time	Has tried to resolve dispute by giving the situation time to resolve (working it out together may have been included as well)	2	0.7
Miscellaneous	E.g., consulted widely, paid her off	2	0.7
Indeterminate		13	4.4
Total		298	100

4.6 Pathways following the issue of a section 60I certificate

In the previous sections, we have examined the outcome of issuing a certificate, the professional services used, and the resulting propensity for a parenting application to be sought through the courts. In this section, we develop a typology of pathways from receipt of certificate through to resolution of the dispute. Specifically, we define the following pathway groups:

- 1 = The individual uses no services and is involved in a parenting application.
- 2 = The individual uses no services and is not involved in a parenting application.
- 3 = The individual uses 1–2 services and is involved in a parenting application.
- 4 = The individual uses 1–2 services and is not involved in a parenting application.
- 5 = The individual uses 3 or more services and is involved in a parenting application.
- 6 = The individual uses 3 or more services and is not involved in a parenting application.

4.6.1 Pathways and certificate category

Table 4.40 shows the distribution of pathways across the sample. Interestingly, the largest group, accounting for just under 30% of the sample,

represents those who reported no service use and no court application ('Pathway 2'). A further 22% used 1–2 services and had sought parenting orders ('Pathway 3'); 14% used 1–2 services and did not seek parenting orders. About 16% presented as 'resource intensive' respondents, using 3 or more services and having initiated a parenting application ('Pathway 5'). Just over 10% of the sample reported using no services, but had made a court application ('Pathway 1'), and a further 8% reported heavy service use, but made no application to the court ('Pathway 6').

An important question is: do these pathways differ by the individuals' certificate category, and/or their understanding of the use of certificates? Table 4.41 sets out the pathways by certificate category – this distribution is remarkably homogeneous with one exception: 'inappropriate for FDR' certificate recipients were less likely to take Pathway 2 (no service use or court application). This makes sense: there are likely to be safety or related issues involved in these cases that require additional intervention or support (including court).

Considerably greater variation is evident in pathways when classified by understanding of the use of the s.60I certificate, especially those in the group who reported not knowing what the purpose of their certificate is, or who didn't know they held a certificate. About 45% of this group belong to Pathway 2 – they use no services and are not involved in any court applications (Table 4.42). Indeed, they were less likely to be part of a pathway that combines a court application with any service use.

Table 4.40 Typology of Pathways Following Certificate Receipt, 2016

Typology	Service	Court	<i>n</i>	%
Pathway 1	None	Yes	86	11.50
Pathway 2	None	No	210	28.07
Pathway 3	1 or 2	Yes	166	22.19
Pathway 4	1 or 2	No	104	13.90
Pathway 5	3 or more	Yes	121	16.18
Pathway 6	3 or more	No	61	8.16
Total			748	100.00

Table 4.41 Typology of Pathways by Certificate Category, 2016

Typology	Certificate Category (%)					Total
	Service	Court	'Refusal / failure to attend'	'Inapp for FDR'	'Genuine effort'	
Pathway 1	None	Yes	9.3	12.7	11.9	11.5
Pathway 2	None	No	34.9	23.8***	27.6	28.1
Pathway 3	1 or 2	Yes	20.5	24.1	21.0	22.2
Pathway 4	1 or 2	No	14.9	12.1	15.7	13.9
Pathway 5	3 or more	Yes	13.5	18.6	15.2	16.2
Pathway 6	3 or more	No	7.0	8.7	8.6	8.2
Total %			100.0	100.0	100.0	100.0
n			215	323	210	748

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.42 Typology of Pathways by Understanding of Certificate Usage, 2016

Typology	Service	Court	Understanding of Certificate (%)			Total
			Yes	No	Don't Know [#]	
Pathway 1	None	Yes	9.0	13.8*	13.7	11.5
Pathway 2	None	No	24.0	25.0	45.2***	27.9
Pathway 3	1 or 2	Yes	25.7	23.1	12.1***	22.5
Pathway 4	1 or 2	No	15.3	12.7	10.5	13.6
Pathway 5	3 or more	Yes	18.5	15.4	11.3**	16.2
Pathway 6	3 or more	No	7.5	10.0	7.3	8.4
Total %			100.0	100.0	100.0	100.0
n			346	260	124	730

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; # includes those who report 'Don't Know' as to the purpose of the certificate and those who don't recall holding a certificate at all.

4.6.2 Pathways and demographic characteristics

It would appear that Pathway 2, which accounts for just under 30% of the full sample, comprises those with limited understanding of the system. We can also examine how these pathways differ for different demographic groups (Table 4.43) and for those with different parenting characteristics (Table 4.44). Of the demographic characteristics, pathways differ according to the individual's income source, relationship status, education, and gender.

Pathways 4, 5 and 6 had significantly higher proportions of individuals on government benefits. For example, 27% of those in Pathway 5 (3+ services, court application) were in receipt of government

benefits, in comparison to 14% of those in Pathway 1 (0 services, court application). These same pathways (4, 5, 6) were also more likely to include those who were not in a new relationship at the time of the survey. Respondents who had found a new partner and were cohabiting with them were far less likely to be represented in these categories. For example, Pathway 1 (0 services, court application) comprises 43% of cohabiting people in a relationship, compared with 25% of those in Pathway 5 (3+ services, court application). Pathway 5 (3+ services, court application), which has a high proportion of people in receipt of government benefits, also has the highest proportion of people with a university education. For example, about 40% of those in Pathway 5 have a university education, compared with under 20% in Pathway 2.¹⁵⁷

Table 4.43 Typology of Pathways by Demographic Characteristics, 2016

	Pathway:	1	2	3	4	5	6	
	Service Use:	None	None	1 or 2	1 or 2	3+	3+	
	Court Use:	Yes	No	Yes	No	Yes	No	<i>n</i>
Age	18–24	0.0	2.4**	1.8*	1.9	0.8	1.6	12
	25–34	17.4	19.0	21.1	19.4	15.7	14.8	138
	35–44	44.2	40.0	41.6	50.5	43.8	52.5	328
	45–54	29.1	30.5	31.3	23.3	34.7	24.6	222
	55–64	9.3	7.6	3.6	2.9*	4.1	6.6	42
	65+	0.0	0.5	0.6	1.9	0.8	0.0	5
	Total	100.0	100.0	100.0	100.0	100.0	100.0	747
Education	High School	33.7	28.6	23.5*	22.1*	22.3*	26.2	194
	Trade/Cert/Dip	41.9	51.9	47.6	44.2	38.0	47.5	345
	University	24.4	19.5	28.9	33.7	39.7**	26.2	209
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Main Income Source	Wages	60.5	66.2	71.1*	57.7	57.9	63.9	478
	Self-Employed	19.8	13.8	14.5	13.5	11.6	6.6**	102
	Gov't Benefits	14.0	17.6	13.9	27.9**	27.3**	27.9**	151
	Other	5.8	2.4	0.6**	1.0*	3.3	1.6	17
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Relationship	No relationship	40.7	49.0	41.6	54.8*	58.7**	63.9***	374
	Living Together	43.0	37.1	40.4	26.0**	25.6***	23.0***	254
	Living Apart	16.3	12.9	16.9	18.3	13.2	13.1	112
	Don't Know	0.0	1.0	1.2	1.0	2.5*	0.0	8
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Gender	Male	61.6	41.9***	56.6	43.3**	38.8***	31.1***	346
	Female	38.4	58.1***	43.4	56.7**	61.2***	68.9***	402
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Parent	Male A	39.5	32.9	39.8	32.7	27.3*	19.7***	248
	Male B	22.1	9.0***	16.9	10.6**	11.6*	11.5*	98
	Female A	33.7	41.0	28.3	42.3	39.7**	54.1***	287
	Female B	4.7	17.1***	15.1***	14.4**	21.5***	14.8*	115
	Total %	100.0	100.0	100.0	100.0	100.0	100.0	
	<i>n</i>	86	210	166	104	121	61	748

Notes: Pathway 1 is the comparison group for statistical tests: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$

Table 4.44 Typology of Pathways by Parenting Characteristics, 2016

Pathway:		1	2	3	4	5	6	
	Service Use:	None	None	1 or 2	1 or 2	3+	3+	
	Court Use:	Yes	No	Yes	No	Yes	No	<i>n</i>
Number of Children With Former Partner	1	39.5	35.7	47.6	36.5	29.8	41.0	287
	2	36.0	42.9	35.5	37.5	48.8*	32.8	298
	3 or more	23.3	20.0	15.7	25.0	21.5	26.2	156
	Don't Know	1.2	1.4	1.2	1.0	0.0	0.0	7
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Relationship Quality	Friendly	8.1	7.6	6.0	6.7	3.3	9.8	50
	Co-operative	20.9	17.6	16.3	17.3	11.6*	6.6***	118
	Distant	17.4	31.0***	31.3**	25.0	14.0	26.2	191
	Lots of Conflict	25.6	17.1	28.3	26.9	33.1	21.3	186
	Fearful	16.3	10.0	9.6	6.7**	25.6*	21.3	102
	No contact	9.3	15.2	7.8	12.5	10.7	11.5	86
	Don't Know	2.3	1.4	0.6	4.8	1.7	3.3	15
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Child-Parent Involvement	High	59.3	66.2	64.5	63.5	62.0	73.8*	483
	Moderate	12.8	10.0	15.7	13.5	17.4	11.5	100
	Little/No	26.7	22.9	16.9*	22.1	20.7	13.1**	155
	Don't Know/Refused	1.2	1.0	3.0	1.0	0.0	1.6	10
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Child-Former Partner Involvement	High	40.7	40.0	42.8	30.8	36.4	31.1	285
	Moderate	26.7	15.2**	19.3	26.9	16.5*	26.2	151
	Little/No	26.7	39.5**	31.9	37.5**	43.0**	42.6	276
	Don't Know/Refused	5.8	5.2	6.0	4.8	4.1	0.0**	36
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Child Satisfaction With Arrangement	0-3 (Dissatisfaction)	39.5	29.5	33.7	29.8	31.4	26.2*	237
	4-7	26.7	30.5	33.7	26.9	24.0	36.1	222
	8-10 (Satisfaction)	31.4	36.7	29.5	35.6	40.5	36.1	261
	Don't Know/Refused	2.3	3.3	3.0	7.7*	4.1	1.6	28
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748

