



Roundtable Dispute Management practice manual

A resource guide for lawyers

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Produced by Victoria Legal Aid

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Feedback: You are encouraged to provide your feedback about this publication to assist Victoria Legal Aid to improve the effectiveness of its publications. Please direct your feedback to the Manager, Roundtable Dispute Management, Victoria Legal Aid, GPO Box 4380 Melbourne, Vic 3001 or email rdm@vla.vic.gov.au.

Extra copies: You can download this manual from Victoria Legal Aid's website at www.legalaid.vic.gov.au

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About this manual

Roundtable Dispute Management (RDM) is Victoria Legal Aid's family dispute resolution service. This manual is a detailed guide for lawyers who are representing clients using the service.

The manual may also be useful for:

- lawyers providing clients using the service with legal advice
- barristers briefed to appear at RDM
- lawyers on the Victoria Legal Aid panel
- private legal practitioners
- lawyers acting as agents
- community legal centres
- clients without a lawyer.

How to use this publication

This manual should be used as a resource guide. You do not need to read it from cover to cover. Instead, use it to obtain the information you need. Please ensure you have the current edition before relying on the information in this publication to provide your client with advice.

A summary overview of the RDM process is included at the end of Part 1, (pages 11 – 12), for easy reference.

This manual does not cover material related to Victoria Legal Aid's funding policies and procedures for grants of legal assistance. If you need information about grants, go to Victoria Legal Aid's *Grants handbook* at www.legalaid.vic.gov.au

RDM contact details

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RDM service locations

Metropolitan Broadmeadows, Dandenong, Footscray, Frankston, Melbourne CBD, Mornington, Preston, Ringwood, Sunshine

Regional Ballarat, Bairnsdale, Bendigo, Geelong, Horsham, Mildura, Morwell, Shepparton, Sale, Swan Hill, Wangaratta, Warrnambool, Wodonga

Part 1: The five step guide to RDM

The RDM service offers a multi-disciplinary, five-step approach to the resolution of family law disputes. RDM case managers and chairpersons work in partnership with each client and their lawyer, if they have one. It is also possible that other professionals may be involved, such as a court requested independent children's lawyer or a child consultant. Each person has a different, though important, role to play in the resolution of the dispute.

1.1 Step 1: Referral to the service

There are two different ways that someone may be referred to attend RDM:

- A person may have applied to Victoria Legal Aid for a grant of legal assistance and either requested or be directed to RDM.
- A person may be contacted by RDM inviting them to use the service.

Once a person is referred to RDM and both parties have agreed to participate, they are appointed a case manager. The case manager is then the single contact point throughout the RDM process and is responsible for working with all persons involved in the dispute. They maintain confidentiality and are impartial. They do not give legal advice.

The case manager will:

- write to you to confirm that your client has been invited to use RDM
- ask who else should be invited to participate
- provide information to you and your client on RDM and compulsory dispute resolution
- send helpful fact sheets on separation, parenting issues and community services to your client.

FDR Certificate if parties do not participate

Generally, RDM is a voluntary service, which means your client decides whether they want to participate. If someone chooses not to participate, RDM will close the case and inform all parties in writing, and also as required by the Family Law Regulations, will issue a family dispute resolution certificate indicating that the person has 'failed to participate'. If at a later time the person changes their mind, they can contact their case manager and request the case be reopened.

If RDM does not receive a response to an invitation letter within a given stated period of time, a second letter is sent. If RDM does not receive a response within a further stated short period of time, RDM will issue a family dispute resolution certificate, indicating that the person has 'failed to participate'.

The court may then consider this certificate when deciding whether to order the person to attend family dispute resolution or make a costs order.

Early exchange of correspondence

Case managers maintain strict confidentiality. They do not pass information between the parties involved in the dispute, nor information from one party to the other parties lawyer. They cannot therefore become involved with detailed discussions about each parties issues and proposals.

Once a grant for RDM has been made or the invitation from RDM is received, lawyers should exchange brief letters, outlining the general issues to be resolved and general proposals with the other client or their lawyer, if they have one.

1.2 Step 2: Assessment to use the service

The case manager is responsible for conducting a detailed assessment to ensure that the case is suitable for RDM. The assessment covers matters such as risk, urgency, safety, and capacity to participate.

In order to conduct this assessment, the case manager will:

- speak directly with each client
- speak with the lawyers, if required
- speak with the independent children's lawyer if there is one
- speak with the Department of Human Service's child protection unit or ChildFirst if they are involved
- review any documentation provided.

When speaking with each client, the case manager will conduct a detailed screening interview over the telephone. If the client does not have a lawyer, the case manager may:

- refer for legal advice
- help the client find a lawyer
- help the client apply for a grant of assistance, if they cannot afford a lawyer.

The assessment stage usually takes two to three weeks. You will be informed of the case manager's decision in writing. If the matter is suitable, you will also be advised of the conference format.

FDR Certificate when the matter is assessed as unsuitable

If the matter is not suitable, your client will be issued with a family dispute resolution certificate. The certificate can be used to show the court that your client has met their responsibility in attempting to use family dispute resolution to resolve the matter. The reason for the decision is not disclosed to protect confidentiality and to protect parties where there are issues of risk.

