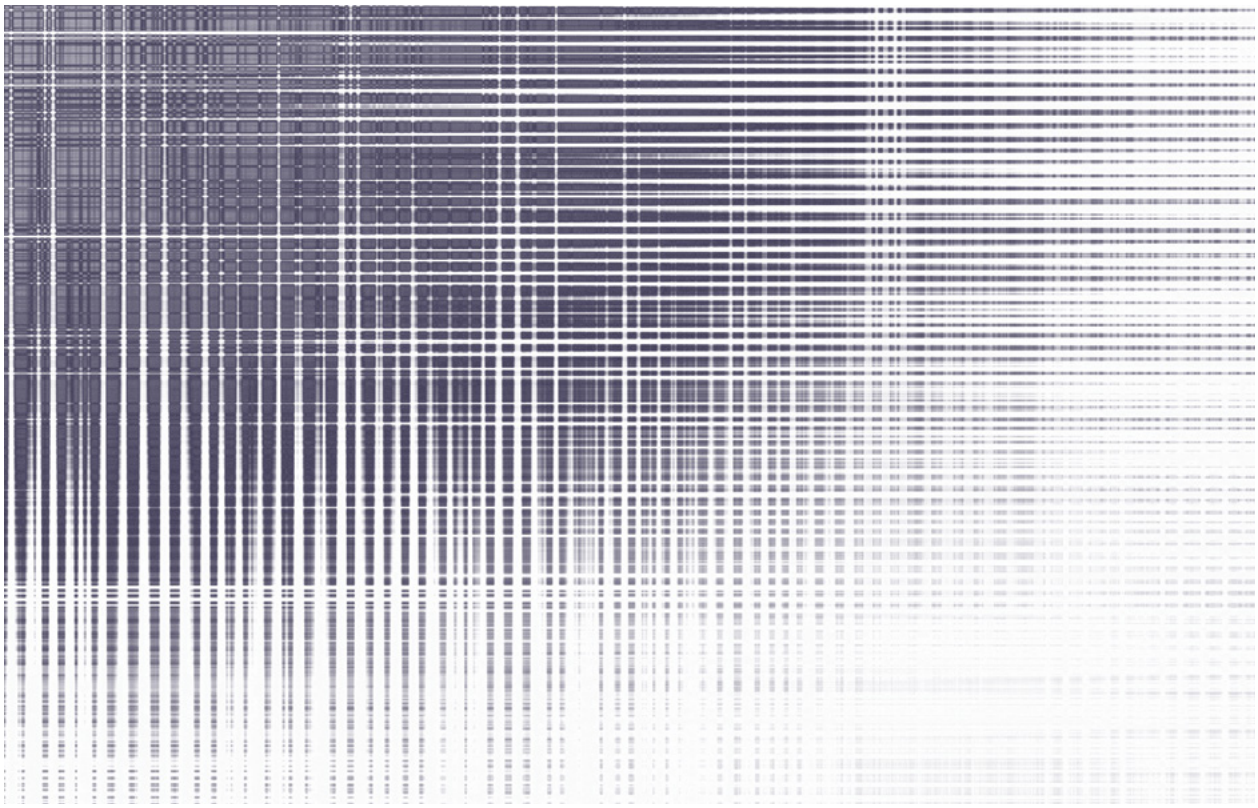
Australian National University | CENTRE FOR SOCIAL RESEARCH & METHODS



Certifying mediation: a study of section 60I certificates

Summary report commissioned by Interrelate and co-funded by the Australian Government Attorney-General's Department

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

UNIVERSITY OF CANBERRA | interrelate relationship experts since 1926

CSRM WORKING PAPER
NO. 2/2017

Series note

The ANU Centre for Social Research & Methods (CSRM) was established in 2015 to provide national leadership in the study of Australian society. CSRM has a strategic focus on:

- development of social research methods
- analysis of social issues and policy
- training in social science methods
- providing access to social scientific data.

CSRM publications are produced to enable widespread discussion and comment, and are available for free download from the CSRM website (http://csrm.cass.anu.edu.au/research/publications).

CSRM is located within the Research School of Social Sciences in the College of Arts & Social Sciences at the Australian National University (ANU). The centre is a joint initiative between the Social Research Centre, an ANU Enterprise business, and the ANU. Its expertise includes quantitative, qualitative and experimental research methodologies; public opinion and behaviour measurement; survey design; data collection and analysis; data archiving and management; and professional education in social research methods.

As with all CSRM publications, the views expressed in this Working Paper are those of the authors and do not reflect any official CSRM position.