Pathway:		1	2	3	4	5	6	
Service Use:		None	None	1 or 2	1 or 2	3+	3+	
Court Use:		Yes	No	Yes	No	Yes	No	<i>n</i>
Own Satisfaction Arrangement	0–3 (Dissatisfaction)	39.5	27.1**	33.1	30.8	34.7	29.5	238
	4–7	23.3	31.9	36.7**	26.0	25.6	34.4	227
	8–10 (Satisfaction)	34.9	39.5	28.9	39.4	39.7	32.8	270
	Don't Know/Refused	2.3	1.4	1.2	3.8	0.0	3.3	13
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748
Time in Arrangement	0–12 Months	29.1	19.0*	31.3	27.9	41.3*	34.4	217
	13–30 Months	29.1	28.1	33.7	36.5	30.6	31.1	234
	>30 Months	41.9	49.0	33.7	30.8	28.1**	27.9*	278
	Don't Know/Refused	0.0	3.8***	1.2	4.8**	0.0	6.6**	19
	Total	100.0	100.0	100.0	100.0	100.0	100.0	748

There are also striking gender differences in pathway type. Women were under-represented in Pathway 1 (0 services, court application) and Pathway 3 (1–2 services, court application) compared to other pathways. For example, female parents accounted for 69% of Pathway 6 (3+ services, no court application), but just 38% of Pathway 1 (0 services, court application). As discussed in Section 5, male parents were more likely than women to be involved in a parenting application. Consistent with this finding, men were over-represented in Pathway 1 (no services, court application) and Pathway 3 (1–2 services, court application) when compared to other categories. However, Pathway 5 (3+ services, court application) had a relatively lower proportion of men (39%), particularly when compared to 61% of women. These data suggest that separated fathers with a s.60I certificate appear to favour court, and make use of few if any other professional services.

4.6.3 Pathways and parenting characteristics

There are fewer variations in pathways by parenting characteristics (Table 4.44) – with most difference pertaining to relationship quality. Separated parents who used 3+ services and made a court application (i.e., Pathway 5) were more likely to report being fearful (25.6%). Conversely, only 6.7% of those in Pathway 4 reported a fearful relationship with their children's other parent.

4.6.4 Pathways and future plans and experience

Importantly, there are some differences in respondents' future plans when classified by pathway type (Table 4.45). Respondents who reported that their parenting dispute had been resolved were asked: 'Are you likely to take steps in the future to change your arrangements'? (Q E1vii)

As shown in Table 4.45, overall about 28% of respondents indicate they are likely to make a change. This figure is significantly higher for those in pathway 6 (high service use, no court application); with about 50% of them indicating a likely change.

Regardless of considerable variation in responses to the question on future change, there are few differences in the levels of satisfaction with current parenting arrangements between the pathway types (Table 4.46). Respondents were asked: 'How satisfied or dissatisfied are you with your current parenting arrangements?' (Q E2vi).

Overall, about one in three respondents scored 3 or less on a 10-point scale, indicating a high level of dissatisfaction. When compared to Pathway 1, Pathway 2 respondents tended to be less likely to be dissatisfied and more likely to be ambivalent, scoring neither dissatisfied nor satisfied.

Table 4.45 Typology of Likelihood of Changing Arrangements, 2016

Pathway:	1 [#]	2	3	4	5	6	
Service Use:	None	None	1 or 2	1 or 2	3+	3+	
Court Use:	Yes	No	Yes	No	Yes	No	Total
Yes	27.9	26.9	26.7	35.4	21.4	50.0**	28.2
No	60.7	70.4	64.2	54.2	76.2**	46.2	65.3
Refused	11.5	2.8**	9.2	10.4	2.4**	3.8	6.5
Total %	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N	61	108	120	48	84	26	447

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; # base case for statistical tests.

Table 4.46 Typology of Likelihood of Changing Arrangements, 2016

Pathway:	1 [#]	2	3	4	5	6	
Service Use:	None	None	1 or 2	1 or 2	3+	3+	
Court Use:	Yes	No	Yes	No	Yes	No	Total
Dissatisfied (score 0–3)	37.2	27.1*	33.7	36.5	33.9	36.1	32.9
Neither (score 4–6)	14.0	24.3**	19.3	16.3	18.2	24.6	19.9
Satisfied (score 7–10)	47.7	48.1	44.6	45.2	47.1	37.7	45.9
Don't know/ Can't say/ Ref	1.2	0.5	2.4	1.9	0.8	1.6	1.3
Total %	100.0	100.0	100.0	100.0	100.0	100.0	100.0
n	86	210	166	104	121	61	748

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; # base case for statistical tests.

Although respondents in Pathway 5 did not indicate higher levels of dissatisfaction with their parenting arrangement, they were marginally more likely than some other pathways to feel pressured into retaining the existing arrangement. For example, about 55% of Pathway 5 applicants felt this way, compared to 43% of those in Pathway 1 (Table 4.47).

4.6.5 Pathways with service use

Focusing on the pathways that include service use (Pathways 3–6), we can examine the distributions of service use with a view to understanding differences in the needs of the respective pathways (Table 4.48). Comparing Pathways 3 and 4, the only discernible difference between the two is the use of Private Lawyer/Solicitor/Legal Practitioner/Barristers.

About 87% of Pathway 3 (1 or 2 services, court application) use these services compared with 68% of Pathway 4, who do not use a court application ($p < 0.01$).

Comparing high service-use Pathways 5 and 6, Pathway 5 respondents (3+ services, court application) were more likely than Pathway 6 to use Legal Aid (62% vs.. 46%, $p < 0.05$) and case workers (30% vs.. 15%, $p < 0.05$).

Comparing high and low-service pathways, the only similarity is the relatively high use of legal services among the categories. Across Pathways 5 and 6, there was heavy usage of all services, but this was particularly so for legal, Legal Aid, counsellors and psychologists.

Table 4.47 'Do you feel pressured to stick with the existing arrangement?' by Service-Use Pathway, 2016

Pathway:	1 [#]	2	3	4	5	6	
Service Use:	None	None	1 or 2	1 or 2	3+	3+	
Court Use:	Yes	No	Yes	No	Yes	No	Total
Yes	43.0	37.1	46.4	47.1	55.4*	47.5	45.1
No	53.5	59.5	50.0	47.1	40.5*	45.9	50.8
Refused	3.5	3.3	3.6	5.8	4.1	6.6	4.1
Total %	100.0	100.0	100.0	100.0	100.0	100.0	100.0
n	86	210	166	104	121	61	748

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; # base case for statistical tests.

Table 4.48 Service Use by Service-Use Pathway, 2016

Pathway:	3 [#]	4	5	6
Service Use:	1 or 2	1 or 2	3+	3+
Court Use:	Yes	No	Yes	No
% Using Services				
Private Lawyer/Solicitor/Legal Practitioner/Barrister	87.3	68.3***	90.9	86.9
Community Legal Centre	4.8	7.7	33.9***	32.8***
Legal Aid	15.1	22.1	62.0***	45.9***
Other Mediation Service	4.8	7.7	20.7***	14.8***
Counsellor	16.3	18.3	68.6***	73.8***
Psychologist	13.9	17.3	63.6***	67.2***
Case Worker	4.8	1.9	29.8***	14.8***
Other Professional	2.4	1.9	18.2***	23.0***
Average Number of Services	1.5	1.5	3.9	3.6

Notes: *** $p < 0.01$ ** $p < 0.05$ * $p < 0.1$; # base case for statistical tests.

4.7 Summary

This chapter sought to shed light on separated parents' knowledge of – and service use following the issuing of – a s.60I certificate. Results are based on data from the s.60I Mediation Certificate Survey conducted between June and August 2016. In particular, we have attempted to identify:

1. clients' understanding of the purpose of the s.60I certificate;
2. whether respondents knew the reason they were issued with a certificate;
3. variations in service use once a certificate had been issued;

4. variations in the propensity for court applications for parenting orders; and
5. differing pathways through the family law system.

4.7.1 Certificate issue and understanding

The most common category of s.60I certificate issued was where the parenting dispute was deemed to be 'inappropriate for FDR' (40%). 'Refusal or failure to attend' and 'genuine effort' certificates were issued in equal proportions (~28%), whereas very few certificates were issued for 'not genuine effort' or 'FDR began but no longer appropriate' (<1% and <3%, respectively).

Very low levels of recall of certificate category

Of those who identified a certificate category, just over half recalled their certificate category correctly once reminded of the five categories. In summary, when either prompted or spontaneously recalled, just over 41% of the sample can correctly recall their certificate category. In total, only 5% of the sample could correctly and spontaneously (i.e., unprompted) identify their issued certificate category.

Some groups recalled their certificate category better than others

Around 80% of those issued with 'refusal or failure to attend' certificates correctly remembered their certificate category, compared with 42% of 'inappropriate for FDR' certificate and 54% of 'genuine effort' certificate recipients. Just over a quarter (27%) of 'inappropriate for FDR' certificate recipients incorrectly believed they were 'refusal or failure to attend' certificate recipients, while one-fifth (20%) of 'genuine effort' recipients were under the misconception that they received the obverse: a 'not genuine effort' certificate. Thus, apart from those who were issued a s.60I certificate because one party refused or failed to attend FDR, there appears to be considerable confusion among other recipients regarding the certificate category they received.

Low levels of understanding of the purpose of the certificate

Just over half of respondents who recalled receiving a s.60I certificate accurately stated the policy intent of the certificate: to file an application in court. When 'other' responses¹⁵⁸ that approximate the purpose are included, around three-quarters of those who recalled receiving a certificate could be seen as accurately stating the purpose of the certificate process.

Some groups understood the purpose of the certificate better than others

Those with a university education were more likely to have a correct understanding of the certificate's purpose than those with a high school or certificate-level qualification. Similarly, women were more likely than men to exhibit an accurate understanding of the purpose of the s.60I certificate.

Moreover, separated parents issued with a s.60I certificate because of 'refusal or failure to attend' by one parent were more likely to recall their certificate category correctly than the other two largest groups – recipients of an 'inappropriate for FDR' or a 'genuine effort' certificate (66% vs. 32% & 40%). Those least likely to recall with accuracy the category of the certificate they received were parents whose case was deemed to be inappropriate for dispute resolution, only one-third of whom remembered the category of the certificate issued.

Yet almost all respondents believed they firmly understood s.60I procedure

Despite the significant proportions of respondents not recalling what their certificate category was or what the certificate was for, 92% of the respondents believed they understood the FDR process more broadly.

