



COST-BENEFIT ANALYSIS

FAMILY DISPUTE RESOLUTION SERVICES (PARENTING & PROPERTY)

15 October 2024

Prepared for

Relationships Australia
VICTORIA

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Purpose of Report

Relationships Australia Victoria has requested support from Inform Economics to help prepare a cost-benefit analysis in respect of the family dispute resolution (FDR) services that it has been providing since changes to the *Family Law Act 1975 (Cth)* in 2006 made it mandatory, with certain exceptions, to attempt FDR and to obtain a section 60I FDR certificate from an FDR practitioner before taking a parenting matter to court.

In addition, we have explored an alternative scenario under which family law legislation made it mandatory, with certain exceptions, to attempt FDR before taking a property matter to court.

This report has been prepared solely for the use of Relationships Australia Victoria and is not intended to and should not be used or relied upon by anyone else and Inform Economics accept no duty of care to any other person or entity.

Abbreviations

Term	Definition
ADR	Alternative Dispute Resolution
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
ALRC Report 135	Family Law for the Future: An Inquiry into the Family Law System (ALRC Report 135)
Bill	Draft Family Law Amendment Bill 2023
CBA	cost-benefit analysis
the Court	Federal Circuit and Family Court of Australia
the Courts	Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2).
ESPS	Experiences of Separated Parents Study
exposure draft	Family Law Amendment Bill (No. 2) 2023
FCFCOA	Federal Circuit and Family Court of Australia
FCoA	Family Court of Australia
FCC	Federal Circuit Court of Australia
FDR	family dispute resolution
FDRP	family dispute resolution practitioner
FRC	Family Relationship Centre
FRSP	Family Relationship Services Program
FY	Financial Year
LSSF	Longitudinal Study of Separated Families
PPP500	Priority Property Pools under \$500,000
RAV	Relationships Australia Victoria
the Review	Review Family Relationships Services Program
RFDR	regional family dispute resolution
the Rules	FCFCOA (Family Law) Rules 2021
SCORE	Standard Client/Community Outcomes Reporting
WELLBY	Wellbeing-Adjusted Life Year

1. Executive Summary

1.1 Overview

Relationships Australia Victoria (RAV) is a community-based, not-for-profit organisation with over 75 years' experience in providing family and relationship support services.

RAV has been providing specialist family dispute resolution (FDR) services since 1984 and is now the largest provider of FDR services in Victoria.

In 2006, changes to the *Family Law Act 1975 (Cth)* made it mandatory, with certain exceptions, to attempt FDR and to obtain a Section 60I FDR certificate from an FDR practitioner (FDRP) before taking a parenting matter to court. These changes were intended to:

- Encourage a culture of agreement-making and avoidance of an adversarial court system.
- Assist people in resolving family relationship issues outside of the court system, which can be costly and lead to entrenched conflict.

Whereas it is mandatory to attempt FDR in parenting matters before taking any parenting matter to court, this is not currently so for property matters although the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 state that, to the extent that it is safe to do so, each prospective party to a financial proceeding in the Federal Circuit and Family Court of Australia (FCFCOA) must make a genuine effort to resolve the dispute by participating in dispute resolution before filing an application to start proceedings in court.¹

1.2 Results of Cost-Benefit Analysis

Cost-benefit analysis is the preferred method of appraisal or evaluation in most Australian jurisdictions due to its comprehensive and evidence-based nature.

Several cost-benefit analyses have been undertaken of FDR services or of other services that include FDR. Most analyses to date have focused on costs and cost savings to government. These have typically shown that cost savings to government exceed costs to government of funding FDR services in the order of 1.5 to 2.25 times.

Economic analysis undertaken as part of the recently published review of the Family Relationships Services Program (FRSP)², which funds most FDR services, found that *'FRSP-funded activities all provide an improvement in client outcomes, and a cost saving to government by supporting clients to resolve their post-separation arrangements without going to court'*.

This cost-benefit analysis evaluates the current operating model of mandatory FDR for parenting matters and takes a wider perspective that includes costs and benefits to families as well as to government.

¹ https://classic.austlii.edu.au/au/legis/cth/num_reg/fcafcualr2021202101197559/sch1.html

² <https://www.ag.gov.au/families-and-marriage/families/family-relationship-services>

It also explores an alternative scenario under which family law legislation made it mandatory, with certain exceptions, to attempt FDR before taking a property matter to court. Such a scenario would be expected to increase the proportion of families undertaking parenting and property FDR.

The results of our analysis are presented in Table 1 below. In summary, under the current operating model of mandatory FDR for parenting matters, the results demonstrate significant returns on investment, with benefits of FDR to the community some twenty times greater than its costs.

Were mandatory FDR for parenting matters extended to property matters, the results demonstrate higher returns on investment, with benefits to the community some twenty three times greater than its costs, largely due to higher legal cost savings for families.

Table 1: Results of cost-benefit analysis

	Reference	Mandatory FDR for Parenting Matters	Mandatory FDR for Parenting & Property Matters
Benefits to Family Law System			
Avoided costs for the family law system	Section 6.1	\$4,400	\$5,176
Benefits to Families			
Increased financial wellbeing	Section 7.1	\$41,800	\$48,565
Improved outcomes	Section 7.1.4	\$16,842	\$16,842
		\$58,642	\$65,407
Total Benefits		\$63,042	\$70,583
Costs			
Cost of FDR services to Government	Section 8.2	\$2,938	\$2,938
Cost of FDR services to families	Section 8.3	\$86	\$206
Total Costs		\$3,024	\$3,144
Net Present Value (NPV)		\$60,018	\$67,439
Benefit-Cost Ratio (BCR)		20.8	22.5

Whilst FDR continues to be cost effective for government, the major beneficiaries of FDR are families through increased financial wellbeing and through improved outcomes across the domains of family functioning, mental health and wellbeing, personal and family safety, and child wellbeing.

Introducing mandatory FDR for property matters would increase benefits to families and the family law system by reducing the number of property-only matters that are litigated with cost savings both to families and the family law system.

1.3 Sensitivity Analysis

For FDR clients, RAV record client outcomes (i.e., the changes that happen because of the services provided to clients) through Standard Client/Community Outcomes Reporting (SCORE) across the domains noted in section 1.2 above.

This cost-benefit analysis has used benefit transfer to draw valuations from other studies³ to estimate a value for the improvements in outcomes recorded for clients receiving FDR services and which are attributable to those services.

Incorporating non-financial wellbeing impacts quantitatively rather than qualitatively is an emerging field in cost-benefit analysis. If these non-financial wellbeing impacts are excluded from the quantitative cost-benefit analysis, then the results are as shown in Table 2 below. These results still demonstrate significant returns on investment, with benefits of FDR to the community some fifteen to seventeen times greater than its costs.

Table 2: Results of cost-benefit analysis excluding non-financial wellbeing impacts

	Reference	Mandatory FDR for Parenting Matters	Mandatory FDR for Parenting & Property Matters
Benefits to Family Law System			
Avoided costs for the family law system	Section 6.1	\$4,400	\$5,176
Benefits to Families			
Increased financial wellbeing	Section 7.1	\$41,800	\$48,565
Total Benefits		\$46,200	\$53,741
Costs			
Cost of FDR services to Government	Section 8.2	\$2,938	\$2,938
Cost of FDR services to families	Section 8.3	\$86	\$206
Total Costs		\$3,024	\$3,144
Net Present Value (NPV)		\$43,176	\$50,597
Benefit-Cost Ratio (BCR)		15.3	17.1

³ The CIE, Family and Relationship Services Economic Evaluation, Using cost-benefit analysis to assess the value of services, prepared for Family and Relationship Services Australia, 12 September 2023.

2. Background

2.1 Family Law in Australia

The Federal Circuit and Family Court of Australia (FCFCOA) was established on 1 September 2021, amalgamating the Family Court of Australia (FCoA) and the Federal Circuit Court of Australia (FCC).

The new court structure has two divisions:

- Federal Circuit and Family Court of Australia (Division 1)
 - This division essentially replaced the FCoA.
 - It primarily handles the most complex and serious family law matters, including cases that involve complex legal issues, significant assets, or serious allegations such as child abuse or family violence.
 - Judges in Division 1 have a high level of expertise in family law, and the division operates as a superior court of record.
- Federal Circuit and Family Court of Australia (Division 2)
 - This division replaced the FCC.
 - It deals with less complex family law matters, including divorces, parenting disputes, property disputes, and other general federal law matters (such as migration, bankruptcy, and industrial law).
 - Division 2 aims to provide a quicker and more streamlined process for handling less complex cases.

The Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2) are referred to as the Courts in this report.

The Family Court of Western Australia (FCoWA) continues to be a separate state court that handles family law matters in Western Australia, whereas the FCFCOA operates as the federal court for family law matters in all other Australian states and territories.

2.2 Parenting, Financial, and Property Matters

For separating couples, matters to be addressed can include parenting and financial arrangements, and division of property and debts.

Whilst financial matters and property matters are terms which are sometimes used interchangeably, we draw a distinction in this report between the two as follows:

- Financial matters refer to ongoing financial arrangements and support obligations between the parties post-separation.
- Property matters involve the division of the parties' tangible and intangible assets and liabilities.

This terminology can be confusing as the FCFCOA frequently refers to financial orders when dealing with matters of property settlement, spousal maintenance, and child support.

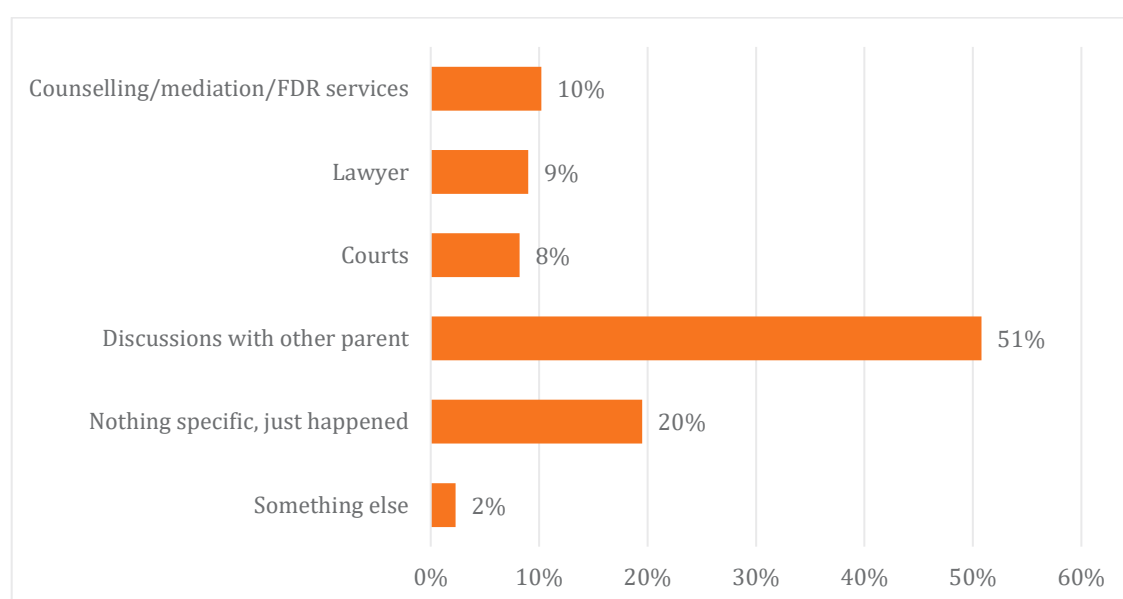
2.3 Post-Separation Arrangements

The Longitudinal Study of Separated Families (LSSF) ⁴, a longitudinal study commissioned by the Attorney General's department, and conducted over three waves by the Australian Institute of Family Studies (AIFS), provides insights into how parents resolve post-separation parenting and property matters following the 2006 changes to the *Family Law Act 1975 (Cth)*.

Data from Wave 3 of that study (based on fieldwork that took place from September to November 2012) reveals that the majority of separating parents (73%) do not engage with formal services when resolving their post-separation parenting arrangements (Figure 1).

Approximately 10% of parents reported using counselling, mediation, or FDR as their 'main' pathway, 9% reported using lawyers, and 8% reported using the courts.

Figure 1: Main pathways used by parents who had sorted out their parenting arrangements, 2014⁵



However, this data may present a somewhat misleading picture as parents often use a combination of these methods to reach a resolution, depending on the complexity and nature of their disputes. Additionally, one of the core principles of FDR is self-determination, which empowers the parties involved to make their own decisions about the outcome of their dispute rather than having a solution imposed by a third party, such as a judge.

The FDR process ultimately aims to help parties reach agreements on parenting arrangements through open discussions with the other parent. It recognizes that these arrangements must remain flexible and responsive to the evolving circumstances of the family.

⁴ Qu, L., Weston, R., Moloney, L., Kaspiew, R., & Dunstan, J. (2014). Post-separation parenting, property and relationship dynamics after five years. Canberra: Attorney-General's Department.

⁵ Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L. et al. (2015). Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments). Melbourne: Australian Institute of Family Studies.

When FDR successfully facilitates self-determined agreements, there may be a tendency to underestimate the significance of the FDR process, particularly in a system that traditionally values formal judicial determinations.

2.4 Dispute Resolution

Dispute resolution encompasses a range of services designed to assist parties in resolving disputes arising from separation or divorce, and to improve their relationship with the other party or parties. These services include:

- *Family counselling*: Helps families address personal and interpersonal issues related to marriage, separation, or divorce, and to the care of children.
- *Family dispute resolution (FDR)*: An independent FDRP assists parties in resolving disputes related to separation or divorce. FDRPs facilitate resolution but do not provide legal advice or impose decisions. FDR is generally mandatory for parenting matters before any parenting application can be filed to the Courts. The Courts may refer parties back to FDR or offer FDR services through a judicial registrar acting as an FDRP.
- *Mediation*: An independent third party assists parties in reaching an agreement. Mediation can occur before or after court proceedings have begun and can address both parenting and/or property issues. FDR is a specific type of mediation which, as noted above, must be undertaken, with limited exceptions, before commencing court proceedings in parenting matters.
- *Conciliation*: An independent conciliator takes a more proactive role in helping parties to primarily resolve property issues arising from separation or divorce. This process is often more structured and may involve the conciliator proposing potential solutions based on their expertise.
- *Arbitration*: Parties to a financial dispute present arguments and evidence to an independent arbitrator, who then makes a binding determination to resolve the dispute.

Whilst FDR is the subject of this report, we do make reference to other forms of dispute resolution throughout.

2.5 Relationships Australia Victoria

Relationships Australia Victoria (RAV) is a community-based, not-for-profit organisation with over 75 years' experience in providing family and relationship support services. Operating across Victoria, RAV offers a wide range of services, including:

- Individual, relationship and family counselling
- Family dispute resolution
- Family violence prevention, support and recovery services
- Relationship skills and parenting courses
- Professional development and training.

RAV receives a substantial proportion of its funding from the Commonwealth Government's Attorney-General's Department and the Department of Social Services, which support the delivery of its services. RAV is also a member organisation of Relationships Australia.

One of RAV's key services is FDR, which assists separating, separated or divorced couples in resolving disputes regarding parenting and/or property matters without going to court.

This service is valuable not only for those currently going through separation or divorce, but also for individuals who have been long separated or divorced and need assistance in resolving ongoing disputes.

RAV has been providing specialist FDR services since 1984 and is now the largest provider of FDR services in Victoria. FDR services are available at its four Family Relationship Centres (FRCs) in Berwick, Greensborough, Melbourne and Sunshine, as well as at other locations throughout the state.