In some cases, the matter may be suitable for RDM, but it may not be the appropriate time for this intervention. Timing may be an issue if:

- a family report is required, or it has been ordered, but not prepared or completed
- a court order is required for an independent children's lawyer
- an independent children's lawyer has been requested, but not yet appointed

- the matter is close to a final hearing in the litigation process
- the Department of Human Service's child protection unit is currently investigating a client's situation.

If the case manager assesses that the matter has been referred at an inappropriate time, you will be informed and the case will be closed. However, you or the clients can ask the case manager to reopen the case at a suitable time.

1.3 Step 3: Preparing for the conference

It is important for all participants to be prepared to settle the family law dispute on the day of the conference.

Conference booking

An RDM team support officer will arrange a location, date and time suitable for each participant. If you and your client are not available on certain days or at certain times, please let RDM know. This helps the team support officer to arrange the conference date. It is a complex and labour intensive matter to book the venue and coordinate a date when all parties, including the chairperson can attend.

For this reason, it is important that everyone commits to a fixed date.

Only in unavoidable circumstances will conferences be rescheduled and it may not be possible for a conference to be rearranged. A client's work, baby sitting commitments or holidays are not considered unavoidable reasons to cancel a conference date, as these arrangements would have been discussed at the time of booking the conference date.

If a client or their lawyer unreasonably delays a conference, RDM may be required to issue a certificate that will allow the other party to proceed to court to resolve the dispute in a timely manner.

Case manager

The case manager will conduct a preparation interview with the client, usually over the telephone. The case manager will ask the client about:

- their relationship background and separation
- their parenting arrangement proposals and legal advice
- how the children are coping and the client's hopes for them
- family violence and other safety risks,
- underlying concerns and issues they need to discuss.

The case manager will let the client know what happens in the conference and help them focus on their children's needs and interests. They can also provide appropriate information and referral, if required. The case manager may speak to you, if necessary and welcomes contact from lawyers if there is a need to communicate about issues.

From discussions with all parties, and any documents received, the case manager will brief the chairperson. This will include the clients' history, concerns, needs and proposals. This way, the chairperson will be prepared for the conference and your client will not need to tell their story again.

Lawyers

Before the conference, you should prepare your client by:

- helping the client understand that RDM is a non-adversarial, child-focused family dispute resolution conference, and orientate the client toward resolution
- explaining your role as a lawyer may be to assist to work toward a realistic resolution if reasonable proposals are on the table, and that you will be an 'agent of reality'
- providing your client with legal advice.

When you discuss proposals to resolve the dispute, it is suggested that time is spent preparing the client so that the matter is ready to be settled on the day. It would be useful to consider before the conference the practical arrangements that would need to be put in place. For example:

- parent's availability to look after the children, given work or other constraints
- specific options for any proposed change-over venue
- options for supervision such as relatives or contact centre if this is likely
- realistic travel and transport proposals including costs and timetables
- the children's commitments (extracurricular, school etc.) that may need to be considered.

Financial Statement

If the client's grant covers financial issues, such as adult child support, RDM will request that you complete a financial statement prior to the conference. We provide a copy of the financial statement to the other party and their lawyer, if they are represented. It is essential that the parties make full and frank disclosure, and bring any documents to prove financial facts to the RDM conference.

At the present time Victoria Legal Aid is not funding property matters. If this situation changes, Victoria Legal Aid will notify practitioners.

Clients without lawyers

If the other party does not have a lawyer, we recommend that they consider making an appointment to get legal advice and consider full legal representation if possible. Getting legal advice about their legal rights and entitlements prepares them for the conference and helps resolve the dispute.

1.4 Step 4: Attending RDM conference

The screening and preparation stages of RDM, involving both lawyers and case managers are designed to help participants to be fully prepared and in the best position to reach a settlement at the RDM conference.

What is an RDM conference?

The conference is the best opportunity for clients to resolve their issues before lengthy court action. Ideally, the clients reach settlement on the day. However, some cases may need a second conference.

Who attends the RDM conference?

The case manager is not involved in the conference. The RDM conference is run by a chairperson with significant experience in dispute resolution. The chairperson is registered with the Federal Attorney General's Department as a Family Dispute Resolution Practitioner and will be either qualified as a social worker, psychologist, lawyer or barrister.

Each client attends the conference with their lawyer, if they have one. If there is a child represented by an independent children's lawyer, they also must attend the conference.

Support people may attend, particularly if the client does not have a lawyer or they have special needs. However, this must be discussed with the case manager and agreed to before the conference. It is a policy of RDM that a client's current partner not attend a conference unless exceptional circumstances apply. RDM has a support persons written guide for those considering bringing a support person.

What is the role of the chairperson in the conference?

During the conference, the chairperson's role is to:

- encourage the parties to speak for themselves
- assist each client to develop options to assist resolution
- focus all participants on the needs of the children
- offer their professional expertise to assist in the resolution
- assist in the development and clarification of any agreement
- write a brief report at the conclusion of the conference
- send a family dispute resolution certificate after the conference.

If the matter does not settle, the chairperson will also recommend whether a further grant of legal assistance should be made under Commonwealth guidelines.

What is the lawyer's role in the conference?

You have many roles during the conference. These include:

- legal advisor
- coach
- problem solver
- negotiator/deal maker
- professional support
- drafter of agreements.

