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**Australian Government**  
**Attorney-General's Department**

# **New family dispute resolution services for Aboriginal and Torres Strait Islander families**

## **Discussion paper**

## Acknowledgement of Country

The Attorney-General's Department acknowledges the custodians of the land on which we work, and their contributions to our communities. We pay our respects to Elders, past and present. We extend our respect to all Aboriginal and Torres Strait Islander people, who hold the memories, traditions, cultures and hopes of Aboriginal and Torres Strait Islander peoples.

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# New family dispute resolution services for Aboriginal and Torres Strait Islander families

## Discussion paper

The Australian Government's first [Implementation Plan](#) under the National Agreement on Closing the Gap included an announcement for funding for culturally safe and appropriate family dispute resolution for Aboriginal and Torres Strait Islander families. Family dispute resolution (FDR) is a type of mediation delivered under the *Family Law Act 1975* to help separated or separating families formulate their own agreements about parenting and property matters. It is done with the professional assistance of accredited FDR practitioners.

The measure provides \$8.3 million over three years to support selected Aboriginal Community Controlled Organisations (ACCOs) to train and/or employ Family Dispute Resolution FDR practitioners to assist Aboriginal and Torres Strait Islander families resolve post-separation parenting and property disputes. Pending outcomes of this consultation process and the grant selection process, service delivery will commence during the 2022-23 Financial Year and conclude on 30 June 2024.

This measure responds to various expert bodies, parliamentary inquiries, community consultations and program evaluations which have highlighted the barriers to accessing mainstream family law services and the need for more culturally appropriate service delivery for Aboriginal and Torres Strait Islander clients. Prioritising cultural healing and family restoration while leveraging the strengths of Aboriginal and Torres Strait Islander families through community driven, trauma-informed services is key to the successful implementation of the measure.

## Working together to design the new services

The Attorney-General's Department (AGD) is working with stakeholders across government, the Coalition of Peaks, community organisations and interested community members to inform the development of various elements of the grant opportunity and selection process. Information gathered through the consultation process may also be used for other Commonwealth purposes, such as informing potential future investment and policy decisions regarding FDR for Aboriginal and Torres Strait Islander families.

While FDR practitioners will still be required to operate in accordance with the [Family Law \(Family Dispute Resolution Practitioners\) Regulations 2008](#) (the FDRP Regulations), this paper intends to provide background and framework to support conversations around what culturally safe and appropriate FDR for Aboriginal and Torres Strait Islander families could look like and how it would best operate. We welcome all ideas in relation to the measure, as well as aiming to arrive at a shared approach towards:

- the name of the program
- service design

- grant selection methodology
- the Grant Opportunity Guidelines
- data and evaluation requirements.

The department welcomes feedback and ideas from stakeholders in response to the issues identified in this paper, as well as comments and views on any other issues that may not have not been canvassed, but should be considered. The consultation process will run until 25 March 2022. You can provide input via email to [FamilyLawServices@ag.gov.au](mailto:FamilyLawServices@ag.gov.au). You can also share your ideas and feedback online; to do so, please follow the links on the department's website: <https://www.ag.gov.au/families-and-marriage/families/family-dispute-resolution>. You are encouraged to include a name and contact details for the department to discuss your input should there be a need to do so. Personal information shared through the consultation process will be treated in accordance with the *Privacy Act 1988*. For more information on how the department collects, stores and uses personal information please visit the department's [Privacy Policy](#).

The department will host a number of virtual meetings and workshops in February and March 2022 as part of this consultation process. To express interest in being involved in the meetings or workshops, or to arrange a time to provide verbal feedback, please email [FamilyLawServices@ag.gov.au](mailto:FamilyLawServices@ag.gov.au).

Following this consultation process, a grant round is anticipated to open to eligible service providers in mid-2022 for grant agreements to be in place with service providers by January 2023.