This suggests a strong mismatch between perception and reality in relation to the s.60I certificate component of FDR. 'Inappropriate for FDR' certificate recipients were less likely to indicate they understood the FDR process than parents issued with a certificate because one party refused or failed to participate (41% vs. 51%).

Positive view of mediation, but....

Respondents were generally positive about the FDR experience and felt parenting issues were appropriate for this forum. However, the majority of respondents also indicated that they did not achieve the outcomes they had sought to achieve. There was nonetheless a strong preference for continued mediation to resolve the parenting dispute.

This set of findings is indicative of the ways in which procedural justice can offset distributive injustice. As observed by Clayton and Opatow (2003: 303), 'people can be more willing to accept negative outcomes when they view procedures that lead to these outcomes as fair, respectful and allowing voice'. Put simply, the way people are treated can affect their perceptions of the fairness of an outcome.

The characteristics of people with different categories of s.60I certificate varied

Separated parents issued with a certificate because one party refused or failed to participate in FDR were younger on average than 'inappropriate for FDR' and 'genuine effort' certificate recipients. They were also more likely to be repartnered.

Those most likely to be single, to be reliant on government benefits, and to be in a fearful relationship were parents whose case was deemed to be inappropriate for dispute resolution.

Parents with a s.60I certificate issued on the grounds of 'genuine effort' were more likely to have a tertiary degree than those with 'refusal or failure to participate' or 'inappropriate for FDR' certificates.

4.7.2 Service use

Moderate levels of service use varied throughout the population

A majority (~61%) of separated parents with one of the three most common categories of certificate ('refusal or failure to attend'; 'inappropriate for FDR'; 'genuine effort') had engaged some type of professional service.

Low levels of variation in service use throughout the population

There was no variation in service use by certificate category. Demographic and relationship factors, however, did come in to play. About 70% of separated parents with a degree used services compared to only 54% of those with a high school education. In addition, about 70% of those who reported their relationship involved 'lots of conflict' were more likely to use some kind of service, compared with those in a 'friendly' relationship (55%).

Legal Services most heavily used

Where professional services had been used, over 80% of respondents reported using a private lawyer, solicitor or similar; around one-third (33–38%) of service users also made use of counsellors (38%), psychologists (34%) and Legal Aid (33%).

By certificate category, several differences emerged. Parents deemed to make 'genuine effort' were more

likely to use psychologists, whereas those in cases deemed to be 'inappropriate for FDR' were more likely to use case workers or other professionals when compared to those in cases where a parent refused or failed to attend FDR.

Multiple service users more likely to engage particular services

Just under 40% of the group comprising the three most common categories of certificate ('refusal or failure to attend'; 'inappropriate for FDR'; 'genuine effort') used one or two professional service types; this percentage swiftly declines to just over 5% retaining the support of five or more services. Those who used multiple service types were more likely to use Legal Aid, counselling and case worker services.

Satisfied with services

The majority of respondents indicated satisfaction with services, although levels of dissatisfaction appear higher for some legal services.

4.7.3 Parenting applications

Moderate levels of court applications

Approximately half the survey respondents had been involved in a parenting application to court. Importantly, there are variations in applications by certificate category. Those in cases deemed to be 'inappropriate for dispute resolution' were more likely than others to undertake court proceedings, whereas those in cases where one of the parents refused or failed to attend FDR were less likely than others to be party to an application.

Those with limited understanding of the system were less likely to seek parenting orders

About half of those who understood the purpose of the s.60I certificate or who saw an alternative use of the certificate sought court orders. This is significantly higher than 36% of those who simply didn't know what the purpose of the certificate was or didn't think they had a certificate.

Little variation in court applications by demographic or parenting factors

Interestingly, there were few differences in the propensity to seek court orders by either demographic or parenting characteristics. About 56% of men were involved in a court application compared with approximately 45% of women. Those who reported feeling 'fearful' or having 'lots of conflict' with their former partner were more likely to be involved in a court application compared with those who reported a friendly relationship.

Low levels of applications with a ruling by a judge

Less than one in five respondents with a finalised application reported receiving a ruling by a judge.

Those in cases deemed to be 'inappropriate for FDR' or in which both parents made a 'genuine effort' to resolve their parenting dispute were more likely to receive a judicial determination (about 20%) compared to those in cases where one of the parents refused or failed to attend FDR (~10%).

Cases where both parents appeared to make a 'genuine effort' to resolve their parenting dispute were also more likely to specify consent orders (about 4%). However, instances of seeking consent orders as a means of resolution were uncommon.

Moderate levels of satisfaction with application to the court

Over half of all respondents were satisfied or totally satisfied with their application to the court (54.3%). By contrast, around 30% were entirely dissatisfied or dissatisfied with their experience.

Moderate levels considering seeking further orders from the court

Of those with completed applications, almost one-quarter indicated that they were likely to seek further orders from the court; a further 8% were unsure. This finding is consistent with other work internationally suggesting that high-conflict cases constitute between 10 and 25% of the separated parent population (e.g., Coates et al., 2004; Elrod, 2001; Johnston, 1994; Kelly, 2003; Lebow & Slesinger, 2016; Stewart, 2001).

Alternatives to court mostly piecemeal

Of the 298 individuals who (a) had not been involved in court proceedings or whose court order had not been finalised, and (b) used alternative methods to resolve their parenting dispute, many resolved their dispute themselves or continued with FDR. A sizeable proportion (41%) of respondents indicated that they 'worked it out together'. About one-fifth indicated continuing with FDR.

4.7.4 Pathways after receiving a section 60I certificate

Differing pathways through the system

To recap: we identified a set of six pathways through the system upon receipt of a s.60I certificate, tracing a combination of low, medium, and high service use with court applications (Table 4.49).

Importantly, the largest group – accounting for just under 30% of the sample – were parents who *reported no service use and no court application* (Pathway 2). A further 22% used 1–2 services and were involved in a court application (Pathway 3); 14% also used 1–2 services, but did not seek parenting orders (Pathway 4). Approximately 16% were resource-intensive respondents, using three or more services and seeking parenting orders (Pathway 5). Just over 10% of the sample reported not using any services, but did seek parenting orders after they received a s.60I certificate (Pathway 1), and a further 8% were heavy service-users, but with no court application (Pathway 6). This means that half of all separated parents with a s.60I certificate filed an application for parenting orders in court; the other half did not.

Those with a poor understanding of the s.60I certificate were most likely take Pathway 2

About 45% of those with limited understanding of the purpose of the s.60I certificate used no services and were not involved in any court applications (i.e., Pathway 2). Furthermore, they were less likely to be part of a pathway that combined a court application with any service use.

Table 4.49 Identified Pathways on s.60I Certificate Receipt, 2016

Typology	Service	Court	%
Pathway 1	0	✓	11.5
Pathway 2	0	✗	28.07
Pathway 3	1–2	✓	22.19
Pathway 4	1–2	✗	13.9
Pathway 5	3+	✓	16.18
Pathway 6	3+	X	8.16

Individual characteristics reveal different pathways upon receipt of a s.60I certificate

Pathways 4 and 6 (service but no application to court) and Pathway 5 (3+ services and application for parenting orders) had significantly higher proportions of individuals on government benefits. Overall, those with a university education were less likely to use any services or go to court (Pathway 2) than parents in Pathway 3 (1–2 services, court application), Pathway 4 (1–2 services, no court application) and Pathway 5 (3+ services, court application).

There were fewer variations in pathways by parenting characteristics, with most differences pertaining to relationship quality. Pathway 5 members (3+ services, court application) were more likely to report being fearful (25.6%). Conversely, only 6.7% of those in Pathway 4 (1–2 services, no court application) reported being in a fearful relationship with their children's other parent. The distribution of pathways by certificate category is extremely homogeneous, subject to parents in cases deemed to be 'inappropriate for FDR', who were less likely to belong to Pathway 2 (no service use, and no court application). Cases deemed to be inappropriate for dispute resolution are, of course, the most likely cases to need other services or the involvement of a family law court.

Female parents were less likely to be involved in a court application, except when there were high levels of professional service support

Mothers were under-represented in Pathway 1 (0 services, court application) and Pathway 3 (1–2 service, court application), whereas fathers were over-represented in these two pathways.

However, Pathway 5 (3+ services, court application) had a relatively lower proportion of men (39%), when compared to 61% of women. It would seem that mothers were only more likely to have initiated a court application if they had also made use of numerous services. It is noteworthy that Pathway 5 also comprised a higher proportion of parents who reported a 'fearful' relationship with their children's other parents.

Pathways' use of alternative services

Of those pathways that involved service use (Pathways 3–6) there were significant differences in the types of services reported. Among low service-use pathways, about 87% of Pathway 3 (1–2 services, court application) used legal services (Private Lawyer/Solicitor/Legal Practitioner/Barristers) compared to 68% of Pathway 4, which involved no court application.

Close inspection of the high service-use Pathways 5 and 6 (3+ services) revealed Pathway 5 respondents (3+ services, court application) were more likely to use Legal Aid (62% vs. 46%, $p<0.05$) and case workers (30% versus 15%, $p<0.05$). Of course, this might reflect the nature of the population receiving legal aid: many may face multiple challenges and require multiple services.

Relative to Pathways 3 and 4, Pathways 5 and 6 involved heavy use of all services, but in particular legal, legal aid, counsellors and psychologists.

Future plans and pathways through the system

Of those respondents who reported that their parenting dispute had been resolved, just over a quarter (28%) indicated they were likely to take steps to change their parenting arrangements. This figure is significantly higher for those in Pathway 6 ('high service use, no court application'), with about 50% of those in this group indicating a likely change.

4.8 Limitations

Several limitations of the survey data warrant brief mention. First, the Interrelate sample represents mediated parenting dispute cases in which a s. 60I certificate was issued between 2011 and 2015 in New South Wales. Our results may not generalise to other states and territories of Australia. Second, just over half (56%) of the final useable sample ($n=1,379$) completed the telephone survey, immediately omitting 44% of potential respondents. The extent to which those who participated differed to those who did not – including the extent to which the causes of non-participation might be indicative of divergent demographic, parenting, or other characteristics – remains unclear. The above results thus may not be representative of the administrative caseload under examination.¹⁵⁹ Fourth, although there are hints in the data that some lawyers sent their clients to mediation to obtain a s. 60I so that court proceedings could begin – or to have the certificate on hand in order to commence proceedings at a later date – this is not something that the survey data explicitly explored. Legal advice to obtain a certificate 'just in case' is a factor that might conceivably underlie some results.