What is the client's role in the conference?

The focus of the conference is to assist clients to make their own decisions. The chairperson will ask clients to speak for themselves, with lawyers providing advice and

support as required. For this reason, it is important that clients are well prepared for a settlement.

What is the conference format?

There are different types of conference formats. Participants can have no contact, some contact or a lot of contact with the other person during a conference. This can be in person or over the telephone.

If there is no contact, it is called a 'shuttle' conference. A shuttle conference can happen in different rooms. This means the chairperson moves from one client to another.

Conferences may also happen in different buildings via telephone. Telephone conferences can happen jointly or via a shuttle format.

The case manager will decide the format, in consultation with the parties, during the assessment stage. The chairperson can sometimes alter the conference format with everyone's agreement. However in some cases with a history of family violence, where there is current risk, the case manager may assess there is no discretion by the chairperson to change the format from shuttle to joint.

What happens at the conference?

At the start of the conference the chairperson meets privately and confidentially with each client and their lawyer, if they have one. This is the time to raise any concerns, recent developments or sensitive issues with the chairperson.

The chairperson commences the conference with an introduction, setting out the conference procedure, aims and everyone's role. Confidentiality is also explained. To ensure each conference participant (including lawyers) has a shared understanding of the situation, the chairperson will spend some time reviewing the issues.

The chairperson will then work with each client and their lawyer to develop options. The focus is on developing options which are acceptable or 'liveable' for all participants and the children. Reaching this position may involve a degree of compromise from each client. Therefore, it is important that before the conference you have already discussed with your client the range of possible options.

Can participants meet in private?

During the course of the conference, there is normally a series of private meetings. Usually you can spend time alone with your client. This gives you time to update your legal advice and discuss issues privately.

The chairperson would usually have a private meeting with:

- you and your client
- the other party and their lawyer, if they have one
- each lawyer, without their client
- all lawyers together.

Private meetings may be very helpful to:

- discuss any legal issues or concerns
- raise potential blocks or impasses
- assess progress to date
- develop additional proposals.

Are there any breaks during the conference?

A conference usually lasts 3.5 hours and it is usual to have a break part way through. At any stage during the conference, any participant may also call a conference break.

Breaks may be helpful to:

- provide space for clients to manage strong emotions
- allow clients time to process their thoughts and feelings
- arrange a private meeting between a client and lawyer
- speak with a support person.

However, as the conference is time-limited, participants should consider the best timing and duration of a conference break.

What happens if clients do not have a lawyer at the RDM conference?

Clients who do not have a lawyer can bring a support person. A support person's role is to provide personal support, rather than advocate on the client's behalf. For this reason, a support person does not usually participate directly in the conference. There are policies which apply to identities of support persons, for example current partners are precluded from attending. Your client will receive a guide to the use of support persons when receiving the conference booking details.

Can a lawyer give telephone advice during a conference?

A client may wish to pre-arrange a time to telephone you during a conference. While it may be difficult to offer complete advice, it may provide the client with an opportunity to discuss legal options. It helps if you meet with the client prior to the conference.

What happens when clients reach an agreement at the conference?

Once clients reach an agreement, this should be put in writing and dated for your client to sign. This way everyone feels confident that a firm and lasting agreement has been achieved. The conference agreement can then be used as the basis of a parenting order, which is enforceable by the court or remain as a Parenting Plan with legal effect.

Does the chairperson write a report at the end of the conference?

Yes. After the conference has finished, the chairperson will complete a brief report. This report serves as a record that the clients have attended family dispute resolution. If clients received a grant of legal assistance through Victoria Legal Aid, the report will also make a recommendation about further funding.

Will the chairperson issue a family dispute resolution certificate?

Yes. The chairperson will issue a family dispute resolution certificate to clients and their lawyers after the conference. The chairperson will make an assessment about whether the clients made a genuine effort to resolve the dispute. This certificate may be used by the court to assist it to decide whether the parties should attend further family dispute resolution or make a costs order against either party.

What happens if the issues did not get resolved at the conference?

If the issues did not get resolved, the case manager will recommend that the clients get further advice from their lawyer. You can then discuss with your client what their options are to resolve the dispute.

These options may include:

- a second conference, now or at a later date
- negotiation with the other party and their lawyer, without the involvement of RDM
- referral to another FDR service at a later time
- taking the matter to court
- taking no further action.