RAV's FDR services focus on safety, the best interests of children, and ensuring the participation of both parents. Currently, three main models of FDR are in operation at RAV:

- *FDR for Parenting, Financial, and Property Matters (No Lawyer Involvement):* Facilitated solely by an FDRP.
- *Lawyer-Assisted Dispute Resolution:* An FDRP leads the process, with support from community legal centres partnered with RAV, where lawyers provide advice to clients on parenting and/or property matters.
- *Lawyer-Inclusive Dispute Resolution:* Clients are represented by private lawyers during mediation for parenting and/or property matters.

RAV encourages clients attending FDR for property matters to seek legal advice or assistance prior to or during the FDR process.

2.6 Family Dispute Resolution for Parenting Matters

In 2006, changes to the *Family Law Act 1975 (Cth)* made it mandatory, with certain exceptions, to attempt FDR and to obtain a Section 60I FDR certificate from an FDRP before taking a parenting matter to court. These changes were intended to:

- Encourage a culture of agreement-making and avoidance of an adversarial court system.
- Assist people in resolving family relationship issues outside of the court system, which can be costly and lead to entrenched conflict.

Exceptions to the requirement for FDR include circumstances involving urgency and cases where there are reasonable grounds to believe that there has been, or is a risk of, family violence or child abuse by one of the parties. In such cases, a court may hear a matter without a Section 60I certificate.

The 2006 amendments to the *Family Law Act 1975 (Cth)*, along with other changes, aimed to shift the management of family separation away from litigation and towards cooperative parenting.⁶

⁶ The Parliament of the Commonwealth of Australia, Senate, Family Law Amendment (Shared Parental Responsibility) Bill 2005, Revised Explanatory Memorandum.

To support these changes, increased funding for dispute resolution services, and the establishment of 65 Family Relationship Centres (FRCs) across Australia, were announced in the Federal Budget for Financial Year 2006 (FY06).

FRCs are designed to serve as entry points into the family law system, offering services to families such as:

- Information and referral services on parenting and relationships to intact families.
- Information, referral, advice, and dispute resolution services to separating and separated families to help them reach agreement on parenting arrangements without going to court.

FDR is delivered by experienced and accredited practitioners, qualified to work with couples and families undergoing divorce and separation. When couples reach an agreement with the assistance of an FDRP, they can either enter into a Parenting Plan or file an Application for Consent Orders to make the agreement legally binding.

The Parenting Plan is a written agreement between parents regarding the care and welfare of their children. While it is a mutual agreement, it is not legally enforceable. By contrast, if the court approves the application, it will issue Consent Orders, which are legally binding and enforceable.

If an agreement is not reached, an FDRP may issue a Section 60I certificate so that the parties can take the parenting matter to court. A Section 60I certificate may be issued for the following reasons:

- One party did not attend FDR due to the refusal or failure of the other party to attend.
- The FDRP made an assessment that the matter was not appropriate for FDR.
- The parties attended FDR and made a genuine effort to resolve the dispute without success.
- FDR was attempted but one or both parties did not make a genuine effort to resolve the dispute.
- The parties began FDR, but the FDRP decided it was not appropriate to continue, considering the circumstances.

Once a Section 60I certificate is issued, the couple can then file an Initiating Application seeking parenting orders under Part VII of the *Family Law Act 1975 (Cth)*. This application asks the court to make decisions regarding the child's living arrangements, the time the child will spend with each parent, the child's communication with each parent, or any other decision parents need to make about their children.

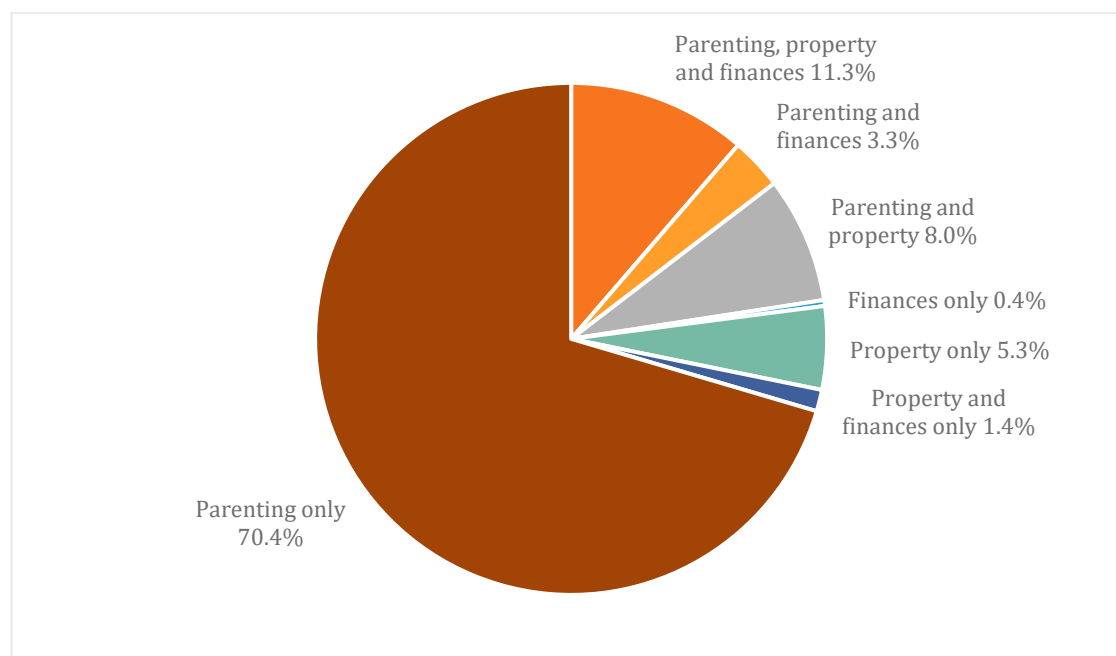
FDR is regulated by the *Family Law Act 1975 (Cth)* and the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth)*.

2.7 Family Dispute Resolution for Financial and Property Matters

In addition to resolving parenting matters, separating couples often need to address financial and property matters, such as determining ongoing financial arrangements and division of assets in a property settlement.

The 2019 national study conducted by the Relationships Australia Federation on the outcomes and efficacy of post-separation FDR (n=1,617) found that 70% of participants were most commonly seeking FDR for parenting issues only, 23% cited a combination of parenting and property/finance issues to resolve, and 7% were concerned with property/finance issues only (Figure 2).⁷

Figure 2: Matters seeking to be resolved by parents through FDR process⁸



However, whilst parties might have initially sought to resolve property matters, the study found that many parties did not progress to property FDR, despite an initial desire to do so. The most common reasons were:

- Unwilling ex-partner.
- Prioritisation of parenting matters and then not subsequently proceeding with property negotiations, especially when parenting negotiations had been difficult.
- Presence of high conflict inhibiting progression to property FDR because attempting FDR in property matters is entirely voluntary.
- Participants unable to tackle property matters at the FRCs they attended with participants at FRS/FSP venues significantly more likely to have discussed property matters within a year of intake (80%) than those at FRCs (43%).

Amongst those that did tackle property matters, the positive agreement rates (67% for property alone) and satisfaction rates highlight the value of property FDR.

Although a Section 60I certificate (or its equivalent) is not currently required before commencing court proceedings for property matters, these issues can be resolved as part of the same FDR process used for parenting matters or at different times.

⁷ Dr Aditi Lohan & Dr Genevieve Heard, Family Dispute Resolution Outcomes Study, July 2019

⁸ Dr Aditi Lohan & Dr Genevieve Heard, Family Dispute Resolution Outcomes Study, July 2019

FDR services provided by RAV for property matters offer the prospect of a quicker and more affordable alternative to litigation, characterised by:

- **Transparent Pricing:** Fees are set so clients know the cost upfront.
- **Timeliness:** Most clients can complete property mediation quickly.
- **Professionalism:** FDRPs are qualified, experienced and impartial.

Regarding the potential for legislating mandatory pre-filing property FDR, Heard & Bickerdike (2021)⁹ highlight the following:

A Productivity Commission Report (2014) recommended that “the Australian Government should...introduce requirements for parties to attend family dispute resolution prior to commencing a family law property matter in court” (Productivity Commission, 2014, p. 845, Recommendation 24.5) advising that this “will assist family law property disputes to be resolved at the most appropriate level” (p. 875).

More recently, the Australian Law Reform Commission (ALRC), in their Discussion Paper for the Inquiry into the Family Law System, proposed that “the Family Law Act 1975 (Cth) should be amended to require parties to attempt family dispute resolution prior to lodging a court application for property and financial matters” (ALRC, 2018, p. 106, Proposal 5-3), with a limited set of exceptions including urgency and family violence.

While “many submissions” supported this policy shift, “a limited number,” including from the Law Council of Australia, criticized the proposed requirement. The proposal was not reflected in the final report from the ALRC Inquiry, which merely supported “greater use of FDR and other non-court-based mechanisms for resolving property and financial matters” (2019, p. 257), and no such requirement has been introduced.

Improving the law for parties with family law property disputes is currently the subject of an exposure draft (Family Law Amendment Bill (No. 2) 2023) that was released for feedback by the Australian Government in late 2023 (refer section 2.8 which follows).

2.8 Family Law Applications

In FY23, 96,142 family law applications were filed in the Court (Table 3). The majority of applications filed were applications for divorce (47.4%), followed by interim applications (now called Applications in a Proceeding) (19.2%), applications for consent orders (16.4%), and then applications for final orders (14.4%).¹⁰

Table 3: Filings in FCFCOA by application type (2022-23)¹¹

Application type	Filings	Percentage
Applications for final orders	13,862	14.4%
Applications for interim orders (Applications in a Proceeding)	18,473	19.2%

⁹ Genevieve Heard, Andrew Bickerdike, Dispute Resolution Choices for Property Settlement in Australia: Client Views on the Advantages and Disadvantages of Family Dispute Resolution and Legal Pathways, Family Court Review, Volume 59, Issue 4, October 2021, Pages 790-809.

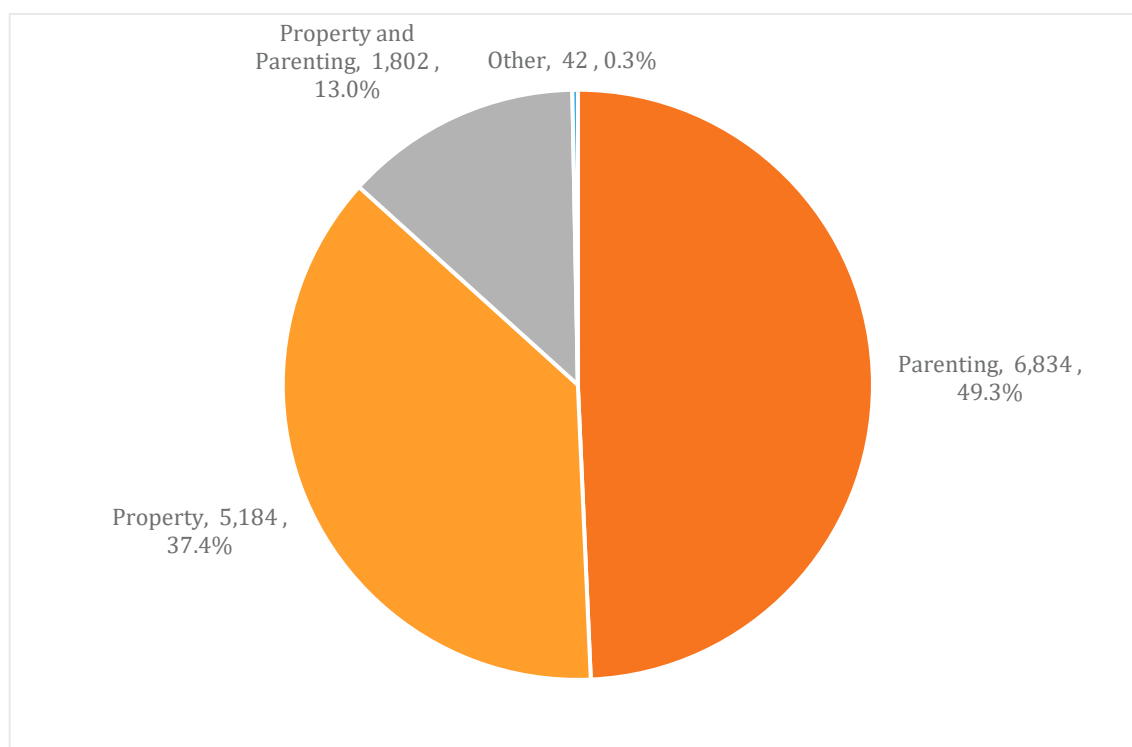
¹⁰ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23, page 74

¹¹ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23, page 74

Application type	Filings	Percentage
Applications for divorce	45,529	47.4%
Applications for consent orders	15,782	16.4%
Other	2,496	2.6%
TOTAL	96,142	100.0%

Based on high-level Court records, of the 13,862 applications for final orders filed in FY23, the mix of orders sought is presented in Figure 3 below.

Figure 3: Applications for final orders filed by orders sought, 2022–23¹²



Filings shown above for FY23 are comparable with FY22 when 91,545 filings were made of which 12,551 were applications for final orders and of those, 51% were for parenting, 13% for property and parenting and 36% for property only.¹³

2.9 Family Law Reform (2024)

In October 2023, the Australian Parliament passed the Family Law Amendment Bill 2023 and the Family Law Amendment (Information Sharing) Bill 2023. These pieces of legislation aim to make Australia's family law system simpler, safer, and more accessible for separating families and their children.¹⁴

The amendments repeal the presumption of 'equal shared parental responsibility' provisions in the *Family Law Act 1975 (Cth)*. They ensure courts have access to

¹² Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23, page 76

¹³ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2021-22, pages 73-76

¹⁴ Media release, 19 October 2023, passage of landmark family law reforms

comprehensive information on family safety risk to prioritise the safety of children and families, particularly in cases involving the risk of child abuse, neglect or family violence. Under the new laws, parenting decisions must be based solely on what is in the best interests of the child.

In accordance with s60CA of the *Family Law Act 1975 (Cth)* in deciding whether to make a particular parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration. The court relies on s60CC to determine what is in the best interests of the child. FDRPs have obligations under s60D to inform FDR participants that they must regard the best interests of the child as paramount and encourage participants to act in the best interests of the child by applying the considerations set out in s60CC (2) and (3).

Most of the changes to the *Family Law Act 1975 (Cth)* commenced on 6 May 2024.¹⁵

In late 2023, the Australian Government sought feedback on an exposure draft of the Family Law Amendment Bill (No. 2) 2023 (the exposure draft). This second tranche of reforms focused on improving the law for parties with family law property disputes, specifically by recognizing family violence as a factor in property settlements. The proposed amendments aimed to address recommendations from two major inquiries into the family law system: the Australian Law Reform Commission in 2019¹⁶ and the Joint Select Committee on Australia's Family Law System in 2021.¹⁷

In its response to the exposure draft, Relationships Australia made several recommendations including:¹⁸

- Government should provide more support for legally-assisted FDR for all clients, including those with 'property-only' matters.
- Mandating a pre-filing certificate process for property matters.

In August 2024, the Family Law Amendment Bill 2024 was introduced to '*make the division of property and finances safer, simpler and fairer for separating families, especially where family violence is present*'.