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

Certifying mediation: a study of section 60I certificates

Summary report commissioned by Interrelate and co-funded by the Australian Government Attorney-General's Department

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

Wendy Bonython is an Associate Professor with 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 and 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 Australian National University (ANU) College of Law. He was awarded an 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 NSW 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 Legal Workshop at the ANU. She has a BA/LLB (Hons) from the ANU, and is an admitted practitioner of the ACT Supreme Court. She practised as a family lawyer for 10 years before 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 ANU. He is a psychologist and epidemiologist, and has more than 40 years of research experience in 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 & Methods at the ANU. 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 at 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, ANU. She has a background and postgraduate 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

This study was designed to explore elements of the operation of the certificate-issuing process created by s. 60I of the *Family Law Act 1975* (Cwlth). Specifically, it sought to explore:

- the number and categories of certificates issued, and the characteristics of clients who do and do not receive them
- the factors and circumstances influencing the decision of Family Dispute Resolution Practitioners to issue different categories of s. 60I certificates
- 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.

Working Paper No. 2/2017

ISBN 978-1-925715-01-9

An electronic publication downloaded from http://csrm.cass.anu.edu.au/research/publications/working-papers.

For a complete list of CSRM working papers, see http://csrm.cass.anu.edu.au/research/publications/working-papers.

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

Acknowledgments

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

We are also 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.

We would also like to thank Wallis Consulting, particularly Josephine Foti, Julie Higgs and the interviewers, for conducting the computer-assisted telephone interview fieldwork; and Amy Spadaro and Luke Stapleton of Interrelate for extraction of the Interrelate administrative data and sample.

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

CATI	computer-assisted telephone interview
FDR	family dispute resolution
FDRP	Family Dispute Resolution Practitioner
FLA	*Family Law Act 1975* (Cwlth)

Contents

1 Background

On 1 July 2006, widespread reforms to the *Family Law Act 1975* (Cwlth) (FLA) took effect. Among the changes was the 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 deal constructively with separation-related disputes, particularly pertaining to parenting arrangements. Specifically, the reforms focused on expanded use of Family Dispute Resolution Practitioners (FDRPs) and mediation techniques to assist families attempting to resolve their disputes without resorting to court proceedings, where possible.

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 and present it to the court. A s. 60I certificate demonstrates either that mediation had been attempted but was unsuccessful, or that parties had attempted to participate in mediation, but the dispute was inappropriate for mediation. Since the implementation of these reforms a decade ago, we are not aware of any report of empirical research into the process of issuing s. 60I certificates and the dispute resolution trajectories of separated parents who receive a certificate.

1.1 Section 60I certificates

The stated object of s. 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' (FDR) 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 applies, parties cannot commence proceedings for orders relating to children unless they have filed a certificate completed by an FDRP relating to the parties' participation in dispute resolution.

Five different categories of certificate can be issued by an FDRP. The full description of each category of certificate is set out in s. 60I(8) of the FLA. They may be paraphrased as certificates verifying that the person:

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

1.2 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) have on the resolution of disputes about the care and living arrangements of children. Because 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 as to whether it achieves its objectives and whether it produces unwanted consequences.

1.3 Aims and research questions

The 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:

- the number and categories of certificates issued, and the characteristics of clients who do and do not receive them
- the factors and circumstances influencing the decision of FDRPs to issue different categories of s. 60I certificates
- 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:

- 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?
- 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?
- 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?

1.4 Methodology

Three sources of data were used:

- administrative data
- telephone interviews with FDRPs
- computer-assisted telephone interviews (CATIs) with separated parents who were issued with a s. 60I certificate.

1.4.1 Interrelate's analysis of its administrative data

Interrelate's FDR process comprises four sequential stages:

- intake and assessment ('needs assessment')
- the 'Building Connections' parenting program
- a pre-FDR session (parents attend individually)
- a joint FDR session.

Interrelate is required to collect various pieces of client information during the FDR process, including whether a s. 60I certificate was issued and, if so, which category of certificate was issued. The data are entered into an online case management system. For the purposes of the present study, Interrelate extracted all cases in which a s. 60I certificate in the 2011–15 financial years was issued, and analysed the relevant data.

The characteristics of FDRPs were also extracted from Interrelate's systems and analysed as part of this study.

1.4.2 Interviews with FDRPs

Semistructured telephone interviews were conducted with 27 (22 female, 5 male) of the 41 FDRPs employed by Interrelate (i.e. two-thirds of FDRPs participated). The average duration of interviews was 60 minutes. Interviews were audio-recorded with participants' permission, transcribed and then analysed using HyperRESEARCH software.

1.4.3 CATI survey of separated parents

CATIs were conducted with 777 (362 male, 415 female) separated parents who had been issued with a s. 60I certificate in the 2011–15 financial years (from a potential pool of 1379 parents with a certificate who had agreed to be re-contacted for research purposes). A total response rate of 56% was achieved, spread reasonably evenly across the potential sample groups.

Specifically, the CATI survey sought to determine whether separated parents understood the purpose of the certificate; whether they had 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.