1.5 Step 5: Follow up after the conference

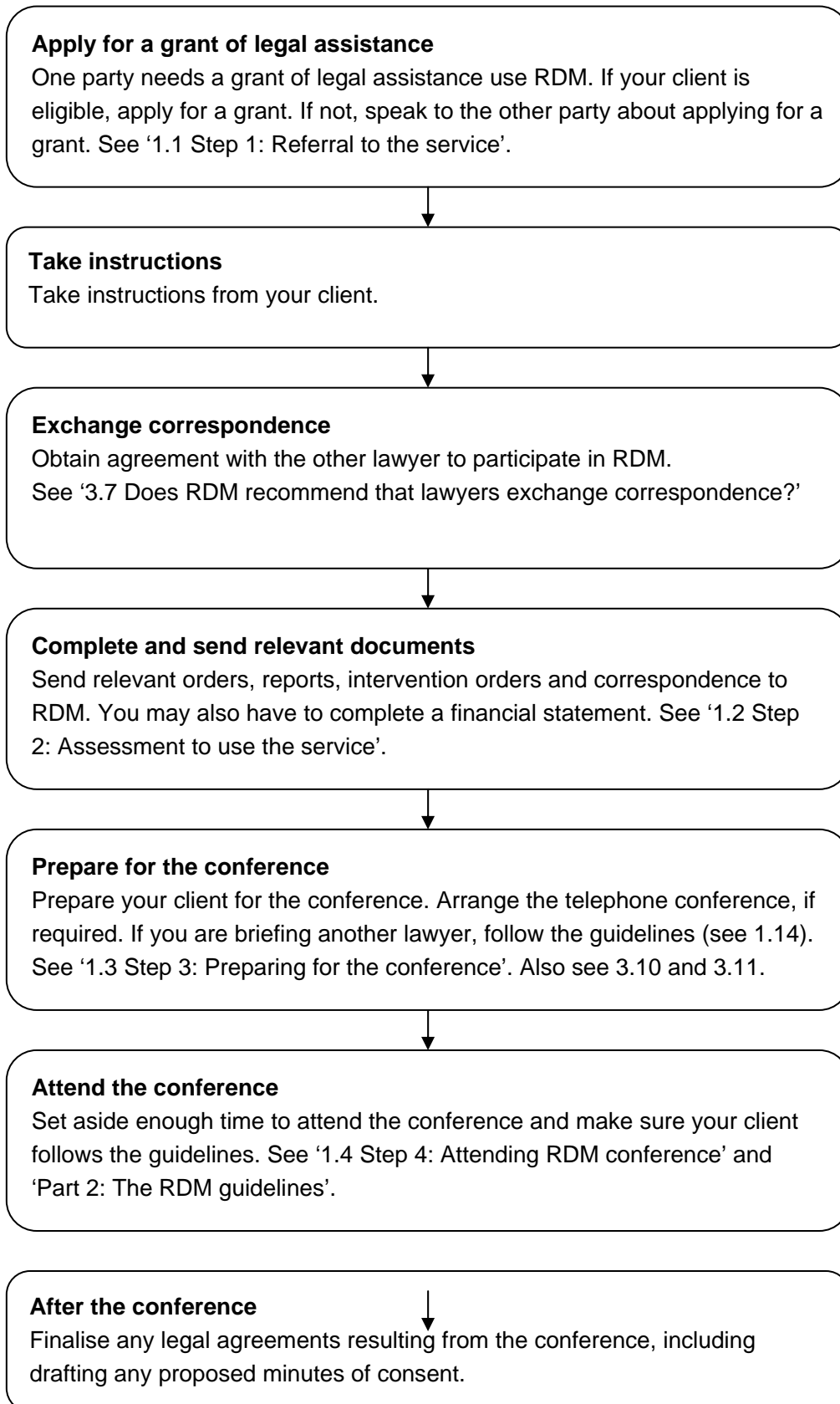
After the conference, lawyers should finalise any legal agreements resulting from the conference, including drafting any proposed consent orders.

The case manager can follow up with a client after the conference, if required. This includes:

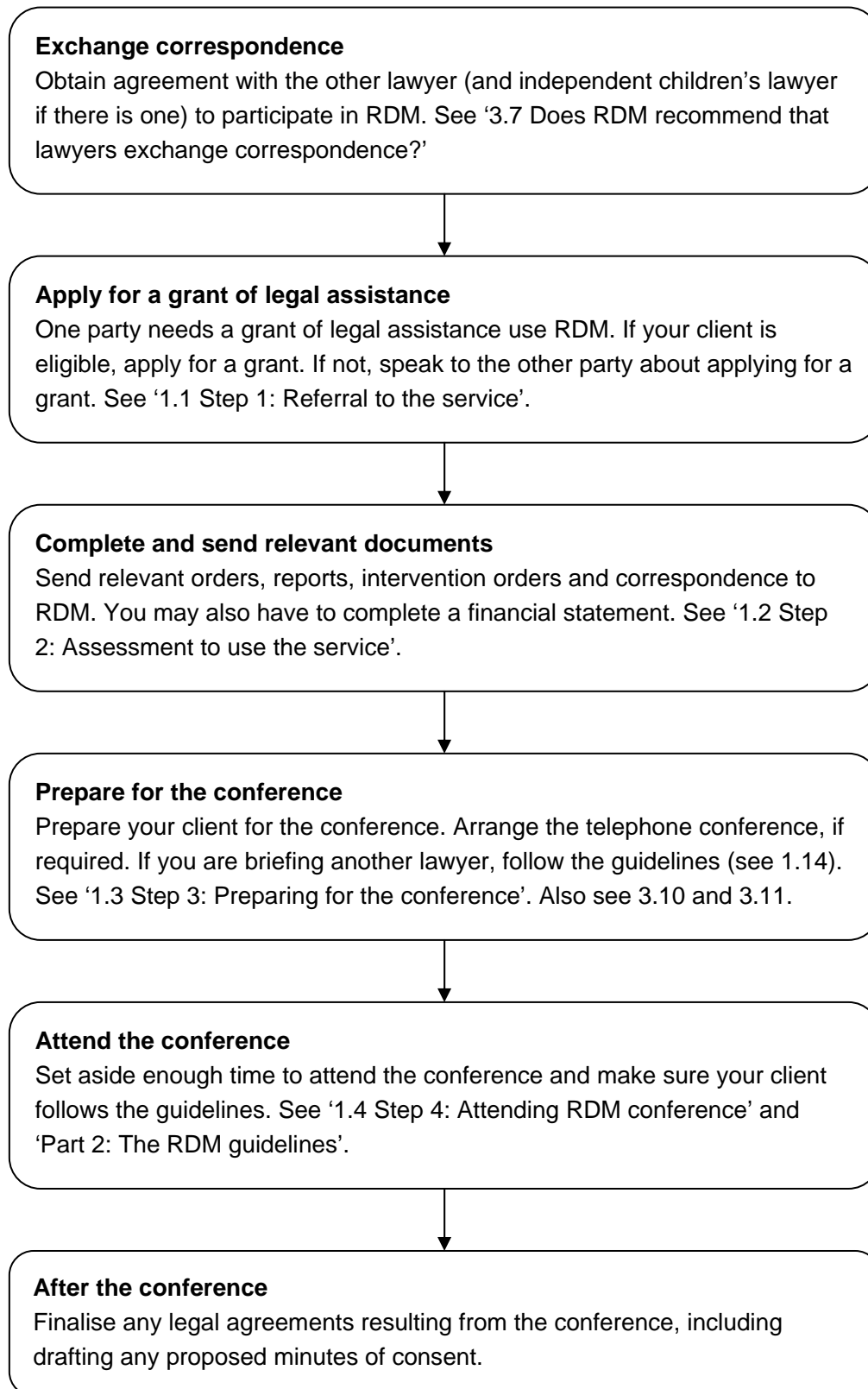
- information to help clients put in place and maintain the conference agreement
- referral details of services that may have been agreed at the conference
- options to explore, if future problems arise
- an opportunity to provide feedback on RDM's services
- arranging another conference, if it was agreed to at the first conference, at the clients request.

If they require longer-term assistance, the case manager will refer the client to other community services.

1.6 Overview of the RDM process during pre-litigation



1.7 Overview of the RDM process during litigation



Part 2: The RDM guidelines

The RDM guidelines have been developed to ensure participants have a clear understanding of what is expected of them once they agree to use the service. RDM expects each participant to commit to the guidelines.

We ask each participant to:

- make the safety of each person the first priority
- act in good faith
- focus on solutions
- focus on the children.

In addition, we are committed to:

- a fair process and a just outcome
- supporting client participation and decision-making.

These guidelines have been developed to assist clients to seek new ways of resolving old problems. They encourage participants to act in a cooperative way to help resolve the dispute.

This guideline covers all people involved in the process, including:

- clients using RDM
- children of clients using the service
- family members
- lawyers and other professionals assisting clients use the service
- RDM staff, including reception staff, case managers and chairpersons
- any other associated people.

RDM may refer to the guidelines throughout the RDM process. RDM reserves the right to withdraw its services if a participant clearly demonstrates that they are not willing to behave in a manner consistent with the guidelines.

2.1 Make the safety of each person the first priority

Our aim is to protect the safety of the people attending RDM. This includes:

- protecting each person's physical, mental, emotional, spiritual and financial wellbeing
- ensuring people can fully participate in RDM, without undue influence or coercion
- ensuring discussions, proposals or agreements do not compromise a person's safety.

RDM takes any threats, implied threats or 'jokes' about safety very seriously. It is RDM's policy to report threats made to a person's safety or property to the police or other relevant authority.

As RDM is not a court, it does not make judgments on allegations of family violence. However, if a client is concerned about their safety, RDM will develop a safety plan to ensure the client feels safe. All participants must follow the safety plan.

RDM may screen out some matters involving family violence.

2.2 Act in good faith

Participating in good faith means a person behaves in a way that shows they are genuinely committed to doing what they can to help resolve the dispute. This means that all participants agree to:

- treat others with respect
- listen to what others have to say
- be open, honest and respectful
- participate with a positive attitude
- provide full and frank disclosure
- attend to requests in a timely manner
- be prepared legally and practically for resolution on the day of the conference
- fully participate in the RDM process.

Participating in good faith means you do not:

- fail to disclose relevant information to your advantage
- take a fixed position and refuse to negotiate
- make ambit claims
- leave little or no room for negotiation
- unreasonably back down from offers you have previously made
- leave part-way through a conference.

It is important that your client acts in good faith, as the chairperson may in some circumstances issue a family dispute resolution certificate indicating that they did not make a 'genuine effort'. This may have consequence, including costs, in later court proceedings.

2.3 Focus on the future

RDM aims to help find a solution to a dispute that is acceptable to each client. To achieve this, it helps if participants are focussed on the future.

RDM understands that what has happened in the past may be important for making plans for the future. However, to move forward, we encourage clients to:

- be prepared to focus on the future
- be willing to compromise
- look for things they agree on, such as children being well cared for in the future
- accept that there can be different views of past events that may not be able to be reconciled at RDM (they may have to agree to disagree about the past).

RDM's goal is to develop better, safe and child-focused arrangements for the future.