The Family Law Amendment Bill 2024 would:

- Specify the approach that a court will take when deciding the division of property and finances, making the law clearer for all parties.
- Ensure the economic impact of family violence is considered where relevant as part of dividing property and finances.
- Ensure that the care and housing needs of children are considered in financial and property decisions.
- Ensure financial information is disclosed at the earliest opportunity to promote the early resolution of disputes.

¹⁵ <https://www.fcfcga.gov.au/news-and-media-centre/fla2023>

¹⁶ Australian Law Reform Commission's Final Report No. 135: Family Law for the Future - An Inquiry into the Family Law System

¹⁷ Australian Government, Family Law Amendment Bill (No.2) 2023, Consultation Paper, September 2023.

¹⁸ Submission by Relationships Australia dated 9 November 2023

- Expand the court's ability to use less adversarial approaches in all types of proceedings, not just for children's matters, supporting parties to safely raise family violence risks and ensuring the safe conduct of proceedings.¹⁹

2.10 Review of the Family Relationship Services Program

The Family Relationships Services Program (FRSP) was established in 2006, with the creation of a number of Family Relationship Centres (FRCs) around Australia.

The FRSP has expanded over the past 18 years, and now supports separating or separated families, particularly those with children, through a range of services including:²⁰

- Family Relationship Centres
- Family Relationship Advice Line
- Family Dispute Resolution (including regional FDR and First Nations FDR)
- Family Counselling
- Children's Contact Services
- Parenting Orders Program/Post Separation Cooperative Parenting Program
- Supporting Children after Separation Program

Committed grants under the FRSP in FY24 total \$261 million.²¹

In September 2023, the Australian Government commissioned a review of the FRSP (the Review) to *'identify how the program can best meet the needs of the community now and into the future'*. The results of the Review were published on 11 September 2024.²¹

The principal conclusion of the Review was that *'the FRSP is successful in supporting separating families, including families with complex needs, such as where family violence or mental health issues are present'*.

The Review also concluded that *'the program effectively provides alternatives to what can be highly costly litigation and court processes, and provides valuable therapeutic support to help families manage separation safely'*.

Cost-effectiveness analysis undertaken as part of the Review found that *'FRSP-funded activities all provide an improvement in client outcomes, and a cost saving to government by supporting clients to resolve their post-separation arrangements without going to court'*.

Key recommendations included:

- Reframe the objective of the FRSP to more clearly identify the outcomes it is seeking to achieve, and how it proposes to achieve them.
- Rename the FRSP to more accurately describe its purpose (e.g., Support for Separating Families Program).

¹⁹ <https://ministers.ag.gov.au/media-centre/simpler-safer-and-fairer-family-law-system-22-08-2024>

²⁰ <https://www.ag.gov.au/families-and-marriage/families/family-relationship-services>

²¹ Support for Separating Families, Review of the Family Relationships Services Program, Andrew Metcalfe AO, Lead Reviewer, June 2024

- Improve awareness of and access to the FRSP.
- Consolidate delivery of some services through FRC Hubs.
- Better support and enhance the voices and best interests of children.

3. Property FDR

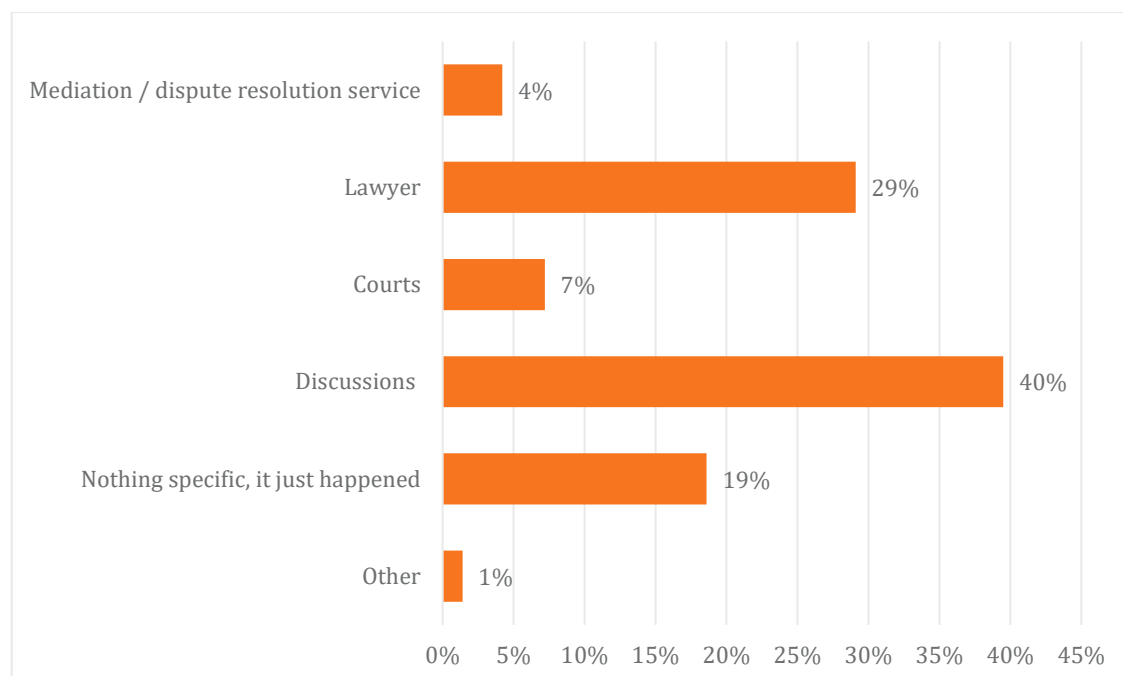
3.1 Pathways

As noted in section 2.3 above, 27% of separating parents engage with formal services (10% mediation or dispute resolution, 9% lawyers and 8% courts) when resolving their post-separation parenting arrangements. This compares with a much higher 40% of separating parents engaging with formal services for property division (Figure 4).

Despite the much higher engagement with formal services for property division, mediation or dispute resolution are used much less frequently for property division than for parenting arrangements.

Just 4% of separating parents use FDR as their main pathway to settlement of property matters compared to 29% using lawyers and 7% using the courts (Figure 4).

Figure 4: Main pathway used for property division (settled or in process), LSSF Wave 3²²



This low use of FDR in property division is despite FDR being significantly less costly for participants than adversarial methods, and despite separated Australian parents (who participated in the LSSF) more likely to consider their property settlements fair if they had used FDR as their main pathway than if they had used a lawyer or been to court.²³

²² Qu, L., Weston, R., Moloney, L., Kaspiew, R., & Dunstan, J. (2014). Post-separation parenting, property and relationship dynamics after five years. Canberra: Attorney-General's Department

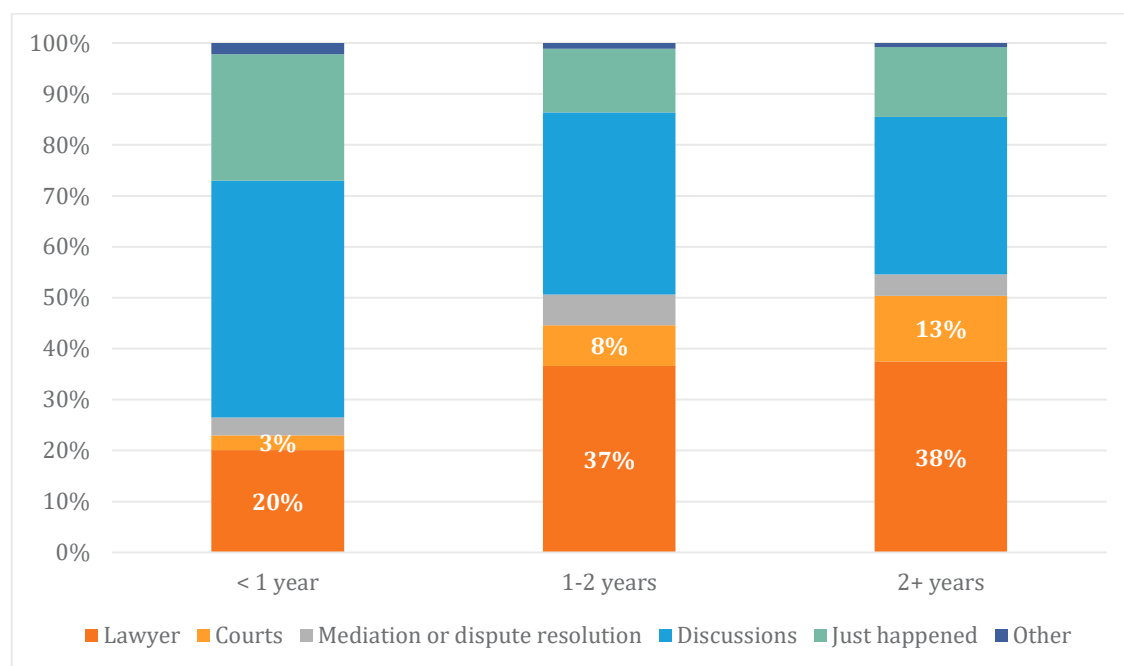
²³ Qu, L., Weston, R., Moloney, L., Kaspiew, R., & Dunstan, J. (2014). Post-separation parenting, property and relationship dynamics after five years. Canberra: Attorney-General's Department, page 110-111.

3.2 Timing

Data from the LSSF indicates that the type of primary pathway used was linked with the timeframes for finalising property division. Parents who took longer to finalise their property settlements were more likely to report using formal pathways (Figure 5).

Among parents who reported timeframes in excess of two years, 38% indicated using lawyers and 13% using courts.

Figure 5: Pathways for property division, by when settled, parents reaching property settlements, Wave 3²⁴



Influencing the longer timeframes for property division are a number of factors including the prioritisation of parenting matters over property matters when both matters are in dispute.

3.3 FDR in Property Settlement

Whereas it is mandatory to attempt FDR in parenting matters before taking any parenting matter to court, this is not currently so for property matters although the FCFCOA (Family Law) Rules 2021 (the Rules) state that, to the extent that it is safe to do so, each prospective party to a financial proceeding in the FCFCOA must make a genuine effort to resolve the dispute by participating in dispute resolution before filing an application to start proceedings in court.²⁵

New case management pathways introduced by the FCFCOA in 2021 also now prioritize early intervention and resolution, often requiring parties to engage in mediation or other dispute resolution processes early in the court process.²⁶

²⁴ Qu, L., Weston, R., Moloney, L., Kaspiew, R., & Dunstan, J. (2014). Post-separation parenting, property and relationship dynamics after five years. Canberra: Attorney-General's Department

²⁵ https://classic.austlii.edu.au/au/legis/cth/num_reg/fcafcocr2021202101197559/sch1.html

²⁶ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23

However, ‘dispute resolution’ has no clear definition in the Rules and consequently a lower and less clear bar exists for parties in property matters than exists for parties in parenting.

The 2019 national study on outcomes and efficacy of post-separation FDR²⁷ found that parties did not negotiate on property matters in FDR, despite an initial desire to do so. The most common reasons were:

- Unwilling ex-partner.
- Prioritisation of parenting matters and then not subsequently proceeding with property negotiations, especially when parenting negotiations had been difficult.
- Presence of high conflict inhibiting progression to property FDR because attempting FDR in property matters is entirely voluntary.
- Participants unable to tackle property matters at the FRCs they attended with participants at FRS/FSP venues significantly more likely to have discussed property matters within a year of intake (80%) than those at FRCs (43%).

In their 2019 submission to the Joint Select Committee on Australia’s Family Law System²⁸, RAV highlighted their experience in conducting property mediation/FDR for many decades. Other community not-for-profit organisations, including all Relationships Australia organisations nationally, have also provided this service.

Since 2012, RAV has also offered AccessResolve, a property dispute resolution service specifically for court-ordered clients.

AccessResolve uses a lawyer-assisted conciliation model, through which practitioners adopt an advisory role when necessary to assist parties to reach agreement. Lawyers are active participants in the conciliation process, and assist in preparing and exchanging information, clarifying details and drafting agreements.²⁹

Property cases dealt with through RAV FDR services range from relatively straightforward, small property matters to large, multi-million-dollar property pools involving complex trust structures, self-managed super funds, businesses, and various other asset and debt classes.

RAV strongly recommends that clients participating in property FDR seek legal advice or assistance either before or during the FDR process. Lawyer involvement in the FDR process can vary across a spectrum as follows:

- **Lawyer-Advised Model:** Parties participate in FDR independently of lawyers but have obtained legal advice beforehand, ensuring they are informed about their rights and options during negotiations.
- **Lawyer-Assisted Model:** Parties are supported by a lawyer in FDR sessions. That lawyer plays an advisory role during the session and the parties are supported to advocate for themselves during the FDR sessions. Currently at RAV, this model is supported by Community Legal Centres who do not charge a fee to RAV clients.

²⁷ Dr Aditi Lohan & Dr Genevieve Heard, Family Dispute Resolution Outcomes Study, July 2019

²⁸ RAV, Joint Select Committee on Australia’s Family Law System: Submission from Relationships Australia Victoria (RAV), 2019

²⁹ Research Summary: Property Dispute Resolution for Court-Ordered Clients (2023) | relationshipsaustralia.org.au/about/research-evaluation

- **Legally-Inclusive Model:** Private lawyers actively participate in the FDR sessions alongside their clients, providing real-time legal guidance, assisting with negotiations, and ensuring any agreements are in their client's best interest. Lawyers engaged for this process are paid independently by their individual clients.

When agreements are reached through property FDR, they are often formalized by lawyers as Consent Orders, making them legally binding and enforceable.

The involvement of lawyers in the FDR process has proven effective over the years, with clients reporting high satisfaction levels with both the process and outcomes. For example, an evaluation of AccessResolve, the property dispute resolution service for court-ordered clients, found that 78% of respondents were satisfied with the way their conciliation was carried out, and 69% of respondents were satisfied with their conciliation outcome.³⁰

AccessResolve consistently achieves high settlement rates of 70% or more each year, exceeding those typically seen in traditional FDR services. These results are particularly noteworthy considering that AccessResolve cases are arguably among the more intractable. AccessResolve clients have already filed matters in court and have often waited for some time to attend court before being ordered to attempt conciliation.³¹

RAV notes that property FDR services would be more widely used if all property matters were subject to the same mandatory FDR requirements as parenting matters. This could potentially lead to more cases settling early, significantly reducing costs for clients who might otherwise become entangled in the adversarial system.

Additional benefits of pre-filing property FDR, as highlighted by RAV, include:

- **Alleviating Court Resources:** By diverting property cases to FDR, courts can focus more on complex parenting matters involving family violence, sexual abuse, and substance abuse, areas where the courts have significant expertise. This will also mean those complex parenting cases get resolved sooner with benefits to families.
- **Comprehensive Resolution:** Parents dealing with concurrent parenting matters can address all their separation issues within FDR, leading to increased cost-effectiveness, convenience, and, crucially, the preservation of the parenting relationship.

3.4 Other Benefits of Participation in Property FDR

Beyond the benefits of mandatory property FDR outlined in section 3.3, the 2019 national study on post-separation FDR outcomes³² found several key benefits for clients who attended joint property FDR:

- **Improved Well-being:** Clients who participated in property FDR showed improvement in more areas than those who did not, including reduced levels of anxiety and stress, and better adjustment to separation.