The CATI survey was conducted between 16 June and 3 August 2016. The average length of interviews was 16.8 minutes (range: 10–60 minutes). The average time since mediation ended for participants was 2 years, 8 months (range identified from sample set of administrative data: 1 year to 5 years).

2 Study findings

2.1 Interrelate's administrative caseload data

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

Key findings:

- The number of s. 60I certificates issued by Interrelate between 2011–12 and 2014–15 steadily increased, with a marked increase between 2011–12 and 2012–13 (from 1716 to 1986 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 the failure to attend'.
- Comparing the characteristics of clients who were issued with a s. 60I certificate with those who were not revealed that there were no clear differences between these two groups with respect to age, education, and Aboriginal or Torres Strait Islander status.

2.2 Family Dispute Resolution Practitioner interviews

Key findings:

- 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, before 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 processes.
- Some factors outside the scope of the legislative instruments appear to be affecting decisions. These 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 clients if a certificate (or particular category of certificate) is issued, particularly when the FDRP perceives that the client does not have the 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 if FDR could be assessed as 'refusal, or the failure to attend'; or 'inappropriate for FDR' or 'genuine effort' certificates might be issued if 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 assessing '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 as an 'empowering' act that enables clients to access 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 affect judicial decision-making and court processes.
- Similarly, there is significant diversity of opinion about FDRPs providing more information about the reasons for their decision in relation to the issuing of s. 60I certificates.
- Many FDRPs commented on the practical difficulties created by the complex wording of the 'refusal, or the failure to attend' clause of the s. 60I certificate.

2.3 Survey of clients issued with a section 60I certificate

Key findings:

- Just over half of those who recalled receiving a s. 60I certificate accurately stated the purpose of the certificate as enabling them to file an application in court. When 'other' responses that approximate the purpose are included, around three-quarters of those who recalled receiving a certificate could be regarded as accurately stating the purpose of the certificate process.
- 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 obtained the assistance of a professional service, the most 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.
- In contrast, another quarter used three or more services (two-thirds of these also went to court).
- Based on the administrative data for the sample and survey responses, the most common category of s. 60I certificate issued was the category that deemed the parenting dispute to be 'inappropriate for FDR' (40%). 'Refusal, or the 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 for FDR' (<1% and <3%, respectively).
- Clients 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%) than 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 ('inappropriate for FDR', 'refusal, or the 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 that parenting issues were appropriate for this forum. However, the majority of respondents also indicated that they did not attain the outcomes they had set out to achieve. There was nonetheless a strong preference for continued mediation to resolve the parenting dispute.
- Surprisingly, a group of parents who are facing significant challenges and high levels of stress rated their own life satisfaction and health as high, and expressed an equal level of satisfaction regarding their child's wellbeing and achievement. This could point to a level of natural resilience in the face of significant adversity faced by this client group.

2.4 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 of the 777 respondents provided additional comments.

Key findings:

- 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 continue abuse; whether safety concerns were adequately addressed).
- Perceived personal bias by an FDRP was also mentioned by some respondents (*n* = 55).

3 Study limitations

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:

- is limited to the experiences of FDRPs and clients of a single family relationship service provider in one state of Australia (New South Wales)
- excludes the experiences of people who participated in, or sought to participate in, FDR but did not receive a certificate
- 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 from 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 FDR trajectories after a certificate has been issued.

4 Concluding thoughts

The data from the present study suggest that, a decade after implementation, a number of unresolved questions remain concerning the role of s. 60I certificates.

Respondents were generally positive about the mediation experience and felt that 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.

Perhaps the most fundamental issue is the need to identify the purpose of the different categories of certificate. 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. 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. There is confusion within the legislation about the consequences attached to the different categories of certificate: although 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. Data relating to the decision-making processes of FDRPs indicate that these decisions are sometimes influenced by factors external to 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 the 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 certificate parents received was not of sufficient importance 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' general comments about the mediation process; it is also consistent with existing literature.

One of the significant tensions that emerges 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 interests 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, 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 showed poor

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 among other clients. It is likely that some of those without a certificate may not have understood the need to request one. Although 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 child's best interests should affect their 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 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 child'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 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 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.

5 Key questions and future research

The data raise several key questions worthy of further investigation:

- What is the purpose of the different categories of certificate?
- Are the five categories of certificate useful?
- Should the legislation require that a certificate be issued to everyone who participates, or attempts to participate, in FDR?
- Is the wording of the 'refusal, or the 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, in particular, 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 place for future research to begin would be with obtaining a nationally representative snapshot of the number and category of s. 60I certificates issued – 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 very useful, given the relatively limited data on which the present study is based.

Replicating 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 undertake.

There is also great value in expanding the samples to include lawyers. There were hints in our data that some family lawyers suggest that clients 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 give to their clients in relation to the value and timing of obtaining a s. 60I certificate would fill an important gap in our knowledge. It is possible that lawyers' advice underpins some of the results in the survey of clients.

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.

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