5 Separated Parents with a Section 60I Certificate: In their own words...

Maria Vnuk and Bruce Smyth

5.1 Introduction

At the conclusion of the main survey questions, participants were asked: Do you have anything further you would like to pass on to the researchers or Interrelate about your experience with mediation?¹⁶⁰ This chapter presents analysis of these additional comments, provided by almost two-thirds of the survey participants (62%; $n=485/777$).

At this juncture it is worth remembering that the present study sought feedback from clients who received a certificate. Many clients, of course, did not obtain the outcomes they initially sought. The comments that follow need to be read in this context. As mentioned previously (Table 4.19), although two-thirds did not achieve their desired outcome, almost half of this group still rated mediation as a positive experience.

Eight clear themes emerged:

- i. The time taken to obtain a certificate;
- ii. The apparent lack of power to enforce attendance at FDR;
- iii. Additional concerns for families with complex needs;
- iv. Feeling pressured to reach an agreement;
- v. Perceptions of systemic or individual bias;
- vi. The issuing of certificates;
- vii. Follow-up after the certificate was issued; and
- viii. An apparent lack of enforcement of outcomes reached in FDR.

We discuss these themes in detail below.¹⁶¹

The chapter is structured in a way that broadly follows the process of FDR and issuing of the s. 60I certificate. More general responses are also briefly discussed at the end of the chapter.

5.2 Key themes

5.2.1 The time taken to obtain a certificate

A small group ($n=22$) of parents specifically referred to the protracted period of time the FDR process took before a s. 60I certificate was issued. For example, one father who initiated mediation remarked:

The time delay from when you first contact [the mediation service] – it's months and then they don't contact the other parent until after that [first] meeting has taken place. Then it takes another three months and it's not until after that time that you have a conversation together or get a certificate. This means the need to address or resolve the issue quickly is lost.¹⁶² ('Genuine effort' certificate)

Timeliness was also often mentioned when other matters of significance were evident. Some parents felt from the start that their issues would not be resolvable by FDR, because of (a) the inappropriate subject matter; (b) the other parent's likely non-attendance; or (c) the rare prospect of their dispute reaching an agreement. In any of these circumstances they believed they should be able to bypass FDR and proceed directly to court. Some had been advised by lawyers to obtain the certificate in order to initiate the matter in court. Some parents felt that the time required to undergo the FDR process to secure a certificate disadvantaged them, such as in the circumstances of non-resident parents who could not spend time with their child.

As one father who initiated mediation averred:

Mediation did not play any role other than helping going to court. It is complex, too lengthy, and not the best for the child, and put me at a disadvantage.¹⁶³ ('Genuine effort' certificate)

Another father who initiated mediation expressed a similar view:

There was a course that you had to complete before you started mediation, which was about why it's important to have children in your life. The timeframes [for mediation to begin or to be issued the certificate] were ridiculous.... I had no access to my child for twelve months, and it went on to two years.¹⁶⁴ ('Inappropriate for FDR' certificate)

In a similar vein, but from a different vantage point, a mother remarked:

I just needed that certificate to go to court. Everything is always so delayed and it takes so long. When you have kids and are in the situation I'm in, it takes too long.... Sometimes you just need that certificate and it's just an added stress on everyone else.¹⁶⁵ (Mother who initiated mediation; 'inappropriate for FDR' certificate)

5.2.2 The apparent lack of power to enforce attendance

A sizeable group of parents ($n=82$: 16% of those who provided comments) discussed the difficulty of when the other parent did not attend or did not make an effort in the mediation. The majority ($n=66$) of these parents initiated the mediation ($n=66$). Some of these parents emphasised the time wasted, the financial detriment when the other parent was thought to be 'manipulating the process', and that once the certificate was issued, they would need money for a lawyer or to go to court.

For instance, one father whose former partner initiated the mediation remarked:

I do believe [the mediation service] needed to be given more power because the

parenting arrangement was happening – then for some reason the other party stopped it. I contacted [the mediation service] who sent a letter to the other party, who [subsequently] refused to attend.... The end result was a waste of time and taxpayers' money. I have no idea where to take it. I can't afford the legal fees. I've got to suck up with what I've got and not see my children.¹⁶⁶ ('Inappropriate for FDR' certificate)

Some parents expressed frustration at the 'voluntary' nature of FDR, as they could not take unresolved issues any further because of a lack of funds. A small group ($n=42$) believed that the mediation service should have applied more pressure on the other parent to attend, or that the mediation service should be allocated increased powers to track down parents, and that FDR be compulsory. Others proposed sanctions, such as fines, having to pay court costs, or granting the parent who initiated mediation what they sought.

This response from one father sums up the frustration felt by the parent who initiated mediation:

Mediation only works if both parties are willing to work it out. If one party wishes not to be involved, then it is a waste of time and energy. There needs to be some enforcement to have some outcome from the mediation process.¹⁶⁷ ('Inappropriate for FDR' certificate)

As one mother despaired:

[It's] disappointing [there's] no help outside the court system.... Separated partners should have to go to mediation; the law should make both parties participate in mediation. If I have to take it to court it will cost me a whole lot. I've been down that way. I'm not doing it anymore. The system has let me down.¹⁶⁸ (Mother who initiated mediation; 'inappropriate for FDR' certificate)

5.2.3 Families with complex needs

Another common theme raised ($n=72$) was the issuing of the Section 60I certificates where families had complex needs. Most ($n=51$) mentioned family violence, followed by mental health concerns ($n=18$), with three parents raising both. It is not surprising that this was one-fifth of all responses to this question, as families with complex needs are likely to be over-represented in this population. Four parents noted how mediation or court can be used to continue the abuse – and wanted this to be recognised. As one mother whose former partner initiated mediation commented:

Mediation agencies have to be careful with people who are vindictive, and do things for inappropriate reasons – for example, fighting for more access to children to hurt the other parent when they do not mean to have access.¹⁶⁹ ('Genuine effort' certificate)

Several sub-themes related to families with complex needs emerged. One theme pertained to whether parents felt their safety concerns were appropriately considered during FDR, for example, shuttle mediation rather than both being in the same room; whether they felt they were believed or not; and concerns that they could be pressured to agree to a level of time with the other parent that they felt was not safe. As one mother who initiated mediation stated:

I kind of just feel like that in my situation, you're getting dragged through [the mediation service] about three or four times a year... [The mediation service] saw that the situation was quite violent and they actually protected me by letting me go 15 minutes prior to him. So they actually did protect me in that sense. [That organisation] is very considerate, very caring and do very much try. But as you know, the outcomes can't always be wonderful. In my situation it wasn't and it wasn't worth it.¹⁷⁰ ('Genuine effort' certificate)

The complexity of these cases and expectations of FDR are illustrated by a woman whose former partner initiated the mediation:

When I first went to [the mediation service] and talked to people, they gave me the

impression they were all understanding and believing, I felt supported.... They were saying 'it's terrible, go to the police,' and 'don't let him see them until you have court orders.'...then reality dawned that there was no proof of what happened.... Nobody told me in the beginning how unlikely what I was fighting for was (that my ex wouldn't be able to see the kids).... Realistic expectations should be given. I was fighting for something unrealistic. I may have tried a bit harder at mediation if people had told me this at the start, because they told me not to worry about mediation and just go straight to court.¹⁷¹ ('Inappropriate for FDR' certificate)

The other sub-theme related to whether the parent wanted a certificate issued or preferred FDR to commence or continue. Three parents who raised matters of family violence mentioned specifically that they had wanted to continue the FDR process rather than being issued with a certificate. One mother was especially clear on this:

The cancellation of mediation due to my partner being abusive left me disappointed, and unsupported to achieve a mediated outcome.... I felt abandoned because of their policy and that was the only opportunity that I had before going to court.¹⁷² (Mother who initiated mediation; 'inappropriate for FDR' certificate)

Another father who wanted to mediate was concerned that it did not proceed:

I did reach out to [the mediation service] two months ago because I wanted a dispute resolution. They wouldn't do it because there was an AVO [apprehended violence order] in the family relationship. Now there's a lot of solicitors and legal proceedings involved...I'm quite disappointed with [the mediation service] not helping out.¹⁷³ (Father whose former partner initiated mediation; 'Inappropriate for FDR' certificate)

For parents with complex needs, particularly where both family violence and mental health issues were raised, the circumstances that lead to issuing of the certificate can influence whether the dispute progresses to court. As one mother remarked:

My ex- didn't follow through with anything. I had high anxiety and stress related to his violent and abusive behaviour.... Their advice was, take it to court, but with my stress and anxiety I couldn't do that.¹⁷⁴ (Mother whose former partner initiated the mediation; 'refusal or failure to attend' certificate)

One mother highlighted the consequences for her of not revealing her situation:

When someone is coming out of an emotional abusive relationship...that person is not feeling confident enough to speak up. They need to pull that person aside and ask them more, better questions and ask them how they're feeling. They didn't ask me, and I didn't speak up and he did and he got everything his way.¹⁷⁵ (Mother who initiated mediation; 'genuine effort' certificate)

Some participants' responses emphasised that even when the issuing of a certificate was not the outcome they sought, they benefited from support or other services that assist with parenting and communication skills. For example, one mother was extremely appreciative of the support she received from the mediation and related wrap-around services:

[I] really appreciated their support. My ex-partner pulled out, and they supported me. I did a domestic violence program through them. The case worker rang once a month when I was going through the court even though I wasn't with them anymore.¹⁷⁶ (Mother who initiated mediation; 'Genuine effort' certificate)

Responses relating to mental health mainly revolved around the extra challenges it brings to the process, and the assistance that needs to be available. As one father who initiated mediation explained:

There's no support for either party if mental health issues are a contributing factor. It is very difficult to start and there are lengthy delays to get it processed.... In situations like mine there's little information and it's hard for people needing that service to get the information.... You can apply to court without it, and waste the time and spend the money to only be sent back by a judge to complete the process. My ex-partner has [condition] and she didn't understand that she wasn't going to benefit from mediation.¹⁷⁷ ('Refusal or failure to attend' certificate)

As with family violence, mental health concerns provide an opportunity for the services to support the parents even if a certificate is issued. As one mother remarked:

[I] wanted to thank [the mediation service] as they had helped at a time when I had lost everything. They really were supportive at a point where I almost felt suicidal.¹⁷⁸ (Mother whose former partner initiated mediation; 'refusal or failure to attend' certificate)

5.2.4 Feeling pressured to reach an agreement

Twelve responses related to pressure to make a decision on the issues without enough time to consider them or to agree to less-than-optimal arrangements. Parents who raised the issue of pressure had usually initiated the mediation ($n=8$ of the 12), although responses were fairly evenly divided by gender (5 mothers, 7 fathers). These were parents who received a certificate ($n=7$ 'genuine effort' certificate) mainly after some participation in FDR.