³⁰ Research Summary: Property Dispute Resolution for Court-Ordered Clients (2023) | relationships.victoria.org.au/about/research-evaluation/

³¹ Research Summary: Property Dispute Resolution for Court-Ordered Clients (2023) | relationships.victoria.org.au/about/research-evaluation/

³² Dr Aditi Lohan & Dr Genevieve Heard, Family Dispute Resolution Outcomes Study, July 2019

- **Process Benefits:** Participants from the property subsample who attended joint FDR identified various benefits of the property FDR process, regardless of whether they reached an agreement. These included the structured process for identifying assets, and the opportunity to hear suggestions and options for dividing assets from the FDRP.

A subsample from this national study was interviewed in a separate study examining client perspectives on property dispute resolution methods. This study involved 112 prospective FDR clients who cited property settlement as one of their goals. Some proceeded to joint FDR and some did not. Of those proceeding to joint FDR, some attempted property settlement in FDR, and others discussed parenting only with no serious attempt at property FDR.³³

Participants provided strong endorsement of FDR in its current form, particularly highlighting its affordability and non-combative nature. FDR appealed especially to those looking to avoid the higher costs associated with legal methods of resolving property disputes. Additionally, participants valued FDR for its ability to open or maintain channels of communication between ex-partners, and offer an opportunity for both parties to be heard without escalating conflict. The presence of an impartial third party to facilitate and moderate negotiations was also highly valued.

However, thematic analysis of interview data revealed some elements found lacking in the (voluntary) FDR process, such as the authority to compel attendance and/or negotiation, and guidance on likely outcomes. While some clients obtained the legal authority and guidance they needed from lawyers, this often meant sacrificing FDR's affordability and its potential to minimise conflict.

Under new funding arrangements implemented in July 2019, property matters can now be discussed at all RA centres offering FDR, including FRCs, regardless of whether concurrent parenting matters are involved.

3.5 Modelling Assumptions

As noted in section 2.8 above, 96,142 family law applications were filed in the Court during FY23. Interim applications (Applications in a Proceeding) comprised 19.2% of family law applications, and applications for final orders comprised 14.4%. Of the applications for final orders, 37.4% were for property matters.³⁴

The implementation of mandatory property FDR would be expected to lead to a reduction in the number of filings in the Court related to property disputes, and specifically applications for interim orders (Applications in a Proceeding) and applications for final orders.

Our key assumption is that with the introduction of mandatory property FDR, there would be an uplift in property FDR leading to a 25% reduction in property-only disputes going to court, consistent with the reduction in children-related matters in the years immediately following implementation of the 2006 changes to the Family Law Act 1975 (Cth) (Figure 7).

³³ Heard, G. and Bickerdike, A. (2021), Dispute Resolution Choices for Property Settlement in Australia: Client Views on the Advantages and Disadvantages of Family Dispute Resolution and Legal Pathways. Family Court Review, 59: 790-809. <https://doi.org/10.1111/fcre.12565>

³⁴ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23, page 74

We have also assumed that these property matters would be handled with parenting matters through the same FDR process.

With the uplift in property FDR, lawyer involvement may change in some circumstances from being the 'main' pathway to being a supporting component of the FDR process under either the 'lawyer-assisted' or 'legally-inclusive' models described in section 3.3 above.

Property FDR actually encourages legal advice and some parents might now access legal advice (who previously wouldn't) on the encouragement of their FDR practitioner.

4. Cost-Benefit Analysis Framework

4.1 Overview

Cost-benefit analysis (CBA) is the preferred method of appraisal or evaluation in most Australian jurisdictions due to its comprehensive and evidence-based nature.

CBA aims to capture all social, economic, environmental, and cultural impacts, considering both benefits and costs. It assigns a dollar value to these impacts, enabling the measurement of net benefits/losses (or welfare gains/losses) for the community as a whole, and, if relevant, assesses the distribution of these benefits/losses among different community groups.

To account for costs and benefits occurring at different times, CBA uses the concept of present value, where future costs and benefits are discounted.

The following measures are typically estimated for the different options considered in a CBA:

- **Net Present Value (NPV)** – The difference between the present value of benefits and the present value of costs.
- **Benefit Cost Ratio (BCR)** – The ratio of the present value of total benefits to the present value of total costs.

Prima facie, an investment is viewed as increasing the welfare of the Australian community if the present value of benefits is greater than the present value of costs (i.e., $NPV > 0$, $BCR > 1$). Conversely, if the present value of costs is greater than the present value of benefits (i.e., $NPV < 0$, $BCR < 1$), the investment is viewed as reducing the welfare of the Australian community.

However, sometimes it is not feasible to quantify and place a dollar value on all significant costs or benefits. In that case, the costs or benefits should be described qualitatively and presented in the CBA report for consideration alongside the quantitative measures of BCR and NPV.

4.2 Counterfactual

This cost-benefit analysis evaluates two FDR scenarios:

- Current operating model which has mandatory FDR for parenting matters only.
- New operating model where FDR is mandatory for both parenting and property matters.

Mandatory FDR requires parties to attend FDR before commencing family law parenting and/or property matters in court. Costs and benefits are considered relative to the counterfactual, which assumes no mandatory requirement to undertake FDR for parenting and/or property matters.

Informing the counterfactual scenario for mandatory FDR for parenting matters is data on how family disputes were resolved before the 2006 changes to the *Family Law Act 1975 (Cth)*, and how they are resolved now.

In relation to the new operating model (mandatory FDR for both parenting and property matters), the counterfactual describes the situation where there is no mandatory FDR for parenting and/or property matters.

Informing non-financial benefits are changes in self-assessed Standard Client/Community Outcomes Reporting (SCORE) data before and after FDR services are provided to clients (section 7.1.4). Not all of the positive change in SCORE data commonly observed can be attributed to the provision of FDR services given the potential influence of other factors. For this reason, our central estimate makes a conservative attribution estimate, and we conduct sensitivity analysis around this conservative estimate of attribution.

This CBA is an ex-post analysis estimating costs and benefits associated with an average family that accessed FDR services during calendar year 2023 under each of the two scenarios. This means that costs and benefits are considered from the perspectives of both parents (i.e., the family) and a single court case potentially avoided.

The analysis is informed by data from families who underwent FDR in 2023 and considers impacts on clients and other groups (e.g., government) over future periods. Impacts beyond 2023 are discounted to present value.

4.3 Discount Rates and Base Year

Future costs and benefits have been converted to present values using a discount rate of 7%, with sensitivity analysis conducted using discount rates of 3% and 10%, in line with the requirements of the Office of Impact Analysis (part of the Department of the Prime Minister and Cabinet).³⁵

The base year of analysis is 2023, being the period to which all future costs and benefits have been discounted when calculating present values.

4.4 Standing

Although this CBA has been commissioned by Relationships Australia Victoria (RAV), a community not-for-profit organisation operating in Victoria, it has been prepared from a national perspective. This national perspective is appropriate as the Commonwealth Government is the major funder of FDR services through the Family Relationship Services Program, a national program.

4.5 Benefits

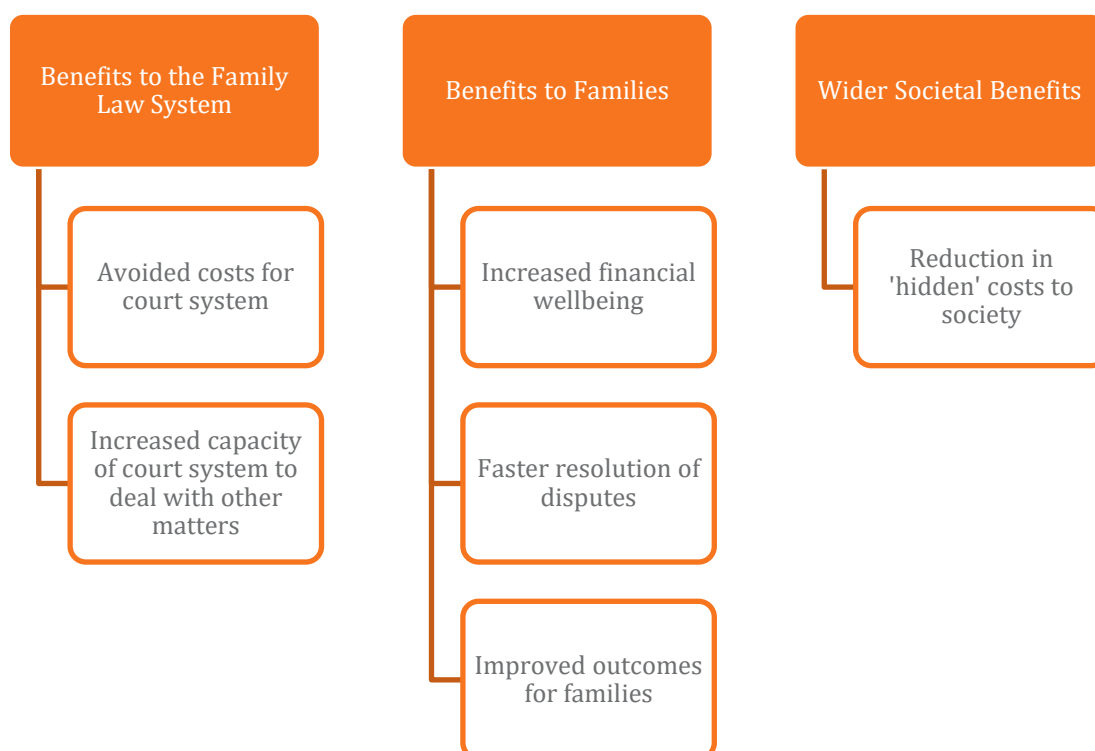
For the two mandatory FDR scenarios being analysed, benefits are the increases in welfare associated with the service model's economic and social outcomes. Benefits are measured by reference to the counterfactual i.e., what would have happened without the implementation of the FDR service model (section 4.2).

Our benefits framework is set out in Figure 6 below. Where impacts cannot be quantified, we have accounted for them qualitatively.

Benefits reflect a mix of financial benefits (cost savings) and non-financial benefits (e.g., improved outcomes for families).

³⁵ Office of Impact Analysis | Guidance Note | Cost Benefit Analysis, July 2023

Figure 6: Benefits framework.



This benefits framework highlights the benefits of FDR across three key areas:

Benefits to the Family Law System:

- **Avoided costs for court system:** FDR reduces the financial burden on the court system by reducing the number of family law disputes that progress to court.
- **Increased capacity of court system to deal with other matters:** By diverting cases to FDR, the court system can allocate its limited resources and time to more complex parenting matters involving family violence, sexual abuse, and substance abuse, in which the courts have considerable expertise. This will also mean those complex parenting cases get resolved sooner with benefits to families (refer below).

Benefits to Families:

- **Increased financial wellbeing:** Participating in FDR generally costs less than going to court. FDR helps families save on legal costs and preserve assets, ensuring more resources are available for their future needs and enhancing their financial stability.
- **Faster resolution of disputes:** FDR generally helps resolve conflicts more quickly than litigation, reducing the duration of stress and uncertainty for families. This timeliness helps families move forward sooner, enhancing emotional stability, and reducing the negative impacts of prolonged conflict.
- **Improved outcomes for families:** FDR aims to promote cooperation between parents, help prevent or contain further conflict, and ensure the best interests of children, contributing to improved (a) family functioning, (b) mental health and well-being, (c) personal and family safety, and (d) child wellbeing.

Wider Societal Benefits:

- *Reduction in 'hidden' costs to society:* Efficient resolution of family disputes through FDR reduces societal costs related to prolonged conflicts, such as health costs, lost productivity, and social services involvement.

We explore benefits to the Family Law System and benefits to families in more detail in section 6 and section 7 below.

We have not attempted to quantify wider societal benefits in this report.

4.6 Costs

FDR services are provided by various types of organisation including those funded by the Australian Government through the Family Relationships Services Program (FRSP), and by private practitioners, law firms, and Legal Aid Commissions.

For purposes of this CBA, we are focusing on FDR services primarily funded by the Australian Government through the FRSP.

The cost of these FDR services is represented by the funding provided plus additional contributions payable by families dependent upon income levels and financial circumstances.

We have based estimates of costs of FDR services on recent research which has had access to, and used, Commonwealth funding data by family law service line (section 8).

4.7 Sensitivity Analysis

The results of the CBA have been tested by varying key assumptions and estimates to reflect key risks and uncertainties.

The purpose of sensitivity analysis is to assess the robustness of the analysis to plausible variations from the central estimate.

Our sensitivity analysis is presented in section 5.2 below.

4.8 Distributional Analysis

The results of the CBA show how costs and benefits are borne or shared by group.

5. Results of Cost-Benefit Analysis

5.1 Summary

Results of cost-benefit analysis for an average family unit are presented in Table 4 below.

In summary, under the current operating model of mandatory FDR for parenting matters, the results demonstrate significant returns on investment, with benefits of FDR to the community some twenty times greater than its costs.

Were mandatory FDR for parenting matters extended to property matters, the results demonstrate higher returns on investment, with benefits to the community some twenty three times greater than its costs, largely due to higher legal cost savings for families.

Table 4: Results of cost-benefit analysis

	Reference	Mandatory FDR for Parenting Matters	Mandatory FDR for Parenting & Property Matters
Benefits to Family Law System			
Avoided costs to the Court System	Section 6.1	\$4,400	\$5,176
Benefits to Families			
Increased financial wellbeing	Section 7.1	\$41,800	\$48,565
Improved outcomes	Section 7.1.4	\$16,842	\$16,842
		\$58,642	\$65,407
Total Benefits			
		\$63,042	\$70,583
Costs			
Cost of FDR services to Government	Section 8.2	\$2,938	\$2,938
Cost of FDR services to families	Section 8.3	\$86	\$206
Total Costs		\$3,024	\$3,144
Net Present Value (NPV)			
		\$60,018	\$67,439
Benefit-Cost Ratio (BCR)			
		20.8	22.5

5.2 Sensitivity Analysis

For FDR clients, RAV record client outcomes (i.e., the changes that happen because of the services provided to clients) through Standard Client/Community Outcomes Reporting (SCORE) across the domains noted in section 7.2 below.

This cost-benefit analysis has used benefit transfer to draw valuations from other studies³⁶ to estimate a value for the improvements in outcomes recorded for clients receiving FDR services and which are attributable to those services.

Incorporating non-financial wellbeing impacts quantitatively rather than qualitatively is an emerging field in cost-benefit analysis. If these non-financial wellbeing impacts are excluded from the quantitative cost-benefit analysis, then the results are as shown in Table 5 below.

These results still demonstrate significant returns on investment, with benefits of FDR to the community some fifteen to seventeen times greater than its costs.

Table 5: Results of cost-benefit analysis excluding non-financial wellbeing impacts

	Reference	Mandatory FDR for Parenting Matters	Mandatory FDR for Parenting & Property Matters
Benefits to Family Law System			
Avoided costs for the family law system	Section 6.1	\$4,400	\$5,176
Benefits to Families			
Increased financial wellbeing	Section 7.1	\$41,800	\$48,565
Total Benefits		\$46,200	\$53,741
Costs			
Cost of FDR services to Government	Section 8.2	\$2,938	\$2,938
Cost of FDR services to families	Section 8.3	\$86	\$206
Total Costs		\$3,024	\$3,144
Net Present Value (NPV)		\$43,176	\$50,597
Benefit-Cost Ratio (BCR)		15.3	17.1

³⁶ The CIE, Family and Relationship Services Economic Evaluation, Using cost-benefit analysis to assess the value of services, prepared for Family and Relationship Services Australia, 12 September 2023.