To meet probity requirements, relevant information gathered and shared through the consultation process will be made publicly available to ensure all parties have access to the relevant information as required. This consultation process is for information gathering only, and all input provided during consultation is subject to what is ultimately included in the Grant Opportunity Guidelines and Grant Agreements. Conversations will also continue with relevant stakeholders throughout the grant opportunity's implementation and evaluation phases.

### **For consideration**

*Are there any specific stakeholders who we should directly approach to be involved in the consultation process?*

## **Contributing to Closing the Gap**

This measure was announced as part of the Australian Government's first [Implementation Plan](#) under the National Agreement on Closing the Gap. Funding ACCOs to deliver FDR to Aboriginal and Torres Strait Islander families contributes to Closing the Gap Priority Reform 2 (Building the Community-Controlled Sector). This measure reflects evidence that greater diversification of service provision is required involving structural reform, to give ACCOs the opportunity to define and develop models of FDR. The consultation process to develop the service offer and grant selection process is also consistent with commitment to partnerships and shared decision making under Closing the Gap Priority Reform 1 (Formal Partnerships and Shared Decision Making).

Assisting Aboriginal and Torres Strait Islander families, including those experiencing complex issues, to achieve safe and functional care arrangements for children, will contribute to providing outcomes to address Closing the Gap Targets 10 and 11 by aiming to reduce the overrepresentation of Aboriginal and Torres Strait

Islander children and adults in the child protection and criminal justice systems. Prioritising cultural healing and family restoration while leveraging the strengths of Aboriginal and Torres Strait Islander families through community driven, trauma-informed services is key to achieving the justice targets.

## What is Family Dispute Resolution?

The law requires separating families, who have a dispute about parenting arrangements for their children, to make a genuine effort to try to sort it out through FDR before filing an application for parenting orders in court. This requirement applies to anyone wanting to file an application with the Family Court. It also includes those seeking changes to an existing parenting order. There are a few exceptions to this requirement, such as cases involving family violence, child abuse or urgency. Only accredited FDR practitioners can issue the certificates required by the Court to demonstrate an attempt was made to resolve the matters in dispute.

An FDR service can be delivered in a face-to-face environment, online or by phone, and may include a co-mediation model where two FDR practitioners provide, for example, a gender-balanced or culturally sensitive service, and remain neutral when helping the parties in dispute come to an agreement in relation to parenting or property matters.

Further information on Family Dispute Resolution can be found in this [factsheet](https://www.familyrelationships.gov.au/document/7226), available online at: <https://www.familyrelationships.gov.au/document/7226>

The suite of AGD-funded family law services assist vulnerable families and children to deal with issues associated with family separation and to resolve their parenting and property issues without having to go to court. These services, including FDR, family counselling, children's contact services and various parenting programs, aim to deliver improved capacity towards more cooperative post-separation arrangements in the short term, and improved individual and family wellbeing in the longer term.

### For consideration

*What does culturally safe and appropriate family dispute resolution look like?*

*What formal or informal culturally safe and appropriate dispute resolution or family law service models currently exist? What is working well? What could we learn from them?*

*We are looking for ACCOs to deliver Family Dispute Resolution in each state and territory across Australia. Which locations are most in need of these services?*

## Family Dispute Resolution Practitioners

Funding under this measure will enable ACCOs to train and employ FDR practitioners.

To be called an FDR practitioner, a person must meet the accreditation criteria specified in the FDRP Regulations. This includes having been assessed by a Registered Training Organisation as being competent in units of the Graduate Diploma of Family Dispute Resolution ([CHC81115](#)), or in a course that has been certified by a Higher Education Provider as being equivalent to the units of CHC81115.

To be eligible to enrol in the Graduate Diploma (or equivalent course), a person needs prerequisite qualifications such as a degree (or higher qualification) in law, psychology or social work, counselling, mediation or a topic relevant to FDR – this can be determined by AGD. Alternatively, a potential student can

enrol if they have accreditation under the National Mediator Accreditation System (NMAS), competency in a specified mediation skill set, or documented evidence of previous experience in a dispute resolution environment.