One father, for example, remarked:

I was promised I would have time to think about the question and come back. I was held to ransom to make the decision there and then.... A judge should sit down and listen to what's going on and make a call, rather than mediators who made the call to terminate. I had no say in it. I don't have the money to take it to court and she's well aware of that.¹⁷⁹ (Father whose former partner initiated mediation; 'began FDR but inappropriate' certificate)

Another disclosed:

I felt pressured to come up with an outcome on the day without any prior knowledge of the issues. I think people need to know what they're walking into.... I felt bombarded sitting there. ... I walked out thinking 'what have I agreed to?' (Father who initiated mediation; 'genuine effort' certificate)

Three of the mothers felt the agreement they made was inappropriate because of safety concerns.

As one explained:

I told the mediators that I was fearful of my former partner and that was not considered.... There was no consideration of the implications for the child of the care arrangements. I was pressured to take a decision then and there, which was not helpful.¹⁸⁰ (Mother who initiated mediation, 'inappropriate for FDR' certificate)

5.2.5 Perceptions of systemic or individual bias

A small but significant group of parents ($n=55$) perceived bias in the family law system overall or in part; or perceived a lack of balance, or felt judged by a specific FDRP. Not all participants who mentioned bias referred to gender bias, particularly in the latter group, which comprised a smaller proportion of these responses.

Nonetheless, this theme more often occurred in responses by men than by women (39 fathers compared with 20 mothers), and was also more common to the parent who initiated mediation ($n=39$). Thus fathers who initiated mediation were more likely to raise issues of bias than others. Bias and family violence were sometimes mentioned in the same response. 'Inappropriate for FDR' and 'failure or refusal to attend' certificates may reflect presence of current or past family violence concerns.

According to one father:

The system fails fathers; they need major help against women. Women [are] using their children as revenge to hurt the dad. I don't have the money to take her to court.¹⁸¹ (Father who initiated mediation; 'refusal or failure to attend' certificate)

And according to one mother:

The mediator I had was very biased to the male. I am very fortunate that I have normal well-adjusted children. I felt there was a constant pressure to say that they weren't, that they were going to become psychologically impaired in some way as a result of their parents.... [I] [f]elt the process was very judgemental and not supportive of me.¹⁸² (Mother whose former partner initiated mediation; 'genuine effort' certificate)

Several other participants spoke of bias, pressure, and time – emphasising the cost implications of these. As one father reflected:

I found the process very slow – constantly being held up... I felt pressured by one of the staff to agree to certain things I necessarily did not agree to. I found the process one-sided and in favour of my ex-partner. I did not get any outcome until I...got solicitors involved through Community Legal Service.¹⁸³ (Father who initiated mediation; 'genuine effort' certificate)

A mother similarly reflected:

I felt backed into a corner with regard to how much time the children spent with each parent...and [the FDRP] putting pressure on me because they wanted a result that day.... I wasn't able to go to legal aid because I own a property. The outcome with [legal aid] is usually ten days with the mother and four days with the father. This seems to be the best outcome for kids.... [The mediation service] work for seven days with the mother then with the father...pushing for resolution on the day is not in kids' best interests.¹⁸⁴ (Mother whose former partner initiated mediation; 'genuine effort' certificate)

A small number of responses ($n=5$), all from fathers, related to child support. (Most references to child support $n=5/7$ were in this category.) Payment or enforceability of child support was presented as evidence of gender bias, with the compulsory nature of child support compared with the difficulties in enforcing parenting-time agreements reached in FDR or court orders. As one father who initiated mediation commented:

It is an unfair situation.... The Child Support Program enforces the money but does not enforce the parent having access to the children. This part of the system has to change. If the parent...cannot afford legal proceedings, they are left with no help. It is a one-sided situation where the parent and children do not get to see each other.¹⁸⁵ ('refusal or failure to attend' certificate)

5.2.6 The issuing of certificates

Sixteen participants referred to the ways in which the s. 60I certificate was issued. Some mentioned that they did not know the reasons why or what category of certificate was issued ($n=3$), or felt they should have been contacted before a certificate was issued ($n=2$). For instance, one father reflected:

In my case, I suspect that the reason the certificate was issued was because of the information provided by my

ex-wife.... This is not right if people can use this to avoid mediation. If [the mediation service] are going to issue this certificate, then both parties should be consulted regarding the credentials of the claim.¹⁸⁶ (Father who initiated mediation; 'inappropriate for FDR' certificate)

Others ($n=5$) felt that a certificate was issued too quickly before mediation had been given a chance, when both parents had wanted to continue.

One mother lamented:

If they allowed us to continue mediation, we could have resolved this and had something in place a lot earlier. She [the FDRP] made the call to call off mediation even though both parties wanted to mediate.¹⁸⁷ (Mother who initiated mediation; 'genuine effort' certificate)

Two participants believed that the other party had been given a 'Genuine effort' certificate too quickly. In contrast, one parent felt they should have been given a certificate the first time the other parent did not attend. Two mothers were concerned that it was excessively easy for their ex-partner to obtain a certificate. Family violence was present in these cases and both believed that this helped their ex-partner to abuse them financially by taking the issue to court. As one of these mothers explained:

I am not satisfied with how easy it is to get into court for my former partner... and cause discomfort to me including financially. [Former partner] is manipulating. He harms the child...and [the mediation service] believed him rather than listening to me. I don't think he qualified for the certificate.¹⁸⁸ (Mother whose former partner initiated mediation; 'refusal or failure to attend' certificate)

Two other participants referred to their frustration that the certificate indicating that the other party refused or did not attend was not considered by the judge. For example, a mother remarked:

Because they don't go to mediation you get the s.60I – and it's useless. The judge took no notice of it, and we had to conform to every rule we put in, or it would have cost thousands more... There's nothing between the court and that resolution.¹⁸⁹ (Mother who initiated mediation; 'refusal or failure to attend' certificate)

5.2.7 Follow-up after certificate issued

A small group of participants ($n=20$) raised issues about their understanding of the process, and the follow-up by the mediation service after the certificate was issued. Not understanding the impact of FDR ending, and being issued with a certificate, was an issue for some.

The following two comments typified these views:

A little more support or different angles that other people can approach [was needed], instead of just handing them a certificate and saying they can go to court.¹⁹⁰ (Mother who initiated mediation; 'inappropriate for FDR' certificate)

A bit more information [was needed] on what to do after the next step after s.60I certificate. The law court is a bit of a nightmare. Something to let people know what to expect, and if they need a solicitor or not [would be helpful].¹⁹¹ (Father who initiated mediation; 'refusal or failure to attend' certificate)

Another mother commented:

No one's ever bothered to follow up and say 'How are things?' I think that would make a huge difference.¹⁹² (Mother who initiated mediation; 'inappropriate for FDR' certificate)

5.2.8 Lack of enforcement of outcome

Twenty-five participants mentioned the apparent lack of enforcement for agreements made in mediation. (A few comments related to enforcement of court orders.) The composition of this group was similar to the group concerned that attendance at FDR was not compulsory: 16 were fathers, and 17 the parent who initiated mediation.

As one father who initiated mediation observed:

The mediation is fine provided there is co-operation. If there is no co-operation, it has no teeth. It relies on goodwill entirely.¹⁹³ ('Genuine effort' certificate)

Others suggested that they were caught in a cycle of FDR. For example, one mother lamented:

I felt a little let down with the mediation. I had gone through it before; same thing all over again. What should have happened before should have been followed, but there was no consequence for it. I was frustrated I was doing everything by the book and he wasn't.¹⁹⁴ (Mother who initiated mediation; 'refusal or failure to attend' certificate)

5.3 Some final general comments

More than a third (38%) of participants' comments were of a general nature. Of these, 52% expressed a positive view of FDR and 22% less satisfaction about the process for themselves. The remainder (26%) provided general suggestions or comments, with a small number appraising the research itself. One mother was glowing of the male FDRP in particular:

He [the FDRP] was absolutely brilliant.... I thought I was going to lose my children completely and the outcome was frustrating, but perfect.... I really appreciated his help, and the way he tried to help us come to a reasonable outcome. He was able to reason with the unreasonable.¹⁹⁵ (Mother whose former partner initiated mediation; 'genuine effort' certificate)

A parent's satisfaction with the mediation process was not always related to whether they obtained the outcome they had hoped for. The remarks of one mother provides the flavour of these types of responses:

The negative responses in the survey are not because of [the mediation service] or anything they did. When someone's not communicating, it's not their [the mediation service's] fault.¹⁹⁶ (Mother who initiated mediation, 'inappropriate for FDR' certificate)

5.4 Summary

This chapter sought to highlight some of the rich material generated from a final open-ended question in the CATI survey. That question asked all respondents whether they wanted to raise any other general issues or add any specific comments about the service they received. The two themes most often raised were: (a) non-attendance or non-participation in the mediation and the need for mediation services and FDRPs to be empowered to compel parents to attend; and (b) families with complex needs, the FDR process and the issuing of s.60I certificates. Comments on systemic or perceived personal bias by the FDRP were also common. Smaller numbers related to the mediation process itself, such as (a) time taken to obtain the certificate; (b) understanding the process and reasons for issuing the certificate; and (c) information and follow-up support once the certificate was issued. Pressure to agree and non-enforcement of the outcome of FDR, resulting in the need to initiate mediation again, were the other two themes mentioned.

Most themes were not gender-specific. However, as might be expected, bias and enforcement of the outcome tended to be raised by fathers, whereas issues of family violence tended to be mentioned by mothers. The frustration generated when one parent wanted to mediate and the other parent refused to attend, or failed to turn up to the mediation or complete the pre-mediation process, was clearly evident in participants' comments.