2.4 Focus on the children

So that the focus is on the children, RDM asks participants to:

- listen to what might be happening for the children
- focus on the individual needs of each child
- take into account the age and stage of development of each child
- minimise family conflict and protect children when this does occur
- work towards co-operation and improved communication between parents
- reflect upon what an agreement may look like from a child's viewpoint
- respect a child's right to have a close, safe and loving relationship with each parent and extended family members, such as grandparents, uncles and aunts.

Focusing on the children is not the same as leaving the decisions up to the children. Instead, we ask clients to commit to understanding what might be happening for their children and listen to what they have to say. This information is then used to help make decisions. The *Family Law Act 1975* states that decisions should be made in the 'best interests of children'. This guideline is consistent with that principle.

2.5 A fair process and just outcome

RDM is committed to ensuring clients experience a fair process and just outcome. This means that how RDM deals with clients' problems, and the result they get, are important considerations for the service. When using RDM:

- the principles of natural justice apply
- clients are provided with the opportunity to fully participate
- the law is used to guide all processes and decisions.

2.6 Supporting client participation and decision-making

As far as possible, RDM tries to directly involve each client in all stages of the process. RDM will contact clients directly in the assessment, preparation and follow-up stages.

You can also support your client through the process by providing them with:

- guidance to prepare for the conference
- legal advice and professional support to assist them with problem-solving, negotiation and decision-making
- encouragement to have their say and actively participate in all aspects of the conference
- encouragement to approach negotiations positively in order to change the situation for the better.

We also encourage you to:

- intervene to clarify or assist your client to help express themselves
- use plain English and avoid legal jargon so all participants understand what you are saying
- avoid formal forms of address more appropriate to litigation. For example, avoiding legal language such as "I am instructed that...."

Part 3: Frequently asked questions by lawyers

Here are the answers to some frequently asked questions.

3.1 Why should I send my client to RDM?

There are many reasons for using the RDM service. They include the following:

- RDM actively involves lawyers, including independent children’s lawyers.
- RDM can assist in many complex disputes not normally appropriate for FDR.
- RDM offers a comprehensive high quality and responsive service.
- RDM staff and chairpersons are recognised experts in their field.
- RDM conferences have a high success rate – over 85% reach a full or partial settlement.
- Victoria Legal Aid provides eligible clients with a grant of legal assistance.
- RDM can work where other services have not been successful.

3.2 How do I know if my client can use RDM?

To use RDM, at least one of the parties must apply and get a grant of legal assistance from Victoria Legal Aid.

Generally, a family dispute resolution matter is eligible for a grant unless:

- the situation is urgent and requires immediate court action
- child abuse allegations are currently being investigated
- a person’s safety is at risk
- a person’s ability to negotiate effectively is jeopardised by behaviour, such as violence, intimidation, control or coercion, or a history of such behaviour.

You can assess if a matter is eligible for a grant of legal assistance by checking the Commonwealth guidelines of Victoria Legal Aid’s *Grants handbook*. The handbook also sets out the payments made to lawyers whose client has received a grant of assistance for RDM. (see www.legalaid.vic.gov.au/handbook.htm). Payment to lawyers includes time for preparation with clients before the conference, attendance at the conference and writing up any agreements and lodging proposed court orders.

If your client gets a grant of legal assistance, the matter is referred to RDM. A case manager from RDM then conducts a detailed assessment to determine whether the matter is suitable for RDM.

If you have questions, or want to discuss if a case may be suitable, lawyers are encouraged to contact RDM and speak to a case manager.

3.3 Can my client use RDM instead of a Family Relationship Centre?

Yes. RDM is an accredited family dispute resolution service provider, under the provisions of the Family Law Act. Unless exemptions apply, prior to filing a court

application your client must attend family dispute resolution. Using RDM fulfils your client's pre-filing legal obligations.

3.4 Can privately paying clients use RDM?

Yes. However, to use RDM at least one party involved in the family dispute must have a grant of legal assistance from Victoria Legal Aid. If the other side has a grant, or an independent children's lawyer is involved, you can suggest the matter is referred to RDM.

3.5 Does my involvement as a legal representative make a difference?

Yes. RDM's multi-disciplinary approach combines the expertise offered by lawyers, case managers, chairpersons and other professionals to ensure clients are provided with the best opportunity to resolve their family law dispute.

3.6 How does the RDM process involve lawyers?

RDM is strongly committed to working in partnership with lawyers. RDM supports the active involvement of lawyers at every stage of the family dispute resolution process. If RDM is aware that a client is legally represented, we will correspond with the lawyer and send them a copy of all client correspondence.

3.7 Does RDM recommend I exchange correspondence with the other lawyer?

Yes. RDM recommends that you exchange initial correspondence to assist the process. It is not for the purposes of resolving the matter through lawyers' negotiation or detailed proposed orders.

When Victoria Legal Aid sends out the notification that a grant of legal assistance has been approved, the letter will ask you to contact the other client or their lawyer, if they have one. Exchanging correspondence will:

- let the other party know you are involved
- provide the other party with a clear understanding of the nature and scope of the dispute, and any proposed solutions
- encourage the other party to use RDM to resolve the dispute
- motivate the other party to take the required action.