The Graduate Diploma consists of six core subjects and four electives. The subject matter includes topics such as screening and assessing families for family violence and child abuse, managing domestic and family violence, supporting the safety of vulnerable parties in dispute resolution, operating in a family law environment, developing parenting plans and working with a child-focused approach.

Students of the course need to undertake at least 50 hours of supervised practice before they gain their qualification. The supervision is done by an accredited FDR practitioner.

The specific requirements to become an accredited FDR practitioner include:

- having appropriate qualifications and competencies, which generally involves:
  - completing the full Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent); or
  - having an appropriate qualification and competency in the six compulsory units from the Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent)
- having access to a suitable complaints mechanism that can be used by clients
- having a national police check no older than four months
- not being prohibited under a law of a state or territory from working with children
- meeting the 'working with children' requirements in the state or territory where the services are provided, if applicable
- being suitable to perform the functions and duties of an FDR practitioner, and
- be covered by professional indemnity insurance.

Further information is available online at: <https://www.ag.gov.au/families-and-marriage/families/family-dispute-resolution>

FDR practitioners are required to undertake ongoing screening and risk assessment for families attempting FDR. Where FDR is deemed to be appropriate, practitioners are well placed to provide tailored models of FDR to respond to the safety needs of different families, for example, utilising a shuttle conferencing approach where the parties are in separate rooms and messages are sent back and forth, or the use of telephone, video or online facilities to conduct the sessions. They can also facilitate legally-assisted FDR if required, which involves lawyers in the mediation process.

### **For consideration**

*Do you have existing staff who could be developed to become Family Dispute Resolution practitioners?*

*How can ACCOs be supported to ensure they can hire and train the right staff for these roles, and grow capacity in providing family dispute resolution?*

*Are there any potential barriers to ACCO staff obtaining formal FDR qualifications and what support could be offered to address these barriers?*

# Grant Opportunity Guidelines

Grant Opportunity Guidelines must be developed for all grant opportunities. Grant Opportunity Guidelines are the authoritative documents which provide potential grantees with all the information required to understand the purpose of a grant opportunity and how to make an application.

The Grant Opportunity Guidelines for this program will be on a standardised, Whole of Government template, which can be found here: <https://www.finance.gov.au/government/commonwealth-grants/tools-and-templates#grant-opportunity-guideline-templates>.

The feedback and ideas shared through this consultation process will support the drafting of the Grant Opportunity Guidelines for this measure.

## For consideration

*What would be a suitable formal name for this program/Grant Opportunity?*

## Eligible grant activities

The Grant Opportunity Guidelines will outline the eligible grant activities and use of the grant funding. To deliver FDR, organisations will be required to have or build the necessary expertise and staffing levels. Organisations will need to have access to suitable premises and necessary safety and operational features. It will also be desirable if the organisation has an existing client base, well-developed community-based referral networks, and a local knowledge of the target community.

It is proposed that the grant could be used for the following grant activities:

- intake and assessment to ascertain whether parties can resolve their dispute, or if there are issues such as family violence or child abuse
- information about family relationships, children's needs and options for resolving family law disputes
- referral to other services that can assist with family relationship and separation issues
- joint FDR to help families to agree on parenting arrangements following separation
- property mediation.

It is proposed that the available grant funding would be used to pay for:

- staff salaries and on-costs which can be directly attributed to the provision of FDR
- employee training for paid staff delivering activities that are relevant, appropriate and in line with the activity objectives
- membership to a professional body able to manage complaints about an FDR service in accordance with AGD requirements
- administration expenses directly related to the delivery of the grant activity such as:
  - interpreting services
  - telephones
  - computers/information technology/software
  - insurance
  - utilities

- postage
  - stationery and printing
  - accounting and auditing
- travel costs used for the purposes of transporting staff or clients to service delivery outlets.