5.3 Reasonableness of Results

Several cost-benefit analyses have been undertaken of FDR services or of other services that include FDR. These are summarised in Table 6 below.

Most analyses have focused on costs and cost savings to government. These have typically shown that cost savings to government exceed costs of FDR services to government in the order of 1.5 to 2.25 times.

It is the inclusion of costs and benefits to families that substantially change the analysis, significantly increasing the ratio of benefits to costs.

Table 6: Cost-benefit analyses of FDR-related services

Study	Description	Findings
KPMG (2008) Family dispute resolution services in legal aid commissions. Evaluation report, prepared for the Attorney-General's Department.	- Focus was on avoided court costs from diversion. - Costs and benefits were considered from the perspective of the Australian Government only.	- FDR had a BCR of 1.48 nationally over the period 2004-05 to 2007-08. - BCR by jurisdiction was in the range 0.79 to 3.88.
PwC (2009) Economic value of legal aid – analysis in relation to Commonwealth funded matters with a focus on family law, prepared for National Legal Aid.	Analysis was limited to the direct impacts of legal aid on the court system.	BCR was in the range 1.60 to 2.25.
PwC (2023) The benefits of providing access to justice, prepared for National Legal Aid	Quantitative benefits comprised avoided costs to the justice system, individuals, and to government.	BCR was 2.25.
CIE (2023) Family and Relationship Services Economic Evaluation - Using cost-benefit analysis to assess the value of services	- CBA of family and relationship services funded by the Australian Government. - Analysis made novel use of SCORE data to provide benefit estimates for client interactions with services.	- Family law services had a BCR of 7.85. - FDR had a BCR of 12.2. - Avoided costs of court proceedings to both individuals and the court system represented ~60% of benefits of FDR.

The recent Review of the FRSP (section 2.10), which undertook cost-effectiveness analysis, found that *FRSP-funded activities all provide an improvement in client outcomes, and a cost*

saving to government by supporting clients to resolve their post-separation arrangements without going to court'.³⁷

In common with most of the analyses summarised in Table 6, the Review of the FRSP did not quantify cost savings to families (avoided legal and court costs) nor quantify the benefit of improvements in client outcomes.

³⁷ Support for Separating Families, Review of the Family Relationships Services Program, Andrew Metcalfe AO, Lead Reviewer, June 2024

6. Benefits to the Family Law System

6.1 Avoided Costs for the Family Law System

6.1.1 Overview

Avoided costs for the family law system refer to expenditure that is avoided by the family law system as a result of families attempting FDR such as costs of dealing with applications for interim orders and/or final orders.

The FCoWA, which is separate to the FCFCOA, notes that initiating applications for final orders and related applications for interim orders are its most resource intensive application types.³⁸

Dealing with final orders is significantly more costly than dealing with interim orders due to the extended time frame, depth of evidence review, and the need for full trials. By contrast, interim orders, being quicker and more limited in scope, generally cost far less.

Our estimates of court costs have been sourced from the PwC (2018) review of the efficiency of the operation of the federal courts, with data sourced from internal reports of the FCoA and FCC, and re-indexed to FY23 dollars.³⁹ Using this data, estimated family law expenditure per family law final order finalisation, by court, is shown in Table 7 below.

As applications for final orders can be filed with both the FCC and FCoA, but most are filed with the FCC, we have estimated a weighted family court cost for children-only and children-plus-property matters, and a different weighted court cost for property-only matters, with weighting based on the proportion of each type of case seen in each court (Table 7).

Table 7: Family law expenditure per family law final order finalisation⁴⁰

	FCoA	FCC	Weighted Court Cost (FY23 dollars)
Family law expenditure per family law final order finalisation (FY17 dollars)	\$16,900	\$5,500	
Family law expenditure per family law final order finalisation (FY23 dollars) ⁴¹	\$21,000	\$6,540	
Proportion of children-only and children-plus-property cases seen ⁴²	10%	90%	~ \$8,000
Proportion of property-only cases seen ⁴²	20%	80%	~ \$9,400

³⁸ Family Court of Western Australia, Annual Review 2023

³⁹ PwC, Review of efficiency of the operation of the federal courts, Final report, April 2018

⁴⁰ PwC, Review of efficiency of the operation of the federal courts, Final report, April 2018

⁴¹ Indexing carried out using ABS CPI data (6401.0 Table 1) and indices at mid-point of respective financial year.

⁴² Based on data presented in Table 7: Number of applications for final orders by court

Whilst not all attempts at FDR are successful, a 2019 national study conducted by the Relationships Australia Federation on outcomes and efficacy of post-separation FDR found that amongst those who attended joint FDR, nearly two thirds (65.0%) had reached full (24.6%) or partial (40.4%) agreement on some or all parenting matters that they discussed, within one year of intake.⁴³

6.1.2 Impact of the 2006 Changes to the Family Law Act 1975 (Cth)

The Kaspiew et al (2009) evaluation of the 2006 family law reforms found there was a decline in filings in the courts in children's cases, and some evidence of a shift away from an automatic recourse to legal solutions in response to post-separation relationship difficulties.⁴⁴

In a subsequent research report, which provides an overview of trends in family law court filings over an extended 9-year period between FY05 and FY13, Kaspiew et al (2015) reported that the requirement to use FDR in disputes involving children is likely to have had an appreciable influence on the number of applications for final orders made in both children-only and children-plus-property matters.⁴⁵

Data obtained by Kaspiew et al (2015) from the three courts that primarily dealt with family law matters at the time (prior to the amalgamation of the FCoA and FCC in September 2021), being the FCoA, FCC, and the Family Court of Western Australia (FCoWA), shows that across all three courts for the period of their review (Figure 7):

- The number of applications for final orders in children-only and children-plus-property cases declined by approximately 27% from FY05 to FY08, and then increased by approximately 3% from FY08 to FY13.
- The number of applications for final orders in property-only cases increased by 17% from FY05 to FY13.

Over the 9-year period between FY05 and FY13, the population of children in Australia aged 0-18 years grew from 5.09 million to 5.55 million, or just over 9% (Figure 7).⁴⁶

Kaspiew et al (2015) note that much of the decline in applications for final orders in children-only and children-plus-property cases occurred over the period FY07 to FY08 when the majority of Family Relationship Centres (FRCs) had come on line, and therefore the first period in which the s 60I provisions requiring parents to use FDR were likely to have had a substantial effect.⁴⁷

Overall, the introduction of mandatory FDR appears to have reduced the number of parenting matters proceeding to court by approximately 25%.

Kaspiew et al (2015) explain that the large increase in property filings in the period FY09 to FY11 was likely due to the effects of de facto property reforms⁴⁸ introduced effective

⁴³ Dr Aditi Lohan & Dr Genevieve Heard, Family Dispute Resolution Outcomes Study, July 2019

⁴⁴ Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. (2009). Evaluation of the 2006 family law reforms. Melbourne: Australian Institute of Family Studies.

⁴⁵ Kaspiew, R., Moloney, L., Dunstan, J., & De Maio, J. (2015). Family law court filings 2004–05 to 2012–13 (Research Report No. 30). Melbourne: Australian Institute of Family Studies.

⁴⁶ ABS, 3105.0.65.001 Australian Historical Population Statistics, 2019, Table 2.1

⁴⁷ Kaspiew, R., Moloney, L., Dunstan, J., & De Maio, J. (2015). Family law court filings 2004–05 to 2012–13 (Research Report No. 30). Melbourne: Australian Institute of Family Studies.

⁴⁸ Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008 (Cth).

March 2009 that allowed de facto financial matters to be dealt with under the *Family Law Act 1975 (Cth)* in federal courts rather than in state- and territory-based systems.

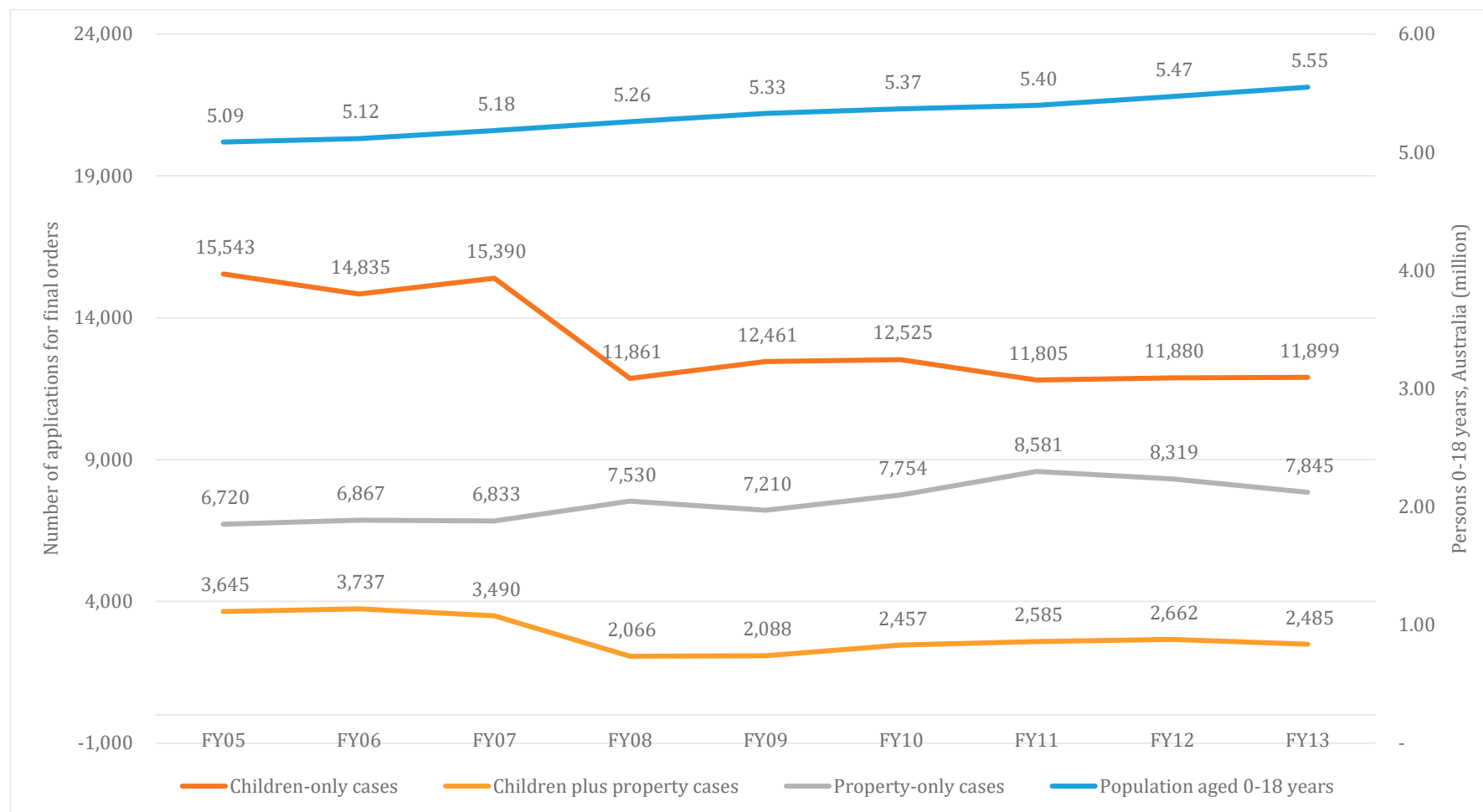
Extending the analysis of Kaspiew et al (2015) to FY22 and FY23 indicates further reductions in the number of applications for final orders in both parenting matters (children-only or children-plus-property) and property-only matters, but an increased use of consent orders (Table 9).

A number of factors likely contribute to these trends including:

- Continued impact of mandatory pre-filing FDR reducing court applications in parenting matters.
- Introduction of new case management pathways for all family law matters by FCFCOA from September 2021. These new case management pathways prioritize early intervention and resolution, often requiring parties to engage in mediation or other dispute resolution processes, in both financial and parenting matters, either within the Court or externally, early in the court process.⁴⁹
- Increase in number of court-based dispute resolution events that have taken place since introduction of new case management pathways in 2021, made possible by recruitment of additional registrars and provision of training in dispute resolution for existing and newly recruited registrars.⁴⁹
- Pilot (from March 2020 to June 2023) and subsequent implementation (from July 2023) of Priority Property Pools under \$500,000 (PPP500), a program designed to achieve a just, efficient and timely resolution of cases involving disputes over smaller property pools, at a cost to the parties that is reasonable and proportionate in the circumstances of the case.
- COVID-19 pandemic accelerated the shift toward virtual mediation and remote FDR services. These platforms have made FDR more accessible to parties who may have previously faced geographic or logistical barriers to participating in mediation.

⁴⁹ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23

Figure 7: Number of applications for final orders by case type^{50 51}



⁵⁰ Kaspiw, R., Moloney, L., Dunstan, J., & De Maio, J. (2015). Family law court filings 2004–05 to 2012–13 (Research Report No. 30). Melbourne: Australian Institute of Family Studies.

⁵¹ ABS, 3105.0.65.001 Australian Historical Population Statistics, 2019, Table 2.1

Trends in the distribution of the three types of application for final orders filed by court are summarised in Table 8 below.

Table 8: Number of applications for final orders by court⁵²

	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13
Children-only, children-plus-property									
FCC	8,837	9,405	11,957	10,182	10,987	11,529	11,405	11,377	11,408
FCoA	8,487	7,479	5,078	2,303	2,086	1,867	1,473	1,616	1,342
FCoWA	1,864	1,868	1,845	1,442	1,476	1,586	1,512	1,549	1,634
Sub-Total	19,188	18,752	18,880	13,927	14,549	14,982	14,390	14,542	14,384
Property-only									
FCC	2,387	2,514	3,256	4,442	4,508	4,959	5,830	5,759	5,611
FCoA	3,595	3,508	2,695	2,148	1,739	1,792	1,747	1,628	1,432
FCoWA	738	845	882	940	963	1,003	1,004	932	802
Sub-Total	6,720	6,867	6,833	7,530	7,210	7,754	8,581	8,319	7,845
Total	25,908	25,619	25,713	21,457	21,759	22,736	22,971	22,861	22,229

⁵² Kaspiew, R., Moloney, L., Dunstan, J., & De Maio, J. (2015). Family law court filings 2004–05 to 2012–13 (Research Report No. 30). Melbourne: Australian Institute of Family Studies.

As discussed above, extending the analysis of Kaspiew et al (2015) to FY22 and FY23 (but excluding FCoWA) indicates further reductions in the number of applications for final orders in both parenting matters (children-only or children-plus-property) and property-only matters, but an increased use of consent orders.