It is particularly useful to exchange correspondence when:

- the other party has not been formally notified of the dispute (pre-litigation)
- delays by the other party may derail the process.

To assist later dispute resolution, it is recommended you avoid adversarial language and letters of demand but rather, encourage the other party to participate.

In matters where litigation has already commenced, it is recommended that you exchange correspondence with the other lawyer, prior to referring the matter to the RDM

service. It helps to ensure that everyone involved agrees to the referral. For example, if an independent children's lawyer is involved, they must provide their consent before the matter can proceed. It also helps RDM to deal with the matter more quickly.

3.8 Does RDM communicate directly with my client?

Yes, RDM speaks directly to clients, even if they have a lawyer. While it is part of Victoria Legal Aid, RDM is a family dispute resolution service, not a legal practice. The nature of the service is to work directly with clients to resolve their family law dispute.

3.9 Can I attend for part of the conference?

No. It is very unsettling for all participants if you leave the conference for periods of time. It also affects the chairperson's capacity to manage the conference process if you are only available for part of the conference.

In addition, your client is potentially compromised when partially represented. They may:

- be unprepared or unable to represent themselves at the conference
- be understandably cautious about agreeing to anything without you present
- enter into an agreement, only later to be advised by you that the agreement is against their interest.

If you find yourself in an unavoidable situation and are required to attend to other matters, please inform RDM in advance so that the conference can be postponed.

3.10 Does RDM have telephone conferences?

Yes. We often arrange telephone conferences if the client:

- has concerns about safety
- lives in a remote location and it is difficult to get to a conference location.

The advantages in conducting a telephone conference include:

- you and the client are in familiar surroundings
- you do not have to travel
- you have immediate access to your resources.

The conference format may be a:

- **direct conference** – you are linked-up in one single telephone call with the other participants and you can hear and speak with each person
- **shuttle conference** – where the chairperson speaks with you and your client, hangs-up and then speaks to the other person and their lawyer, if they have one.

3.11 What arrangements do I require for a telephone conference?

Usually, when RDM conducts a telephone conference, clients participate from their lawyer's office. You will need a space where you will not be interrupted.

From a practical perspective, when conducting a telephone conference from your office, you will require:

- a speaker phone that is centrally located to ensure the chairperson can hear both you and your client with ease – consider having a trial call before the conference to check it works
- access to a fax machine and photocopier.

When you participate in a telephone conference, we recommend that:

- your office staff are informed that you cannot be interrupted during the conference, even if you are not on the phone at that time
- the chairperson has your direct telephone number
- contingency plans are made to ensure the chairperson is always able to locate you, for example, if your receptionist steps away or activates your after-hours answering service.

The chairperson will ring you at the agreed time to start the conference. At the conclusion of the conference lawyers often draft and fax versions of the proposed agreements which are ultimately signed by the clients once the agreed wording is reached. It is important that this occurs in a timely manner, and any likely delay is clearly communicated to all participants.

3.12 What can RDM do if my client is concerned about their safety?

At RDM, the safety of all participants is the first priority. Many clients who have experienced family violence use RDM to help resolve their family law disputes. RDM conducts a thorough risk assessment to make sure clients can use the service safely.

For this reason, it is important to tell the case manager about any family violence, even if it was in the past. RDM can then make sure your client receives the support and assistance they require.

In cases where there has been family violence, the case manager will work with you and your client to develop a safety plan. This may include:

- using staggered arrival and departure times
- meeting with you or a support person at an agreed location prior to entering the premises where the conference is held and at the conclusion
- arranging a 'shuttle' conference with your client in a different room so they do not have to speak to the person
- arranging a telephone conference so your client does not have to be on the same premises as the other person.

Sometimes cases involving family violence will not be suitable for RDM. RDM can still:

- refer the client to appropriate support services
- issue a family dispute resolution certificate to say it has assessed that the matter is not suitable, although the reason will not be disclosed in the certificate.

3.13 What is Kid's Talk?

Kid's Talk is a service offered by RDM. It gives children a safe place where they have an opportunity to say what they think and feel.

The child is interviewed by a specially trained child consultant. This consultant provides the feedback to the parents about this meeting. The parents can use this information to help them make decisions at the conference. A brief, confidential summary of this feedback is sent to all parties, including lawyers and the chairperson before the conference.

A client can request Kid's Talk or RDM may suggest it. We recommend that clients speak to their lawyer before asking to use Kid's Talk. If they decide to go ahead, then both parents must provide signed consent.

Kid's Talk may be suitable if:

- there are children between the ages of 4 and 18
- clients are open to hearing more about what their children have to say
- clients are willing to take these views into account in making parenting decisions
- clients have strong opposing ideas about the children's views, but are open to listening to children's views through the child consultant
- it seems that the children are 'caught in the middle' in the family conflict
- the children's views may strongly influence the outcome. This is particularly relevant for older children, where their view will generally hold more weight if the matter proceeds to court.

Kid's Talk may not be suitable if:

- the children have recently been, or are likely to be, interviewed by other professionals for a similar purpose. This avoids potential 'systems abuse'.
- the situation requires a family report, or updated family report
- the situation is complex and involves possible risk to children
- there is limited capacity by parents to take on board the children's views
- a client or their lawyer does not consent.