6 Discussion

Bruce Smyth, Elizabeth Keogh, Richard Chisholm, Wendy Bonython and Bryan Rodgers

The stated object of section 60I of the *FLA* is to ensure that all persons who have a dispute about children's matters 'make a genuine effort to resolve that dispute by family dispute resolution' before anyone makes an application for an order under Part VII of the Act. Since the introduction of s. 60I certificates a decade ago, little is known regarding: the way in which decisions about the certificates are made; whether clients understand the purpose of the certificates; and what happens to families after receiving a certificate.

The present study was designed to explore elements of the operation of the certificate-issuing process created by s. 60I of the *FLA*. Specifically, it sought to explore: (a) whether the number and categories of s. 60I certificates issued have changed over time; (b) the factors and circumstances influencing the decision of FDRPs to issue different categories of s. 60I certificates; and (c) clients' understanding of the purpose of the certificate, and the particular dispute resolution pathways, if any, used by families after receiving a s. 60I certificate.

Three sources of data were used to answer the above research questions: (a) administrative data for all Interrelate FDR parenting dispute cases between 2011–12 and 2014–15 ($n=10,848$ cases); (b) telephone interviews with 27 FDRPs employed by Interrelate; and (c) computer-assisted telephone interviews with 777 former clients of Interrelate who had been issued with a s. 60I certificate.

We now summarise the key findings of the study under headings based on our original research questions, and interleave prior work identified in the literature review where appropriate. But first, a caveat ...

6.1 Caveat

The findings of this study need to be interpreted with caution. This is because the study (a) is limited to the experiences of FDRPs and clients of a single family relationship service provider in one state of Australia (NSW); (b) excludes the experiences of people who participated in, or sought to participate in Family Dispute Resolution, but did not receive a certificate; and (c) excludes the experiences of two other important groups in the process: lawyers and judicial officers. In addition, slightly fewer than half of those in the final useable sample completed the telephone survey – the extent to which those who participated in the survey differed to those who did not remains unclear.

The study nonetheless provides what we hope will be a useful snapshot of separated parents' understanding of s. 60I certificates, the dispute resolution decision-making processes surrounding the issuing of certificates, and subsequent family dispute resolution trajectories after a certificate has been issued.

6.2 Are s. 60I certificates or certain categories of certificates on the rise?

The short answer is 'yes'. Interrelate issued 1,716 certificates in the 2011–12 financial year and 2,066 in 2013–14.¹⁹⁷

Regional and temporal differences were also evident. For example, in the first three financial years of data,¹⁹⁸ 'refusal or failure to attend' certificates were more likely to be issued in Newcastle and the Hunter Valley than in Far North Coast (2011–12: 33% vs. 15%; 2012–13: 36% vs. 20%; 2013–14: 30% vs. 10%). Both of these regions have relatively large client bases. Another example is 'genuine effort'

certificates in Upper Mid North Coast and Greater Sydney regions, with 'genuine effort' certificates more likely to be issued in the Upper Mid-North Coast in the first three financial years of data (2011–12: 61% vs. 40%; 2012–13: 57% vs. 43%; 2013–14: 52% vs. 42%). Aside from demographic differences, no obvious reason for these regional variations suggests itself, and this is not something the present study was designed to explore.

6.3 What factors and circumstances influence FDRPs' decisions?

FDRP background appeared to be unrelated to FDRPs' choice of certificate. Moreover, the only FDRP characteristic that seemed to be related to the categories of certificates issued was the number of years of experience. The administrative data suggest that experienced practitioners were more likely to issue 'inappropriate for FDR' certificates, and less likely to issue 'refusal or failure to attend' certificates, than newer practitioners.

More pointedly, it is clear from the practitioners we interviewed that many FDRPs expend a considerable amount of time deciding which category of certificate to issue. Some see these decisions as challenging the fundamental neutrality of their role.

Regulation 25(2) of the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth) specifies what has to be taken into account by FDRPs when determining whether FDR is appropriate. This regulation is prominent in FDRPs' decision-making process. That said, there were factors outside of legislation that appeared to influence some FDRPs' decisions. These included: organisational policy; personal safety; fear of complaints; the FDRPs' perception of the 'best interests' of the children; and of particular prominence: 'What will happen after the issue of the certificate – especially for clients who don't have the financial resources to go to court?' Concern about what might happen to a family after a certificate is issued appears to be founded on an unspoken perception by many FDRPs that the issue of a s. 60I certificate is a 'disempowering' act that brings participation in FDR to an end, rather than

an 'empowering' act permitting clients access to litigation as an additional dispute resolution process.

Some FDRPs identified times when the category of certificate issued may not have accurately reflected the circumstances of the family to which the certificate relates. They identified two such situations. The first occurs in cases where they were about to issue a 'refusal or failure to attend' certificate, but discovered with further investigation that the circumstances warranted issuing an 'inappropriate for FDR' certificate. The second situation was where 'inappropriate for FDR' or 'genuine effort' certificates were issued because of a reluctance to issue 'not genuine effort' certificates.

There was diversity of opinion among FDRPs about (a) whether the category of certificate should influence court decisions, and (b) whether it would be beneficial and/or appropriate for FDRPs to provide reasons for their decisions. As noted in Chapter 1, the legislation leaves it uncertain what if anything the court should do with the certificate once it is filed.

Finally, consistent with recent Australian work (e.g., Kaspiew et al., 2009; Qu et al., 2014), it would appear that a lot of family dispute resolution is occurring where there are allegations of family violence.

6.4 Do separated parents understand the purpose of section 60I certificates, and do they make use of these certificates?

Just over half of those who recalled receiving a s. 60I certificate correctly stated that they needed the certificate to file an application in court. (When 'other' responses¹⁹⁹ approximating the purpose are included, around three-quarters of those who recalled receiving a certificate could be seen as accurately stating the purpose of the certificate process.) Most respondents reported that they remembered receiving a s. 60I certificate. Just over 41% of the total sample could correctly recall their certificate category, either through spontaneous recall or after being reminded of the categories.

The most common category of s. 60I certificate issued was where the parenting dispute was deemed to be 'inappropriate for FDR' (40%). 'Refusal or failure to attend' and 'genuine effort' certificates were issued in equal proportions (~28%), whereas very few certificates were issued for 'not genuine effort' or 'no longer appropriate' (<1% and <3%, respectively).

The dispute resolution pathways that parents followed after the issuing of a s. 60I certificate were very diverse. Significantly, only half of parents with a certificate later made an application for parenting orders in court; the other half did not.

There was some association between the category of certificate issued and the incidence and extent of involvement in court proceedings. Those in cases deemed to be inappropriate for FDR were more likely than others to seek parenting orders, whereas those in cases where one of the parents refused or failed to attend FDR were less likely than others to file an application in court. Those who received an 'inappropriate for FDR' certificate or 'genuine effort' certificate were more likely to receive a judicial determination (about 20%) compared to those in cases where one of the parents refused or failed to attend FDR.

Responses to questions about the number of professional services used following the issue of a s. 60I certificate revealed sizeable 'low use' and 'high use' groups. Just over one-quarter did not go to court or use any other professional services, and another quarter used three or more other professional services. Of the latter, about two-thirds also pursued an action in court.

Examination of the type of professional services suggests that after the issue of a certificate, most parents prioritise legal support over more therapeutic interventions, with the use of legal services²⁰⁰ being high amongst those who used one to two professional services *and* those who used three or more services. In contrast, the use of therapeutic services (counsellors, psychologists and case workers) was only high amongst those who used three or more services.²⁰¹

Among parents with a certificate whose arrangements had not been resolved by court (either because they have not been involved in court proceedings, or because those court proceedings have not yet been finalised) about two-fifths reported 'working it out together' as a strategy they had attempted. About 20% indicated continuing FDR after receipt of a s. 60I certificate.

6.5 Joining the dots ...

Respondents were generally positive about the mediation experience and felt parenting issues were appropriate for this forum. However, the majority of respondents also indicated they did not achieve the outcomes they set out to achieve. There was nonetheless a strong preference for continued mediation to resolve the parenting dispute. This positive outcome builds on the findings in existing literature that the s. 60I process has been accompanied by an increased uptake of FDR, and a reduction in court applications.

One of the standout features of the data is that the requirement that FDRPs nominate a category of certificate is problematic at many levels. To begin with, decisions about this appear to consume considerable effort, resources, and FDRP cognitive horsepower. If the categories of certificate served an identifiable purpose, this would be justified. In addition, there is confusion within the legislation about the consequences attached to the different categories of certificate. Even if there were clarity about this, significant concerns remain. Data relating to the decision-making processes of FDRPs indicate that these decisions are sometimes influenced by factors outside of the legislation, and that there are sometimes variations in determining the category of certificate – as disclosed by some FDRPs themselves. If the category of certificate does have consequences, this process may produce unjust outcomes for some families. Furthermore, some FDRPs found the wording of the 'refusal or failure to attend' clause of the certificates confusing, and were frustrated by the absence of a certificate to use when a person does not know the other party's contact details. At a more prosaic level, the category of the certificate parents received was not of

sufficient significance to be remembered by them some years later. One important policy question to be considered then is: Are the categories of s.60I certificates necessary?

The data also suggest that the certification system is not working well for families with complex needs. This is borne out in comments by the FDRPs, and by separated parents' comments about the mediation process more generally. It is also consistent with existing literature.

One of the key tensions that emerge from the data is that parents who do not appear to have the financial resources to pursue litigation can be caught in a dispute resolution no-man's land. Faced with this dilemma, some FDRPs go to great lengths to provide a service, which in the strict letter of the legislation may not be appropriate in some instances lest the practitioners also end up in that no-man's land. The question of when FDR can and should be provided in the context of family violence and other challenging situations is an ongoing, vexed issue. The data in this study suggest that the interest of some clients may be compromised here. We hasten to add that the decisions of the FDRPs in the present study are clearly made from a place of compassion and good intention. Separated parents' comments indicated that for some, an FDRP's decision to withhold FDR is unwelcome; for others, with the benefit of hindsight, the continuation of the process is seen to have been unhelpful.

One potential concern is the disclosure by some FDRPs that they only issue a s.60I certificate if it is requested by clients. Many of the separated parents who participated in the CATI survey evidenced scant understanding of the purpose of the certification process. Given that this survey only involved those who *had* received a certificate it is probable that the level of understanding would be even lower amongst other clients. It is likely that some of those without a certificate may not have understood the need to request one. While obviously the need for a certificate would be brought to the person's attention if they were to attempt to initiate court proceedings, this would make an already complex family law system even more bewildering. Should the legislation require that a certificate be issued

to everyone who participates, or attempts to participate in FDR?