Table 9: FCFCOA - number of applications for final orders by type^{53, 54}

	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY23	FY24
Final Orders – FCoA/FCC											
Children-only, children-plus property	17,324	16,884	17,035	12,485	13,073	13,396	12,878	12,993	12,750	8,033	8,678
Property-only	5,982	6,022	5,951	6,590	6,247	6,751	7,577	7,387	7,043	4,518	5,184
Total	23,306	22,906	22,986	19,075	19,320	20,147	20,455	20,380	19,793	12,551	13,862
Consent Orders - FCoA											
Children-only, children-plus property	4,747	4,955	4,134	4,017	3,992	3,787	3,642	3,350	3,327		
Property-only	6,870	6,819	6,646	6,390	6,108	6,912	7,040	7,166	7,989		
Total	11,617	11,774	10,780	10,407	10,100	10,699	10,682	10,516	11,316	13,182	15,782

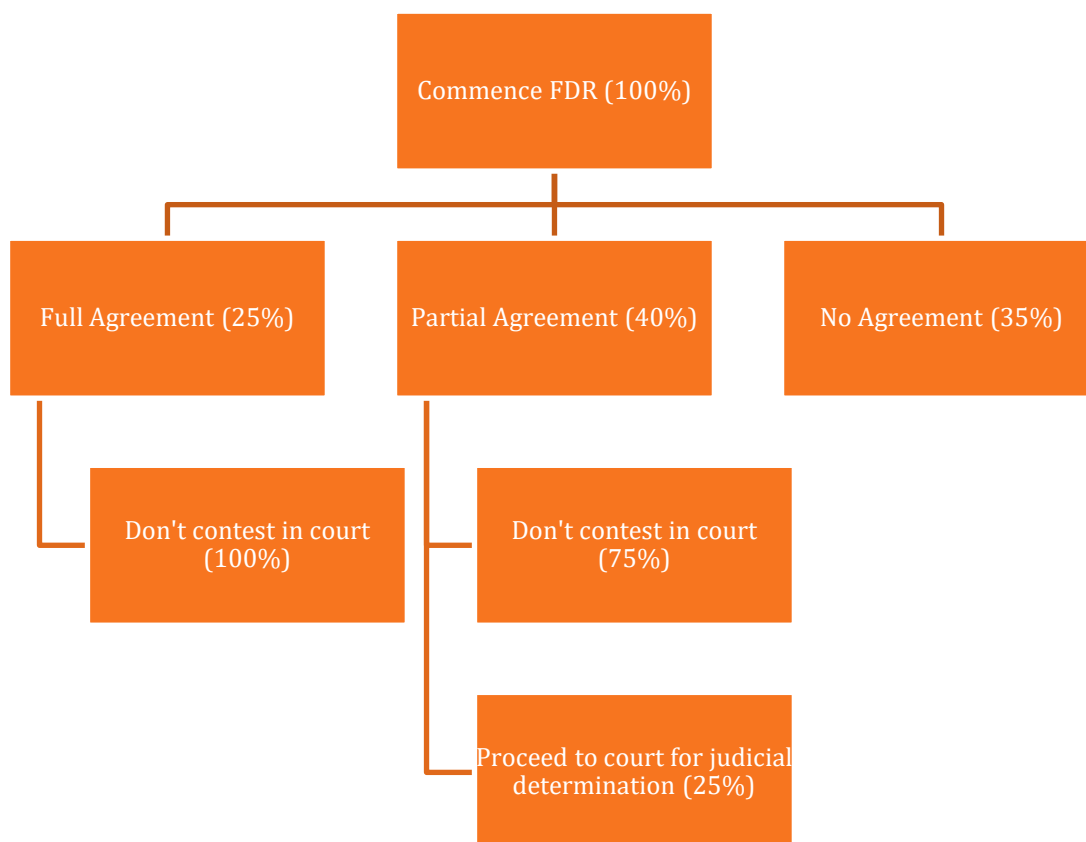
⁵³ Kaspiew, R., Moloney, L., Dunstan, J., & De Maio, J. (2015). Family law court filings 2004–05 to 2012–13 (Research Report No. 30). Melbourne: Australian Institute of Family Studies.

⁵⁴ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23 and 2021-22

6.1.3 Quantification of Avoided Costs – Mandatory Parenting FDR

Our assumptions for court cases avoided are set out in Figure 8 below.

Figure 8: Expected court cases avoided as a result of mandatory parenting FDR



Estimates of full or partial agreement are based on the 2019 national study conducted by the Relationships Australia Federation on outcomes and efficacy of post-separation FDR.⁵⁵

Our estimates of the benefits of reaching full or partial agreement are consistent with KPMG (2008)⁵⁶ which made the following assumptions for avoided court system costs:

- Full agreement – 100% of benefit of avoided court system costs applies to those families reaching full agreement on all parenting matters being discussed.
- Partial agreement – 75% of benefit of avoided court system costs applies to those families reaching partial agreement on parenting matters being discussed.

Clients who reach agreement may seek legal assistance before, during or after the FDR process. Agreements are frequently formalised by lawyers as Consent Orders.

Based on assumptions set out in Figure 8 above, we estimate average cost savings for the court system as set out in Table 10 below.

⁵⁵ Dr Aditi Lohan & Dr Genevieve Heard, Family Dispute Resolution Outcomes Study, July 2019

⁵⁶ KPMG, Attorney-General's Department, Family dispute resolution services in legal aid commissions, Evaluation report, p.76, December 2008.

Table 10: Estimated avoided costs for court system – mandatory parenting FDR

	Cost Saving	Weighting	Weighted Cost Saving
Full Agreement (25%)			
- Don't contest in court	\$8,000	100%	\$8,000
			\$8,000
Partial Agreement (40%)			
- Don't contest in court	\$8,000	75%	\$6,000
- Proceed to court for judicial determination	\$0	25%	\$0
			\$6,000
Total weighted average cost saving (25% x \$8,000 + 40% x \$6,000)			\$4,400

6.1.4 Quantification of Avoided Costs – Mandatory Parenting & Property FDR

The 2019 national study conducted by the Relationships Australia Federation on the outcomes and efficacy of post-separation FDR found that approximately 30% of all participants initially sought to resolve property and/or financial matters but many did not progress to property FDR for the reasons outlined in section 3.3 above. Of those who had initially wanted a property settlement, more than three quarters (77%) had also reported wanting a parenting agreement.⁵⁷

Implementing mandatory property FDR would address some of the reasons for not progressing to property FDR and highlights the potential for property matters to be resolved as part of the same FDR process used for parenting matters or at different times.

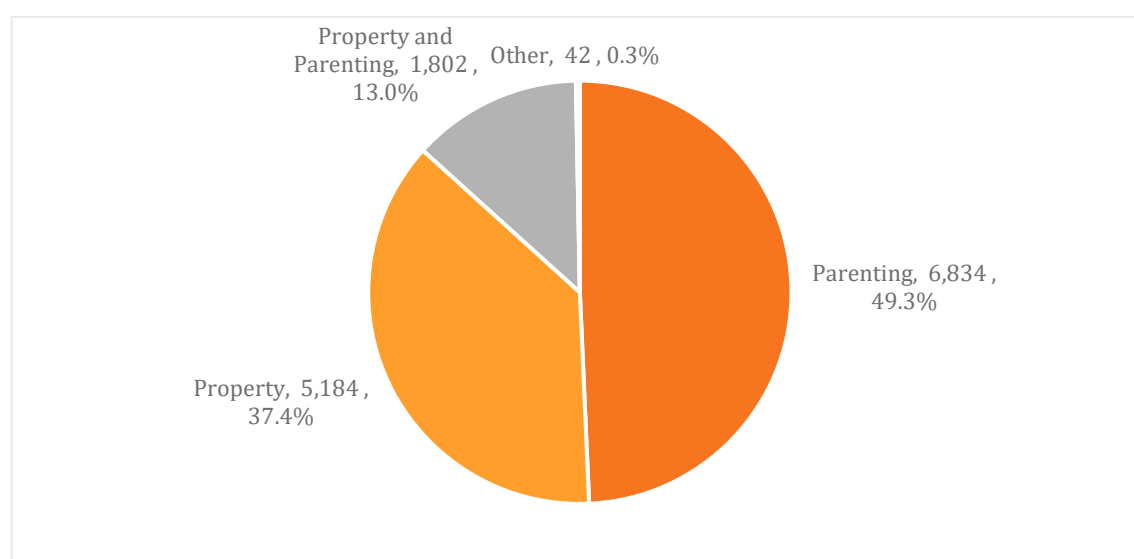
In section 3.5 above, we estimated that with the introduction of mandatory property FDR, the proportion of property matters going to court would reduce by approximately 25% consistent with the experience of children-related matters in the years immediately following the implementation of the 2006 changes to the Family Law Act 1975 (Cth).

We also estimated that the weighted average cost to the court system for property matters was \$9,400 per case (Table 7).

In its annual report for 2022-23, the FCFCOA reported that, of the 13,862 applications filed for final orders, 5,184 (37.4%) were for property-only matters and 8,678 (62.6%) were for parenting-only and parenting-plus-property matters (Figure 9).

A 25% reduction in the number of property-only matters would equate to around 15% of the total number of parenting-only and parenting-plus-property matters.

⁵⁷ Dr Aditi Lohan & Dr Genevieve Heard, Family Dispute Resolution Outcomes Study, July 2019

Figure 9: Applications for final orders filed by orders sought, 2022–23⁵⁸

Assuming that most property matters would be addressed as part of the same FDR process used for parenting matters, this means that the average cost saving for the court system (where full agreement is reached) would increase by approximately \$1,410 (being 15% of \$9,400) from \$8,000 to \$9,410.

Based on the same ‘success’ assumptions outlined in Table 9, we estimate average cost savings for the court system shown in Table 11 below.

Table 11: Estimated avoided costs for court system – mandatory parenting and property FDR

	Cost Saving	Weighting	Weighted Cost Saving
Full Agreement (25%)			
- Don't contest in court	\$9,410	100%	\$9,410
			\$9,410
Partial Agreement (40%)			
- Don't contest in court	\$9,410	75%	\$7,058
- Proceed to court for judicial determination	\$0	25%	\$0
			\$7,058
Total weighted average cost saving (25% x \$9,410 + 40% x \$7,058)			\$5,176

⁵⁸ Federal Circuit and Family Court of Australia, Division 1 | Division 2, Annual reports 2022-23, page 76

6.2 Increased Capacity of Court System

Reducing the number of parenting matters that need to proceed to court increases the capacity of the court system, offering significant benefits including:

Improved Efficiency and Resource Allocation:

- **Reduced Caseload:** By diverting parenting disputes to FDR, courts can significantly reduce their caseloads, allowing them to focus on more complex and contentious cases that require judicial intervention.
- **Resource Optimisation:** Courts can allocate resources more effectively, ensuring that judicial time and effort are spent on cases that truly need legal adjudication rather than on disputes that could be resolved through mediation.

Focus on Family Violence and Safety

- **Safety Prioritisation:** The Court places children, litigants and their safety at the heart of the separation process. For some families, it may be unsafe to resolve their disputes without the help of the Court process and court orders.⁵⁹

Timeliness and Access to Justice:

- **Faster Resolution:** With fewer cases, courts can process remaining cases more swiftly, reducing delays and wait times for families needing judicial decisions.
- **Improved Access:** Families can access the court system more efficiently, with reduced backlogs allowing for quicker hearings and resolutions.

Increased Focus on Complex Cases:

- **Specialized Attention:** Judges and court staff can devote more time and attention to 'difficult' cases, providing more thorough and considered judgments.
- **Enhanced Outcomes:** More time per case can lead to better outcomes and more carefully crafted orders that take into account the complexities of the situation.

Kaspiew et al (2015) noted that while courts are handling fewer child-related disputes (almost certainly linked to the availability of and default requirement to use FDR and other family relationship services), anecdotal evidence suggests an increase in the proportion of 'difficult' cases requiring judicial decisions.⁶⁰

In its annual report for FY23, the Court notes that *'both financial and parenting matters are expected to have attempted dispute resolution prior to filing an application with the Courts, unless an exception applies. The cases that the Courts receive are therefore usually complex and have not been able to be resolved without the assistance of the Courts –hence, the settlement rates able to be achieved, of upwards of 55–60 per cent, are very positive'*.

The Court further notes the importance of encouraging appropriate dispute resolution processes for the just, safe, efficient and timely resolution of family law matters, particularly more complex law matters.⁶¹

⁵⁹ <https://www.fcfcga.gov.au/fl/ss-overview> (accessed 23 September 2024)

⁶⁰ Kaspiew, R., Moloney, L., Dunstan, J., & De Maio, J. (2015). Family law court filings 2004–05 to 2012–13 (Research Report No. 30). Melbourne: Australian Institute of Family Studies.

⁶¹ FCFCOA Annual Reports 2022–23

This includes both pre-filing FDR and the Court's own dispute resolution arrangements for both parenting and financial disputes.

The Court's renewed focus on the importance of dispute resolution is to '*afford parties the opportunity to reduce conflict, identify practical options and reach lasting agreement. In parenting matters in particular, where parties are able to discuss risks and vulnerabilities in a productive way, there is greater likelihood of reaching a compromise that will result in reduced conflict for children. Such outcomes reduce the likelihood of ongoing litigation and legalistic approaches to any future disagreement. The capacity for these events to provide certainty and also preserve, or at least not further damage, relationships is also a crucial focus*'.⁶²

⁶² FCFCOA Annual Reports 2022-23

7. Benefits to Families

7.1 Increased Financial Wellbeing for Families

7.1.1 Overview

Increased financial wellbeing as a result of undertaking FDR refers to the positive financial outcomes or improvements in the financial situation of individuals or families that occur due to the resolution of disputes through the FDR process. This can happen in several ways including:

- Reduction in legal costs and court-related expenses.
- Self-determined and more sustainable financial settlements.
- Reduction in financial conflict between parties which in turn reduces stress and anxiety related to financial matters.
- Preservation of financial assets by avoiding costly and often protracted legal battles that can erode family wealth.
- Faster resolution of disputes so that separating parties can get on with their lives.

There can be significant savings in cost and time to all stakeholders if disputes can be resolved early and without the need for the dispute to be escalated through the court system.

In its 2014 report on Access to Justice Arrangements, the Productivity Commission referenced a submission from a women's legal service that a less complex family law case costs parties between \$20,000 and \$40,000, with complex cases costing in excess of \$200,000.

In its 2018 review of efficiency of the federal courts, PwC provided detailed estimates of litigation costs by court. These estimated that litigation costs were in the order of \$110,000 per matter in the FCoA and approximately \$30,000 in the FCC. These cost estimates were per party, not per family, and included court fees but excluded appeals.⁶³

FDR helps families save on legal costs and preserve assets, ensuring more resources are available for their future needs and enhancing their financial stability.

Progressing family disputes through the courts can also be lengthy and stressful for the parties involved. Further, protracted disputes can restrict the activities of disputants and result in missed social and economic opportunities.⁶⁴

7.1.2 Cost Savings for Families

There are different pathways that can be taken to separate and divorce in Australia, and each of those pathways has different financial costs associated with it.

⁶³ PwC, Review of efficiency of the operation of the federal courts, Final report, April 2018

⁶⁴ Productivity Commission 2014, Access to Justice Arrangements, Inquiry Report No. 72, Canberra

Resolving parenting and/or property disputes through FDR, rather than through adversarial legal and court proceedings, offers the potential to avoid substantial legal fees and additional court-related expenses.

Additionally, FDR often leads to a faster resolution of disputes, letting people get on with their lives, and helping avoid the significant time that might otherwise be spent navigating the lengthy legal process.

The Separation Guide, a social enterprise that provides support, education and connection for people going through or considering a separation or divorce, and which reports that more than 95% of the reportable divorce market visits its website each year, estimates the costs and timeframes associated with 4 different pathway shown in Table 12 below.