### **For consideration**

*Are there other activities that could be part of this grant opportunity?*

*Do you have any other comments about the proposed grant activities?*

## **Ensuring accessible services**

As noted above, barriers to service access have been previously identified, including:

- inappropriate buildings and facilities
- language barriers
- physical barriers (including lack of transport or telecommunications – especially critical in the post COVID-19 environment).
- perception of bias against men
- cultural barriers around the shame of separation
- fear of gossip (especially in smaller linguistic groups that have staff and interpreters from the local area)
- historical trauma surrounding child removal, and
- fear of government oversight and negative consequences (especially fear that service participants or their partners may be reported to child protection services, police, courts, taxation, immigration and housing departments).

It may be possible to address some of these barriers through tailored delivery of this service, and specifics could be included in the Grant Opportunity Guidelines where relevant.

### **For consideration**

*What measures could be put in place to help address and mitigate some of the identified barriers to service access, to support participation in family dispute resolution?*

## **Selection criteria**

When finalised, the Grant Opportunity Guidelines will provide clear guidance on the types of services to be considered for funding under the grant opportunity. The Grant Opportunity Guidelines will outline the assessment criterion which organisations must address in their application.

The application process will require organisations to provide a description of how their organisation will provide FDR (or increase their capacity to deliver this) in accordance with the requirements of the grant. A preferred response would:

- Provide a description of the service/s you will provide, including an outline of the service delivery model that your organisation will use to deliver the activity.
- Explain how the proposed service model will meet the needs of Aboriginal and Torres Strait Islanders, including those with a disability and/or those experiencing family violence.

### **For consideration**

*What should we consider when selecting which organisations should receive funding for this program?*

## **Data and evaluation requirements**

A key element of this project will be to determine how and whether the practices implemented increase the availability and accessibility of FDR for Aboriginal and Torres Strait Islander families. Data collected before and during implementation will allow for an analysis of outcomes and guide any potential next steps, as well as meet the needs of Aboriginal and Torres Strait Islander communities where the services are located.

It is intended that the data and information sharing elements of this program will meet the aims of Closing the Gap Priority Reform 4, and enable shared access to location specific data and information for Aboriginal and Torres Strait Islander communities and organisations. This consultation process will help ensure best practice collection, access, management and use of data under this program. More information about Priority Reform 4 obligations and approaches to be built into the program are at [Priority Reforms | Closing the Gap](#).

Grants for this program will be managed by the Community Grants Hub. Generally, organisations who receive funding via the Community Grants Hub must have systems in place to allow them to meet their data collection and reporting obligations outlined in their grant agreement. Performance information (e.g. client characteristics and service delivery information) is collected by service providers at the client level and entered directly into the Department of Social Services performance reporting solution, the Data Exchange (DEX). The performance information reported through the Data Exchange usually includes:

- Client identity characteristics (given and family names, date of birth, gender and residential address)
- Client demographic characteristics (indigenous status, cultural and linguistic diversity, and disability status, impairment or condition)
- Service delivery information (outlets, cases, sessions)
- Client outcomes.

More information on the Data Exchange can be found here: <https://dex.dss.gov.au/>

### **For consideration**

*How can the data and information sharing elements of this program best meet community needs and the aims of Closing the Gap Priority Reform 4?*

*What are the existing data collection solutions in services provided by ACCOs and how can this be leveraged to report under this program?*

# Performance Indicators

Under this Grant Opportunity, ACCOs will be required to submit a Financial Acquittal (12 monthly). We welcome feedback on the other reporting and data collection requirements of this Grant Opportunity. Some of the potential Performance Indicators could include:

- The number of staff employed via the program.
- Training commenced and completed by staff, where relevant, including course details and prerequisite qualifications.
- Number of participants; counted as the number of unique client records.
- Number of events/services instances (FDR sessions) delivered; counted as the number of service instances.
- Number of participants who identify as being Aboriginal or Torres Strait Islander, culturally and linguistically diverse (CALD), disabled or other as specified in Programme Guidelines.
- Proportion of clients achieving improved independence, participation and well-being immediately after assistance.
- Proportion of clients achieving individual goals related to independence, participation and wellbeing.

## **For consideration**

*What are the current ways that service performance is measured in ACCOs who deliver dispute resolution or legal/family relationship type services (performance indicators, etc.)?*

*How do we measure success for this program?*