Yet another source of complexity that emerged in the present study is that there are some misunderstandings about the role that consideration of 'best interests' should play in the s.60I decision-making process of FDRPs. Within existing literature there are references to FDRPs being required to consider the best interests of children.

There appears to be no judicial guidance on the extent to which an FDRP's view about the children's best interests should affect his or her decision to issue a certificate, and what sort of certificate. Our view, however, is as follows.

First, it is reasonable to say that the overall purpose of this part of the law is to promote children's best interests. Also, FDRPs are required to advise *clients* to consider the best interests of children as the paramount consideration (s 60D).

On the other hand, nothing in s.60I or the *FDRP Regulations* specifies that FDRPs should consider the best interests of children. On the face of it, the law requires FDRPs to make their decisions about whether to issue a certificate, and if so what sort of certificate, on the basis of the factual matters specified in the section. For example, if the FDRP believed that all parties attended and made a 'genuine effort', the FDRP would issue a certificate to that effect. In that case, the decision to issue the certificate would not be based on the children's best interests.

In relation to some matters, however, it might be necessary for the FDRP to form a view about what would be in a child's interest. In particular, we think that it might well be correct for an FDRP to take into account matters relating to a child's best interests if those matters were relevant to the question whether FDR was 'appropriate' under s.60I(8)(aa) or (d). Taking the 'best interests' of the child into account in this decision would be permissible under regulation 25(2)(f) as 'any other matter that the family dispute resolution practitioner considers relevant to the proposed family dispute resolution'.

One perennial thorny issue across many areas of family law is that of what to do when one party refuses to engage with the process. One of the many challenges faced by FDRPs is the difficulty of dealing with clients who appear to be stalling rather than directly refusing to participate in FDR. This problem cuts across the issue of working with entrenched high-conflict cases. These cases continue to represent one of the greatest, most complex contemporary challenges to family law system professionals. No single or simple intervention suggests itself.

It is thus a complex matter to say whether the s.60I certificate process is functioning well, and precisely what changes might be needed to improve it.

6.6 Future research

Several lines of inquiry warrant further investigation. Extension and replication are important foundation stones of social science, and no single study – especially when the data are from one service provider in a single state of Australia – should ever become the sole basis for policy or practice.

An obvious role for future research would be obtaining a nationally representative snapshot of the number and category of s.60I certificates being issued – both present and past – to ascertain trends over time. Our understanding is that Family Relationship Centres and many government-funded Family Relationship Support services are required to submit their client and caseload administrative data to the Australian Government. Analysis of these national administrative data would be incredibly useful given the limited data on which the present study is based.

Replicating both the client survey and FDRP interviews with national random samples of clients (including those who did *not* receive a s.60I certificate) and FDRPs, including those who work in private practice, would be especially valuable. Neither would be difficult to conduct.

There is also great value in expanding the samples to include lawyers. There were intimations in our data that some family lawyers suggest to their clients they obtain a s.60I certificate in case it is needed for later proceedings. This was not something that we could explore more fully.

A study of the sorts of advice that lawyers provide in relation to the value and timing of obtaining a s.60I certificate would fill an important gap in our knowledge, particularly as this advice may underlie some of the survey results.

In addition, informal inquiries suggest that judicial practice in relation to the use or otherwise of s.60I certificates varies. Judges may or may not read the certificates before a hearing commences, and it appears to be unusual for parties to attempt to rely on the certificates as evidence, and consequently unusual for judges to refer to the certificates in their judgments. A formal study of judicial practice in the use of s.60I certificates would be an important line of inquiry for future research.



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Notes

1 *Family Law Act* 1975 (Cth) s. 60I(8)(a) ('FLA').

2 Ibid s. 60I(8)(aa).

3 Ibid s. 60I(8)(b).

4 Ibid s. 60I(8)(c).

5 Ibid s. 60I(8)(d).

6 Ibid s. 60I(1).

7 Ibid s. 60I (9). The full text of s. 60I is set out at: http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60i.html

8 Ibid s. 60I(8)(a).

9 Ibid s. 60I(8)(aa).

10 Ibid s. 60I(8)(b).

11 Ibid s. 60I(8)(c).

12 Ibid s. 60I(8)(d).

13 Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth) regs 26(1), 26(3) ('FDRP Regulations').

14 Ibid regs 25(1), (3), (4).

15 Ibid reg 29(c)(ii).

16 It is probable that this is a drafting oversight, as the 'no longer appropriate for FDR' category was introduced as part of an amendment in 2008: *Family Law Amendment (De Facto Financial Matters and Other Measures) Act* 2008 (Cth), sch 4 s1.

17 Ibid reg 26(4).

18 <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>

19 Fact Sheet: Section 60I Certificates, p. 2 – Available at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>

20 Fact Sheet: Section 60I Certificates, p. 3 – Available at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>

21 Fact Sheet: Section 60I Certificates, p. 5 – Available at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>

22 Fact Sheet: Family Dispute Resolution Screening and Assessment – Available at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>

23 *FLA* s. 60I(9)(a)(i).

24 Ibid s. 60I(9)(a)(ii).

25 Ibid s. 60I(9)(b).

26 Ibid s. 60I(9)(c).

27 Ibid s. 60I(9)(d).

28 Ibid s. 60I(9)(e).

29 Ibid s. 60I(9)(f). At the date of this report, no such circumstances appear to have been prescribed.

30 FDRP Regulations reg 26(1).

31 *FLA* s 13C.

32 We exclude the 2014–15 financial year because of a break in series.

33 The number of presenting needs recorded on a case file is a broad but generally reliable measure of the complexity of the case.

34	Because only clients who received a s.60I certificate were surveyed in the present study (see Chapter 5), an important issue to consider is whether clients who received a certificate differed from those who did not. The Interrelate administrative data are the only available data in the present study that can answer this question.	53	FDRP Regulations, reg 26(4).
		54	Interview #9.
		55	Interview #18.
		56	Interview #17.
		57	Interview #1.
35	The data reported for 2014–15 FY were extracted using a different method to that used for the three prior years.	58	The four-step process is internal to Interrelate (see Chapter 2).
36	Parallel tables using row percentages are provided in the Appendix Tables at the end of this report.	59	Interview #9.
37	i.e., $360/6247 = 5.8\%$.	60	Interview #9.
38	i.e., $105/122 (105+2+15) = 86\%$.	61	Interview #2.
39	We have reported minimal FDRP demographic information to reduce the likelihood of identification of participants. Moreover, we only report the interview number in the quote attributions for the same reason. We initially included the gender, career backgrounds, and years of experience in the quote attributions but found little relation between these factors and any themes or pattern of response. This information was subsequently removed.	62	Interview #6.
		63	Interview #4.
		64	Interview #10.
		65	Interview #13.
		66	Interview #17.
		67	Interview #12.
40	Interview #26.	68	Interview #16.
41	Interview #22.	69	Interview #9.
42	Interview #24.	70	Interview #2.
43	Interview #23.	71	Interview #2.
44	Interview #8.	72	Interview #10.
45	Interview #24.	73	Interview #5.
46	Interview #6.	74	Interview #13.
47	Interview #27.	75	Interview #7.
48	Interview #10.	76	Interview #4.
49	Interview #27.	77	Interview #25.
50	Interview #27.	78	Interview #6.
51	Interview #27.	79	Interview #3.
52	FLA s. 60I(8)(a).	80	Interview #10.

81	Interview #12.	104	Interview #9.
82	Interview #5.	105	Interview #13.
83	Interview #27.	106	Interview #6.
84	Interview #16.	107	Interview #12.
85	Interview #10.	108	Interview #25.
86	Interview #19.	109	Interview #21.
87	Interview #16.	110	Interview #10.
88	Interview #25.	111	Interview #15.
89	Interview #14.	112	Interview #1.
90	Interview #19.	113	Interview #5.
91	Interview #23.	114	Interview #13.
92	Subregulation 2 of this regulation sets out the factors an FDRP must take into account when determining if FDR is appropriate. The regulation is discussed further in Chapter 1.	115	Interview #4.
93	This was the only instance we identified in which practitioner characteristics came to the fore.	116	Interview #19.
94	Interview #8.	117	Interview #13.
95	Interview #4.	118	Interview #4.
96	Interview #11.	119	Interview #13.
97	Interview #17.	120	Interview #19.
98	Interview #8.	121	Interview #4.
99	These exceptions are explained in Chapter 1 of this report.	122	Interview #5.
100	Interview #11.	123	Interview #21.
101	Interview #12.	124	Interview #11.
102	Interview #10.	125	Interview #5.
103	Fact Sheet: Section 60I Certificates, p. 3 – Available at: https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx	126	Interview #5.
		127	Interview #12.

- 128 Interview #1.
- 129 Interview #4.
- 130 Interview #9.
- 131 Interview #8.
- 132 Interview #5.
- 133 Interview #8.
- 134 Interview #2.
- 135 Interview #20.
- 136 Interview #1.
- 137 Interview #15.
- 138 Interview #14.
- 139 Interview #10.
- 140 Interview #18.
- 141 Interview #1.
- 142 Interview #18.
- 143 Interview #10.
- 144 Interview #10.
- 145 Two groups of respondents comprised potential respondents: (a) cases in which only one of the two parents in a case consented to being contacted (either 'Parent A' [the parent who first made contact with the mediation service] or 'Parent B' [the other parent]); and (b) cases in which both parents consented to being contacted. In the latter group, to avoid potential ethical issues, one parent was randomly selected and contacted.
- 146 Even though the sample extraction was restricted to separated parents issued with a s.60I certificate between 2011 and 2015, some sample members were subsequently identified as grandparents, step-parents, or parents who had reconciled with their children's other parent. Others reported receiving a s.60I certificate some years prior to their actual introduction on 1 July 2006. These out-of-scope cases were not interviewed.
- 147 Survey sample breakdown: *n potential sample* = 1,379; *n located* = 1,362; *n contacted* = 1,129; *n eligible* = 1,115; *n cooperated* = 812; *n completed* = 777. Response rate breakdown: *location rate* = 98.77%; *contact rate* = 82.89%; *eligibility rate* = 98.76%; *cooperation rate* = 72.83%; *complete rate* = 95.69%; *total response rate* = $0.9877 \times 0.8289 \times 0.9876 \times 0.7283 \times 0.9569 = 56.35\%$. We are grateful to ANU undergraduate student, Lawrence Rogers, for calculating these estimates. Formula derived from Neuman (2003).
- 148 AIFS achieved a response rate of 60%.
- 149 As part of the survey procedure, permission was sought from each respondent to obtain from the mediation service the certificate type for that individual recorded in the administrative database (Q N8). Of the 777 respondents, over 98% agreed.
- 150 Just over 2% of the sample ($n=18$) didn't know or could not say.
- 151 Full sample of 777 less 15 cases where administrative data were not available.
- 152 'Other (specify)' open-ended verbatim response data were analysed and subsequently coded by Smyth and Keogh using mind-mapping software. Differences in codes were discussed until agreement was reached. Responses that were consistent with the closed response options were post-coded back into the CATI response set prior to data analysis.
- 153 The 'other' responses included are 'Forcing mediation', 'Proof for court', 'Proof with fault' and 'Just in case'. Descriptors for these codes can be found in Table 4.14.
- 154 The data from the 'Other (specify)' open-ended questions were analysed and subsequently coded by Smyth and Keogh using mind-mapping software. Differences in codes were discussed until agreement was reached. Responses that were consistent with the closed response options were post-coded back into the CATI response set original variables prior to data analysis.
- 155 In some cases, males might initiate FDR because they want more parenting time (including those who rarely see their children); females may avoid initiating FDR because of safety concerns for their children and/or themselves.