Table 12: Indicative costs of separation by pathway (source: The Separation Guide)⁶⁵

Separation Pathway	Description	Timeframe	Cost
DIY Agreement	Parties reach a Separation Agreement by themselves.	2-8 weeks	\$175 - \$2.5K per person
Guided Separation	Parties engage a legally-qualified Mediator (FDRP) to help reach a fair agreement. The Mediator (FDRP) is impartial and not on anyone's side.	2-10 weeks	From \$2.5K per person + Court Order costs
Independent Legal Advice	Parties engage their own Lawyers to negotiate an agreement on their behalf.	8-26 weeks	\$3K - \$20K per person
Decision by the Court	Parties and Lawyers go to Court for an outcome. A judge will make decisions about financial and parenting matters.	78 weeks+	\$40K+ per person

When couples reach an agreement with the assistance of an FDRP, they can either enter into a Parenting Plan or file an Application for Consent Orders to make the agreement legally binding. Whilst the Parenting Plan is a mutual agreement, it is not legally enforceable. By contrast, if the court approves the application, it will issue Consent Orders, which are legally binding and enforceable.

The Separation Guide notes that the indicative costs set out in Table 12 above, which are derived from network members, are based on average timeframes, and will vary based on amicability and complexity of the separation.

For purposes of our analysis, we have relied on the detailed estimates of litigation costs provided by PwC (2018)⁶⁶ and which we refer to in section 7.1.1 above. These are presented in Table 13 below.

⁶⁵ <https://theseparationguide.com.au/app/uploads/2019/10/The-Separation-Guide-Different-ways-to-separate.pdf>

⁶⁶ PwC, Review of efficiency of the operation of the federal courts, Final report, April 2018

Table 13: Litigation and court fee costs per family law final order finalisation

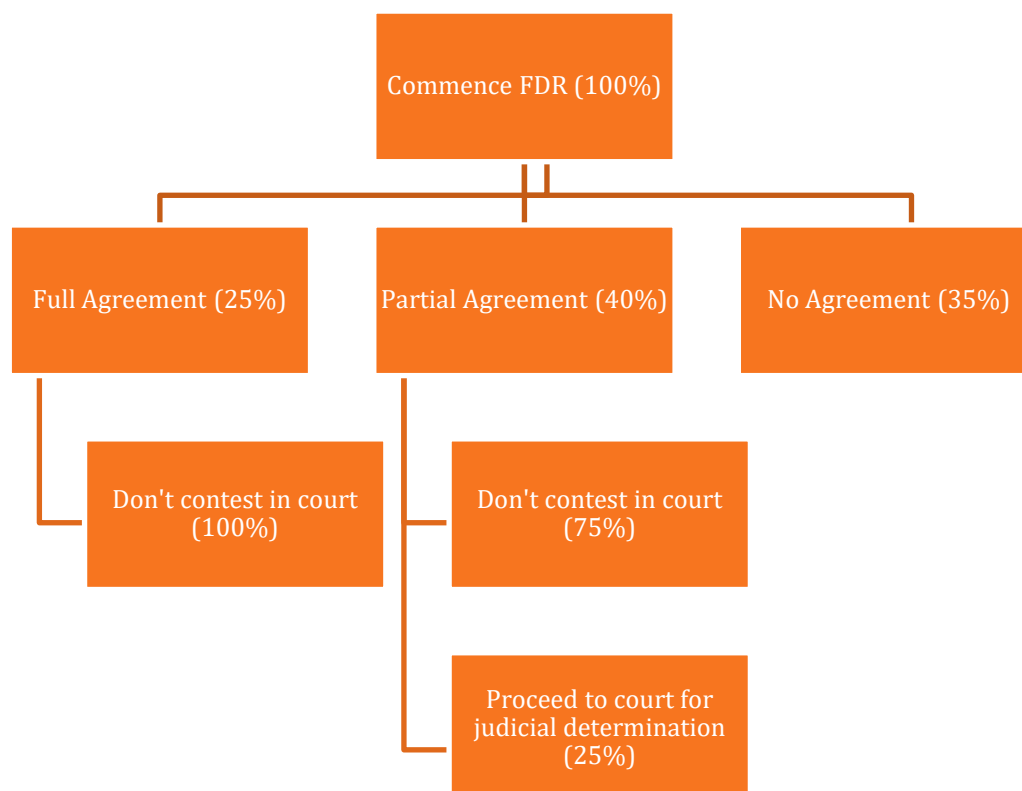
	FCoA	FCC	Weighted Court Cost (2023 dollars)
Litigation and court costs per family law final order finalisation ⁶⁷	\$220,000	\$60,000	
Proportion of children-only and children-plus-property cases seen ⁶⁸	10%	90%	~ \$76,000
Proportion of property-only cases seen ⁶⁸	20%	80%	~ \$92,000

7.1.3 Quantification of Cost Savings for Families – Mandatory Parenting FDR

Our estimates of cost savings for families (legal costs and court-related expenses avoided) are based on the assumptions set out in Figure 8 below which outline how agreement is reached or not reached.

These are the same assumptions we used when we quantified costs avoided by the court system as a result of families commencing FDR (section 6.1.3).

Figure 10: Assumed pathway of families undertaking FDR - mandatory parenting FDR



⁶⁷ PwC, Review of efficiency of the operation of the federal courts, Final report, April 2018, pages 76-77

⁶⁸ Based on data presented in Table 7: Number of applications for final orders by court

Based on assumptions set out in Figure 10 above, we estimate average cost savings for families as set out in Table 14 below.

Table 14: Estimated cost savings for families from undertaking FDR – mandatory parenting FDR

	Cost Saving ⁶⁹	Weighting	Weighted Cost Saving
Full Agreement (25%)			
- Don't proceed to court	\$76,000	100%	\$76,000
			\$76,000
Partial Agreement (40%)			
- Don't proceed to court	\$76,000	75%	\$57,000
- Proceed to court for judicial determination	\$0	25%	\$0
			\$57,000
Total weighted average cost saving for families (25% x \$76,000 + 40% x \$57,000)			\$41,800

7.1.4 Quantification of Cost Savings for Families – Mandatory Parenting and Property

We have applied the same methodology to quantifying cost savings for families as for family law system (section 6.1.4).

Based on the mix of applications filed for final orders (Figure 9), we estimate that a 25% reduction in the number of property-only matters would equate to around 15% of the total number of parenting-only and parenting-plus-property matters.

As discussed in section 3.3 above, RAV strongly recommends that clients participating in property FDR seek legal advice or assistance either before or during the FDR process. We have estimated costs for that legal advice or assistance as follows:

- **Lawyer-Advised Model:** Parties seek legal advice independently before FDR. The cost in this scenario generally includes one or two consultations with a lawyer, which can range from \$300 to \$1,500 per party, depending on the complexity of the case.
- **Lawyer-Assisted Model:** In this model, lawyers may attend FDR sessions to provide advice. If Community Legal Centres provide assistance at no charge, costs are minimized. However, if parties engage private lawyers, costs could be in the range of \$2,000 to \$5,000 per party for a few FDR sessions.
- **Legally-Inclusive Model:** Lawyers are directly involved in negotiations during FDR sessions. This approach tends to be the most expensive, with legal fees typically

⁶⁹ Refer Table 8

ranging from \$5,000 to \$10,000 or more per party, depending on the length of negotiations and complexity of the issues.

For purposes of our modelling, we have assumed average legal costs per family for property FDR of \$10,000.

Assuming that most property matters would be addressed as part of the same FDR process used for parenting matters, this means that the average cost saving for families (where full agreement is reached) would increase by approximately \$12,300, being 15% of \$82,000 (i.e., \$92,000 less \$10,000), from \$76,000 to \$88,300.

Based on the same 'success' assumptions outlined in Figure 10, we estimate average cost savings for the court system shown in Table 15 below.

Table 15: Estimated cost savings for families from undertaking FDR – mandatory parenting and property FDR

	Cost Saving	Weighting	Weighted Cost Saving
Full Agreement (25%)			
- Don't proceed to court	\$88,300	100%	\$88,300
			\$88,300
Partial Agreement (40%)			
- Don't proceed to court	\$88,300	75%	\$66,225
- Proceed to court for judicial determination	\$0	25%	\$0
			\$66,225
Total weighted average cost saving for families (25% x \$88,300 + 40% x \$66,225)			\$48,565

7.2 Improved Outcomes for Families (Changes in Client Circumstances)

7.2.1 Standard Client/Community Outcomes Reporting

For FDR clients, RAV record client outcomes (i.e., the changes that happen because of the services provided to clients) through Standard Client/Community Outcomes Reporting (SCORE) for the Department of Social Services (DSS).

The SCORE Framework allows organisations to measure client outcomes using their own self-selected tools and methods, and to report these outcomes in a way that is consistent and comparable. Measuring outcomes provides evidence of what has changed for clients over time.

Organisations are encouraged to collect SCORE in a way that best suits their own unique service delivery context.

SCORE uses a simple five-point rating scale (with two negative responses, one neutral response, and two positive responses). This provides a consistent and comparable way to translate outcomes into a quantified rating. SCORE is generally recorded towards the beginning and end of a funded activity to best assess change pre- and post- service delivery.

For FDR services, RAV collect and record Client Circumstances SCORE assessments for the following outcome domains, being domains that the FDR service is seeking to improve through the delivery of the funded activity:

- Family functioning
- Mental health and wellbeing
- Personal and family safety
- Child wellbeing.

Client Circumstances SCORE assessments are broadly designed to capture what is occurring in a client's life. A summary of the scale for the client circumstances SCORE in the four relevant outcome domains are included in Appendix A with an example of how SCORE works across a single domain shown in Table 16 below.

Table 16: Example domain: Changed client circumstances – family functioning.

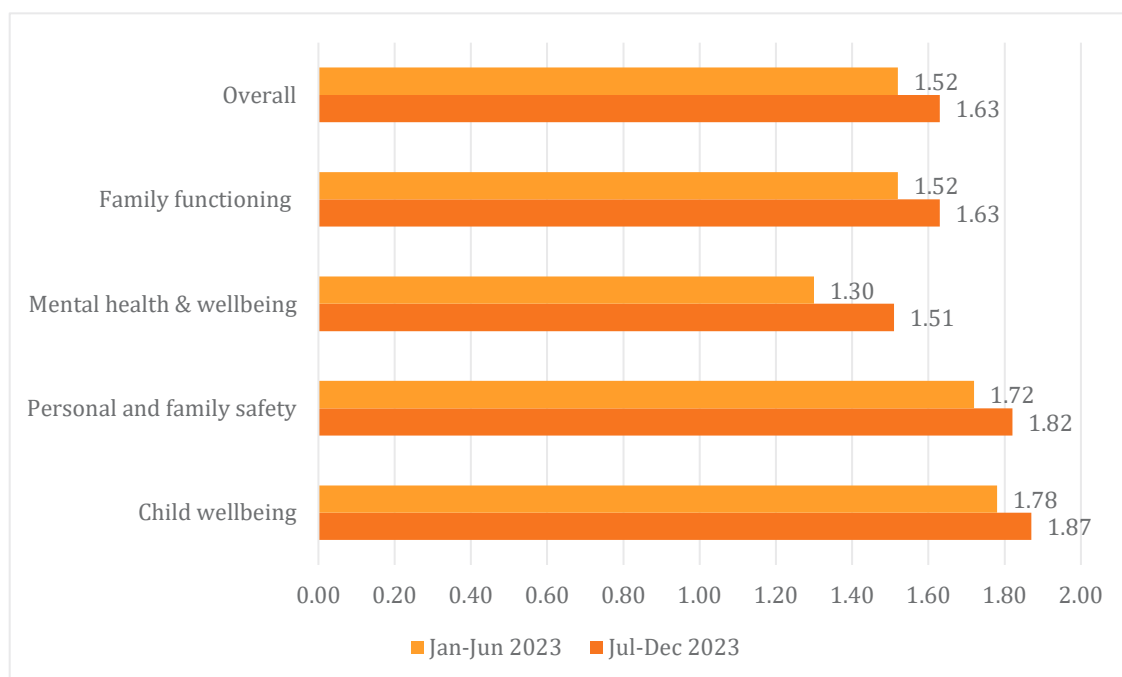
SCORE (RAV) outcome domain	1 No progress in achieving outcome (very poor)	2 Limited progress (poor)	3 Some progress (average)	4 Moderate progress (good)	5 Outcome fully achieved (excellent)
Family functioning	Significant negative impact of poor family functioning on independence, participation and wellbeing	Moderate negative impact of poor family functioning on independence, participation and wellbeing	Progress towards improving family functioning to support independence, participation and wellbeing	Adequate short-term family functioning to support independence, participation and wellbeing	Adequate on- going family functioning to support independence, participation and wellbeing

A SCORE may be determined by the practitioner's professional assessment, a client's self-assessment, a joint assessment between the client and practitioner, or an assessment by the client's support person.

SCORE data for calendar year 2023 for FRC clients receiving FDR services from RAV is presented in Figure 11 below. This shows the average change in self-assessed Client Circumstances SCORE by domain and overall, for the four domains most relevant to the services being provided by RAV.

The average change in SCORE is derived from paired client-assessed data from the Data Exchange and reflects the difference between the average earliest SCORE and average latest SCORE for each domain.

Figure 11: Average change in SCORE by domain/overall for FDR services provided by RAV (2023)



Changes in SCORE shown in Figure 11 above indicate significant improvement in outcomes for FRC clients receiving FDR services, and based on self-assessed data.

This observation is consistent with the findings of the 2023 Family & Relationship Services Economic Evaluation. That evaluation, which had access to SCORE data from the Data Exchange maintained by DSS (which included a combination of client self-assessed and practitioner-rated data), found overwhelmingly positive changes in SCORE associated with access to Family Law Services and to Families and Children Activity services.⁷⁰

However, not all of the positive change in SCORE data observed can be attributed to the provision of FDR services given the potential influence of other factors. For this reason, our central estimate makes a conservative attribution estimate, and we conduct sensitivity analysis around this conservative estimate of attribution.

7.2.2 Valuing Improvements in SCORE

Current examples of the use of SCORE data to provide benefit estimates that have been incorporated in a CBA are minimal.

One example that we have identified is the novel use by the CIE of SCORE data from the Data Exchange in a 2023 economic evaluation to provide benefit estimates that could be compared across the broad spectrum of Family and Relationship Services. SCORE data was considered here to be the most appropriate evidence for estimating changes in subjective wellbeing, supplemented by assumptions in the broader literature.⁷¹

⁷⁰ The CIE, Family and Relationship Services Economic Evaluation, Using cost-benefit analysis to assess the value of services, prepared for Family and Relationship Services Australia, 12 September 2023.

⁷¹ The CIE, Family and Relationship Services Economic Evaluation, Using cost-benefit analysis to assess the value of services, prepared for Family and Relationship Services Australia, 12 September 2023.

Benefit estimates rely on being able to convert changes in SCORE to a measure of wellbeing such as life satisfaction, as shown in Figure 12 below.

Figure 12: Using SCORE data to estimate benefits.



Stated broadly, the goal of CBA is to improve social welfare⁷² and social welfare is synonymous with the wellbeing of an individual, group, community or the entire society.⁷³

HM Treasury's Green Book states that 'the appraisal of social value, also known as public value, is based on the principles and ideas of welfare economics and concerns overall social welfare efficiency.... Social or public value therefore includes all significant costs and benefits that affect the welfare and wellbeing of the population....'⁷⁴

To date, wellbeing impacts have largely been incorporated in CBA qualitatively rather than quantitatively.

However, wellbeing valuation is an emerging field where high quality subjective wellbeing data is used to value outcomes.