156	These 'Other (specify)' open-ended verbatim response data were analysed and subsequently coded by Smyth and Keogh using mind-mapping software. Differences in codes were discussed until agreement was reached. Responses that were consistent with the closed response options were post-coded back into the CATI response set prior to data analysis.	169	Respondent #450.
		170	Respondent #86.
		171	Respondent #157.
		172	Respondent #152.
		173	Respondent #239.
157	Resetting the base category to Category 2, the proportion of university education (19.5%), is lower than 3 (28.9%, $p<0.05$), 4 (33.7%, $p<0.01$) and 5 (39.7%, $p<0.01$).	174	Respondent #408.
		175	Respondent #407.
		176	Respondent #235.
158	The 'other' responses included are 'Forcing mediation', 'Proof for court', 'Proof with fault' and 'Just in case'. Descriptors for these codes can be found in Table 4.14.	177	Respondent #455.
		178	Respondent #30.
159	While the distribution of certificate type reported by respondents closely matched the distribution of certificate type in the administrative data, we found that respondents frequently believed they were issued with a different category of s.60I certificate.	179	Respondent #155.
		180	Respondent #105.
		181	Respondent #189.
		182	Respondent #381.
160	This is a common final question used in telephone interviews. It gives respondents the opportunity to discuss any important issues that the survey did not cover, it often generates rich and detailed information (typically lacking in surveys comprising brief, rapid-fire closed-ended questions), and it provides a nice form of closure.	183	Respondent #465.
		184	Respondent #13.
		185	Respondent #341.
		186	Respondent #104.
161	Some participants' responses covered more than one theme. To help contextualize participants' comments, we report the gender, whether they were Parent A (i.e., initiated the mediation) or Parent B (i.e., the 'other' parent), and the s.60I certificate with which they were issued (according to the administrative data), after each quote.	187	Respondent #123.
		188	Respondent #14.
		189	Respondent #243.
		190	Respondent #466.
162	Respondent #161.	191	Respondent #42.
163	Respondent #133.	192	Respondent #109.
164	Respondent #179.	193	Respondent #187.
165	Respondent #37.	194	Respondent #4.
166	Respondent #100.	195	Respondent #307.
167	Respondent #230.	196	Respondent #128.
168	Respondent #167.		

- 197 We exclude the estimate for 2014–15 financial year because of a break in series.
- 198 Again, we exclude the 2014–15 financial year here because of the break in series.
- 199 The ‘other’ responses included are ‘Forcing mediation’, ‘Proof for court’, ‘Proof with fault’ and ‘Just in case’. Descriptors for these codes can be found in Table 4.14.
- 200 ‘Legal services’ incorporates ‘Private Lawyer/ Solicitor/Legal Practitioner/Barrister’, ‘Community Legal Centre’, and ‘Legal Aid’.
- 201 Further details in Table 4.48.
- 202 Notes Appendix A
- Revised Explanatory Memorandum, Family Law Amendment (Shared Parental Responsibility) Bill, 2005 (Cth) 21.
- 203 Ibid 1.
- 204 That is, in South Australia, Victoria and New South Wales.
- 205 Private communication with Professor Robert Emery, University of Virginia, USA, August 2015.
- 206 Marriage Act, Act No. 47 of 4 July 1991 Relating to Marriage.
- 207 Section 65DAC(3)(b) of the *FLA* requires those sharing parental responsibility for a child to make a genuine effort to come to a joint decision about major long-term issues, and in r 12.06 of the *Family Law Rules 2004* (Cth) there is a requirement for those attending conciliation conferences relating to property disputes to make a genuine effort to reach agreement.
- 208 Fact Sheet: Section 60I Certificates, p. 3 – Available at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>
- 209 *Lala v. Minister for Immigration, Multicultural and Indigenous Affairs* [2003] AATA 209 suggests that determinations of ‘genuine effort’ will depend on the facts of each case.
- 210 *Re Yam and Minister for Immigration and Multicultural and Indigenous Affairs* [2004] AATA 283.
- 211 *Re Teo and Minister for Immigration and Citizenship* [2007] AATA 1118.
- 212 For discussion of the obligations of lawyers to support good faith, see Kovach (1997).
- 213 Fact Sheet: Section 60I Certificates, p. 2 – Available at: <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyDisputeResolution/Pages/Foraccreditedfamilydisputeresolutionpractitioners.aspx>
- 214 Announced by the then Attorney-General in a speech at the launch of National Law Week in 2010. McClelland, R. ‘Improving access to justice’. Available at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Source%3A%22ATTORNEY-GENERAL%22%20MajorSubject_Phrase%3A%22justice%22;rec=7
- 215 Ibid, the Attorney-General also announced that there were plans to give parties more options for resolving their issues outside of the courts. ‘Parties will be able to choose mediation, conciliation or arbitration or some combination of these rather than being limited to mediation or the family courts’ (para 6). To date, these changes have not been implemented.
- 216 Initially, three free hours of FDR were offered to couples. In the 2010 Budget, the Attorney-General announced changes that meant that the first hour of FDR would remain free and not subject to means-test, but that the cost of subsequent hours would be means-tested (McClelland, 2010).
- 217 The Coordinated Family Dispute Resolution (CFDR) was available for a limited time as a pilot.
- 218 See discussion at 2.4.3, 3.2.3, and 5.2.3; and the Better Partnerships Program in Moloney, Kaspiew, De Maio, & Deblaquiere (2013).
- 219 See Dayton’s (1991) argument that the benefits of mediation have been overrated.
- 220 This rationale can be viewed narrowly as primarily being a means of reducing expenditure, or more broadly as courts striving to meet their obligation of ‘providing access to justice, administering justice fairly, and providing for long-term sustainable resolution’ (Boyarin, 2012). In the US context, an over-emphasis on administrative efficiency has been said to result in more coercive and interventionist models (Boyarin, 2012).

- 221 But there could be lower rates of agreement *because* of the coercion, and higher rates of agreement in the voluntary group because those who chose the process are likely to be more predisposed to reach agreement (Quek, 2009, p. 487).
- 222 Represented perhaps by the statutory family law mediation scheme operating in California.
- 223 Half of mother respondents and about one-third of father respondents in Wave 1 of the LSSF reported at least one of the four issues being of concern prior to separation (Kaspiew et al., 2010, p. 41).
- 224 While there was found to be an increase in applications to the Federal Circuit Court of 17%, this was counteracted by a decrease in applications to the Family Court of Australia of 72% (Sourdin, 2012c, p. 29). Parent reports from the LSSF show less dramatic change — in the three years following the introduction of the reforms, involvement with courts dropped from 40% to 29%. Meanwhile, the use of counselling and mediation services increased by approximately 6% and contact with lawyers decreased by around 7% (Kaspiew et al., 2009, p. 50).
- 225 Telephone and Online Dispute Resolution Service (by referral only) (see Rhoades 2010).
- 226 Affordability of services is likely to play an important role in decision-making relating to dispute resolution services. A recent study found that more than two-thirds of recently separated parents experienced financial difficulties (De Maio et al., 2012).
- 227 See qualifications listed in *FLA* s 10G and *Family Law Regulations 1984* (Cth) r 58 ('*FLA*'). See also Cooper and Field (2008, p. 160).
- 228 It is noteworthy, however, that most of these parents reported having made contact with at least one formal service following separation (De Maio et al., 2012).
- 229 These percentages are of the 91% of the parents who recalled the outcome of the negotiations and/or whether they had been issued a certificate.
- 230 As might be expected, attempts at FDR reduced over time, with only 15% of parents surveyed reporting attempts at FDR at Wave 3 (Qu et al., 2014).
- 231 Kaspiew et al. (2009, p. 107) emphasised that, while LSSF data link the issuing of certificates to certain pathways and outcomes for this group, it should not be interpreted as being causative. Rather, it is the reason behind the issuing of the certificate — which for a significant proportion of the certificate group will relate to inappropriateness of FDR due to family functioning — that is likely to be associated with trajectories and outcomes.
- 232 It is noteworthy, however, that half of those who reported emotional abuse identified as being in the 'friendly or cooperative' post-separation category, as did more than a third of those who had reported physical abuse.
- 233 72% in Wave 1, 77% in Wave 2, and 68% Wave 3.
- 234 A higher rate of agreement was found in the Survey of FRSP Clients, another component of the AIFS evaluation; however, differences in methodologies of the two surveys mean that results from the survey are 'not directly comparable' (Kaspiew et al., 2009, p. 96).
- 235 These data were collected prior to the introduction of the *Family Law Amendment (Family Violence and Other Matters) Act 2011* (Cth).
- 236 *Family Law Amendment (Family Violence and Other Matters) Act 2011* (Cth).
- 237 It is unclear whether the remaining 35% of respondents who reported that their fears had not been addressed had reported their concerns to the practitioner.
- 238 However, over 70% felt they were fairly treated in the process and over half reported that they received the help they needed (Moloney et al., 2010, p. 195).

CENTRE FOR SOCIAL RESEARCH & METHODS

+61 2 6125 1279

csrm.comms@anu.edu.au

The Australian National University
Canberra ACT 2601 Australia

www.anu.edu.au

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