In the UK, wellbeing impacts can be incorporated as monetised values, where those values are considered robust enough, using the non-market monetisation approach which is most appropriate for the impact and context.⁷⁵

Latest wellbeing guidance from HM Treasury in the UK notes that '*subjective wellbeing is mainly quantified through changes in 'life satisfaction' on a 0 – 10 scale. Life satisfaction has become fairly standardised in policy and economic studies due to increased data availability and its use in numerous studies, which makes it easier to compare effects consistently.*'⁷⁶

According to UK guidance, if an impact, such as a change in SCORE, can be translated into a change in life satisfaction on a 0 to 10 scale, this change can then be monetized. The monetary value is calculated by multiplying the change in life satisfaction by £13,000 for each one-point change. This value reflects the standard monetary value of a Wellbeing-Adjusted Life Year (WELLBY), which represents a one-point change in life satisfaction sustained for one year.

⁷² Boardman, Anthony E.; Greenberg, David H.; Vining, Aidan R.; Weimer, David L. Cost-Benefit Analysis: Concepts and Practice, Cambridge University Press. Fifth Edition.

⁷³ TPG23-08, NSW Government Guide to Cost-Benefit Analysis.

⁷⁴ The Green Book 2020, HM Treasury

⁷⁵ The Green Book 2020, HM Treasury

⁷⁶ Wellbeing Guidance for Appraisal, Supplementary Green Book Guidance. HM Treasury, July 2021

The £13,000 figure is based on 2019 prices and values, with a recommended range from £10,000 to £16,000.⁷⁷ This approximates to a value of approximately £15,600 in 2023 prices⁷⁸ or approximately \$30,700 (AUD).⁷⁹

New Zealand guidance for use of WELLBYs in CBA recommends a midpoint value for a WELLBY of NZ\$14,000 (rounded to nearest NZ\$1,000) with a low estimate of NZ\$5,000 and a high estimate of NZ\$23,000, and is based on 2022 prices.⁸⁰

This approximates to a value of approximately NZ\$15,000 (rounded to nearest NZ\$1,000) in 2023 prices⁸¹ or approximately \$13,720 (AUD).⁸²

In a 2023 research report for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Taylor Fry and the CIE estimated a value for a 1-point increase in life satisfaction in Australia, measured on a wellbeing scale from 0 to 10, over a 1-year period of \$26,419.

This estimate was based on the average between an approach relying on the Value of Statistical Life Year and a Willingness to Pay approach, per UK Guidance about valuing subjective wellbeing.⁸³

In their economic evaluation of Family and Relationship Services, CIE estimated that a 1-point improvement in the 'personal and family safety' domain in SCORE was associated with a 0.19 point improvement in the average level of life satisfaction, measured on a 1-10 scale, and a 0.048 point improvement in mental health and wellbeing.⁸⁴

Applying the WELLBY estimate of \$26,419 suggested by Taylor Fry and the CIE for Australia, this translates to a valuation of \$5,020 for a 1-point improvement in personal and family safety, and \$1,268 for a 1-point improvement in mental health and wellbeing.

We have adopted these conversion factors to value improvements in SCORE for these two domains in the context of FDR services provided by RAV in 2023 (Table 17).

For the domains of child wellbeing and family functioning, we have made proxy-based estimations, using conversion factors of 0.10 and 0.15 respectively. Our rationale here is as follows:

- *Family functioning*: might be expected to have a significant impact on life satisfaction, though possibly less direct than personal safety, hence the estimation of 0.15, positioning it between the higher impact of safety and the moderate impact of mental health.

⁷⁷ Wellbeing Guidance for Appraisal, Supplementary Green Book Guidance. HM Treasury, July 2021

⁷⁸ UK Office of National Statistics, CPI index June 2019:107.9, June 2023: 129.4

⁷⁹ FX conversion as of 5 August 2024.

⁸⁰ New Zealand Government, The Treasury, Guide for departments and agencies using Treasury's CBAX tool for cost benefit analysis, October 2022

⁸¹ <https://www.stats.govt.nz/indicators/consumers-price-index-cpi> (accessed 5 August 2024)

⁸² FX conversion as of 5 August 2024.

⁸³ Vincent, J., McCarthy, D., Miller, H., Armstrong, K., Lacey, S., Lian, G., Qi, D., Richards, N., Berry, T. (2022). Research Report - The economic cost of violence, abuse, neglect and exploitation of people with disability. Taylor Fry.

⁸⁴ The CIE, Family and Relationship Services Economic Evaluation, Using cost-benefit analysis to assess the value of services, prepared for Family and Relationship Services Australia, 12 September 2023, page 124

- *Child wellbeing*: while crucial, might have a slightly less direct effect on the life satisfaction of adults (e.g., parents), leading to a somewhat lower estimated impact (0.10) compared to family functioning.

This gives rise to the following benefit estimates for improvements in family outcomes attributable to FDR services shown in Table 17 below.

Some of these benefits relate to the entire family (e.g. family functioning and child wellbeing) whilst other benefits relate to each separating parent (mental health and wellbeing) or to a mix of individuals and family (e.g. personal and family safety). To reflect total benefits for the family, we have provided additional weighting as appropriate.

Given the targeted nature of FDR interventions and their direct influence on critical aspects of family life, we have considered a moderate to high attribution rate of 50% to 70% with 60% as our central estimate.

Table 17: Estimated benefits of improvement in SCORE for FDR services provided by RAV (2023)

Domain	Average SCORE Improvement (2023)	Conversion factor per 1-point improvement in SCORE	Value of 1-point improvement in SCORE	Weighting	Valuation of improvement in SCORE
Child wellbeing	1.83	0.100*	\$2,642	1	\$4,835
Personal and family safety	1.77	0.191	\$5,046	1.5	\$13,397
Mental health & wellbeing	1.41	0.048	\$1,268	2	\$3,576
Family functioning	1.58	0.150*	\$3,963	1	\$6,261
					\$28,069
Attribution					
50%					\$14,035
60%					\$16,842
70%					\$19,648

* proxy estimates

8. Costs of FDR Services

8.1 Approach

FDR services are provided by various types of organisation including those funded by the Australian Government through the Family Relationships Services Program (FRSP), and by private practitioners, law firms, and Legal Aid Commissions.

For purposes of this CBA, we are focusing on FDR services provided by community not-for-profit organizations, like RAV. These organisations are funded by government to offer low-cost or no-cost FDR services to families with any fees charged on a sliding scale based on the client's ability to pay.

In costing FDR services, we have assumed a cost based on two components:

- Costs subsidised by government.
- Additional fees charged by service providers.

8.2 Estimates of Costs - Government

We have based estimates of costs of FDR services on recent research which has had access to, and used, Commonwealth funding data by family law service line.

In their economic evaluation of Family and Relationship Services, CIE estimated a funding cost per client by family law service line over a number of financial years.

For the most recently available financial year reported upon (FY22), their funding cost per client for the three most relevant family law services is shown in Table 18 below, converted to 2023 dollars using the Consumer Price Index (CPI) for Australia (published by ABS).

Table 18: Commonwealth Government funding per client in FY22, FY23 dollars⁸⁵

Family law service	Funding per client (2023 dollars)
Family Dispute Resolution	\$1,577
Family Relationship Centres	\$1,811
Regional Family Dispute Resolution	\$1,229

Cost per client shown in Table 18 above was based on Commonwealth Government funding per client in FY22 which was calculated by dividing total funding in the financial year by the number of clients receiving the service in the financial year.

Whilst the Family Relationship Centres (FRCs) provide more FDR services than other family law and family support service providers, they also have a broader role than FDR.

⁸⁵ The CIE, Family and Relationship Services Economic Evaluation, Using cost-benefit analysis to assess the value of services, prepared for Family and Relationship Services Australia, 12 September 2023, Table 4.4

This means that the funding per client for FRCs shown in Table 18 above reflects funding costs of multiple services, not just FDR.

We have therefore based our cost estimate for FDR services on a weighted average of funding costs per client for the FDR and regional family dispute resolution (RFDR) family law services with weighting calculated based on the relative proportion of total client years for each program (FDR: 69% and RFDR: 31%).

This gives a Commonwealth Government funded cost per client for FDR of \$1,469 in 2023 dollars (equivalent to \$2,938 per family).

We have assumed that the cost to government of funding FDR services is the same under both options with clients bearing the additional cost of property FDR.

8.3 Estimates of Costs – Additional Charges

8.3.1 Mandatory Parenting FDR

FDR services provided by RAV are means tested and range between \$10/hour and \$150/hour per client depending upon income.

Fees can be reduced or waived on the grounds of financial hardship, and no client is denied service based on the inability to pay. In FY23, approximately 43% of clients paid no fee. Amongst those clients paying fees, the average client fee for FDR was \$105 and for FRC was \$30.

Across all clients, the average fee charged was \$43 which we have used as the client component (equivalent to family cost of \$86) in our estimation of costs of FDR under the current scenario of mandatory FDR for parenting matters only.

8.3.2 Mandatory Parenting and Property FDR

RAV have proposed a mixed funding model for property FDR where block funding would be supplemented by higher fees from those with larger asset pools.

For purposes of this CBA, we have assumed additional client fees of \$400 per client for property FDR or \$800 per family for property FDR. Fees can be reduced or waived on the grounds of financial hardship, and no client is denied service based on the inability to pay.

By contrast, fees charged in the private sector are much higher. For example, the Australian Institute of Family Law Arbitrators and Mediators offers fixed fee mediation in family law property matters (where the property pool is less than \$750,000). The fixed fee is \$2,418 (GST inclusive) (effective 1 January 2024) and covers preparation, pre-mediation interviews with parties and the mediation itself up to a full day (such mediations do not go beyond a day). It does not include the cost of the venue for the mediation which the parties are responsible for. Also, it does not include the cost of independent legal representation for each party.⁸⁶

⁸⁶ <https://www.aiflam.org.au/aiflam-members/fixed-fee-mediation> (accessed 30 July 2024)

We have applied the same methodology to quantifying costs for families as we have for quantifying cost savings for the family law system (section 6.1.4) and cost savings for families (section 7.1.4).

Based on the mix of applications filed for final orders (Figure 9), we estimate that a 25% reduction in the number of property-only matters would equate to around 15% of the total number of parenting-only and parenting-plus-property matters.

Assuming that most property matters would be addressed as part of the same FDR process used for parenting matters, this means that the average cost for families of undertaking FDR would increase by approximately \$120 (being 15% of \$800) from \$86 to \$206.

Legal fees associated with property FDR have been considered in the discussion and quantification of legal cost savings in section 7.1.4 above.

Appendix A

A.1 SCORE Domains used by RAV for FDR Services

Table 19: Circumstances SCORE domains used by RAV for FDR services.

SCORE (RAV) outcome domain	1 Very poor (No progress in achieving outcome)	2 Poor (Limited progress)	3 Average (Some progress)	4 Good (Moderate progress)	5 Excellent (Outcome fully achieved)
Family functioning	Significant negative impact of poor family functioning on independence, participation and wellbeing	Moderate negative impact of poor family functioning on independence, participation and wellbeing	Progress towards improving family functioning to support independence, participation and wellbeing	Adequate short-term family functioning to support independence, participation and wellbeing	Adequate on-going family functioning to support independence, participation and wellbeing
Mental health and wellbeing (Mental health, wellbeing and self-care DEX SCORE)	Significant negative impact of poor mental health, wellbeing and self-care on independence, participation and wellbeing	Moderate negative impact of poor mental health, wellbeing and self-care on independence, participation and wellbeing	Progress towards improving mental health, wellbeing and self-care to support independence, participation and wellbeing	Adequate short term mental health, wellbeing and self-care to support independence, participation and wellbeing	Adequate ongoing mental health, wellbeing and self-care to support independence, participation and wellbeing
Personal and family safety	Significant negative impact of poor personal and family safety on independence, participation and wellbeing	Moderate negative impact of poor personal and family safety on independence, participation and wellbeing	Progress towards improving personal and family safety to support independence, participation and wellbeing	Adequate short term personal and family safety to support independence, participation and wellbeing	Adequate ongoing personal and family safety to support independence, participation and wellbeing

SCORE (RAV) outcome domain	1 Very poor (No progress in achieving outcome)	2 Poor (Limited progress)	3 Average (Some progress)	4 Good (Moderate progress)	5 Excellent (Outcome fully achieved)
Child wellbeing (Age appropriate development DEX SCORE)	Significant negative impact of poor age appropriate development on independence, participation and wellbeing	Moderate negative impact of poor age appropriate development on independence, participation and wellbeing	Progress towards improving age appropriate development to support independence, participation and wellbeing	Adequate short-term age appropriate development to support independence, participation and wellbeing	Adequate ongoing age-appropriate development to support independence, participation and wellbeing

A.2 FDR Program Logic

Table 20: FDR program logic (source: RAV)

Rationale (need)	Program description (what)	Activities & outputs (how)	Immediate outcomes (change)	Intermediate outcomes (change)	Intended impact (change)
<i>Identify the problem this program seeks to change.</i>	<i>Describe the program, and core components.</i>	<i>Foundational activities, measures of program delivery and implementation.</i>	<i>Measures directly attributed to program and necessary to achieve intermediate outcomes e.g., skills, knowledge, awareness.</i>	<i>Measures expected to occur once immediate outcomes are achieved and necessary to achieve intended impact e.g., changes in behaviour/attitudes.</i>	<i>Overall change this program aims to contribute.</i>
• Accessible, affordable, flexible, and safe alternative to formal legal processes – parenting, property/finances. • Improve family relationships in the best interest of children by providing safe alternatives to formal legal processes for families who are separated, separating or in dispute” Family Law Services	• Description: Structured process to provide information and facilitate communication, negotiation, and decision-making (FDR) in relation to parenting and property matters. • Key principles: impartiality, client-agency, child-focused, evidence-informed, personal and family safety, cultural appropriateness.	Access & engagement: • Multiple participation options: phone, online, face to face to increase access & safety. • Quality & timely screening and assessment: establish safety, determine appropriate response, and address complex needs (wrap around service, referrals i.e., FV, MH, AOD, child development). • Manage client expectations, provision of relevant	• Increased knowledge of process options and legal principles. • Increased knowledge of other relevant services. • Greater agency & control. • Greater inclusion of children’s voices: child-focused FDR and Child Inclusive Practice. • Increased knowledge of the needs of children and the impact of conflict.	• Reduced conflict/acrimony. • Improved decision-making. • Improved parental alliance. • Durable agreements that are safe, affordable, and workable alternatives to formal legal processes. • Access to court (via FDR certificate). • Reduced burden (financial and other) required to achieve	• Improved child wellbeing. • Improved family functioning (incl. communication, problem-solving and decision- making as parents). • Improved personal and family safety. • Improved mental and emotional wellbeing. • Improvement in post separation adjustment. • Financial wellbeing: preservation of assets

Rationale (need)	Program description (what)	Activities & outputs (how)	Immediate outcomes (change)	Intermediate outcomes (change)	Intended impact (change)
- Voluntary process, mandatory if proceeding to court. - Reduce negative impacts of separation and strengthen the capacity and resources of families to adjust.	- FDRP skill set: specified knowledge and micro skills (conflict resolution, legal processes, child development, family law pathways). - Flexibility and Innovation: adaption of FDR processes and models to accommodate client needs and circumstances.	information, and access to resources in accessible ways including online. FDR structured process: - Information sessions - Individual screening and assessment for P1 & P2 - Typically, 1-3 sessions of joint FDR.	- Improved decision-making skills. - Feeling heard & supported (client satisfaction). - Reduced distress. Improved safety. Improved communication. - Psychological adjustment to separation.	agreements in parenting and/or property.	through reduced expenditure on achieving a property settlement.