Due to resource limitations, not everyone has access to Kid's Talk. RDM reserves this service for those who are more likely to receive the greatest benefit.

All information gathered through Kid's Talk is confidential and inadmissible and does not replace the need for a Family Report if this is required.

3.14 What skills do I need to participate?

Many lawyers already use non-adversarial skills in their everyday practice. However, when assisting a client through the RDM process, these skills may be utilised in a different manner.

Lawyer as legal advisor

It is important that you provide your client with clear, concise advice about their legal rights and entitlements. RDM is most successful when each client is able to obtain consistent legal advice both before and during the settlement process.

During the course of the conference, you will be able to meet privately with your client to reinforce, amend or update your legal advice, taking into account matters raised in the conference.

Useful areas to cover include:

- What are realistic settlement options?
- What is the range of possible outcomes if the matter proceeded to court?
- Is it possible the court could order what the other person wants?

At times during the conference, you may wish to make a statement about the state of the law. As far as possible, this should be done in a neutral and respectful manner.

Lawyer as advocate

The RDM process encourages clients to speak on their own behalf. The chairperson will directly address your client, encouraging them to be fully involved in the negotiations.

Lawyers are encouraged to advocate for their client, if required. However, it should be noted that advocacy within the RDM context is non-adversarial. In this situation, the advocacy should address the client's needs and concerns, rather than re-stating a fixed position taken on instructions. For example:

- adversarial advocacy: "My client instructs that"
- non-adversarial advocacy: "I think what Cheryl is concerned about is..."

You may need to correct something said by the other party or their lawyer. It is best to do this in a tone and using language that is respectful and not unduly inflammatory.

In shuttle conferences, and from time to time in direct conferences, you may find yourself discussing matters directly with the other lawyer in the presence of the chairperson. In such circumstances, ambit-style negotiation should be avoided.

Lawyer as coach

You have an important role to play as your client's coach. This is particularly useful in the one-to-one contact with your client. This may happen before or during the conference.

You may wish to raise some of the following questions when you are coaching your client:

- What do you hope to achieve, and why?
- What are you willing to give to make this happen?
- What seems to be the other person's concerns?
- What actions are you able to take that would minimise their concerns?
- What are the needs and interests of the children?

- Is there a difference between what the children need and what you need?
- What options are there for resolving the dispute?
- Are you prepared to listen to other points of view, even when you do not agree?
- How can you communicate your concerns effectively?

Lawyer as problem-solver

The experience you have in dealing with families in dispute is invaluable. There is an opportunity for you to use this expertise to assist in generating options and ideas for settlement. The chairperson may invite such participation, particularly when clients are having difficulty suggesting proposals.

In private sessions, you can assist your client to develop workable realistic proposals in light of conference developments.

Lawyer as deal-maker and negotiator

On occasions, the client's interests could be best served by you becoming more actively involved in the bargaining process. Using your authority as a lawyer can influence both your client and the other side to reach an outcome. This may be particularly important if the matter has become intransigent.

Another important role is assisting a client to explore various options and ideas to ensure that any outcome is workable and realistic. To assist your client in reality-testing proposals or outcomes, you may ask questions such as:

- Is the proposal reasonable, given the legal advice provided?
- How would this idea work in practice?
- Who is affected by your proposal? Do they need to be consulted?
- What could go wrong? What back-up plans do you have?
- What happens today if you do not reach an agreement?
- What are you prepared to offer to reach an agreement today?
- What effect do you think this dispute is having on the children?
- How can you protect the children from the conflict?
- How will you ensure your safety in the future?
- What will you do if your safety is compromised?

Lawyer as provider of professional support

RDM values your ability to provide support to your client throughout the process. Your client will rely on you for support and trust that you are working in their best interests. Generally, clients are more confident in attending and participating in the conference with a lawyer present. This professional relationship and support is critical. You are able to help your client move towards a resolution of the dispute.

Lawyer as drafter

During the conference the chairperson will facilitate the agreement-making process. It is important that this does not happen prematurely, and that any resolution is thoroughly explored and reality-tested in reaching the final settlement.

Wherever possible, clients should leave RDM with a written record of their agreement. This record can minimise any confusion about the conference outcome in the future. The lawyers involved are responsible for drafting this agreement.

The two main forms of agreement, which are signed by the clients and dated, are parenting plans or proposed consent orders. It is your responsibility to advise the client as to what form of agreement should be used and whether it should be signed.

The drafting process plays a crucial role within the conference. It can serve to consolidate the spirit of cooperation or further aggravate underlying tension between clients. In recording the agreement, it is important to deal with clients' concerns in a manner that does not escalate the conflict. Where possible, proposals should be recorded in language that results in provisions being **mutual** and **neutral**.

For example:

- Andrew will not denigrate Mary in front of their children.
- Andrew and Mary agree that they will not make negative comments about the other in the presence of the children.

You may wish to bring a pro forma or partially completed agreement to the conference. This should not be tabled unless the conference has reached a point where using this template may be useful for the participants. It is important that such a step does not undermine the progress of the conference up to that point.

Before entering into a parenting plan, you need to ensure your client understands the legal consequences. Parenting plans are useful for interim agreements. Where finality is required, consider advising your client to sign proposed consent orders.

Sometimes there may be insufficient time to draft parenting orders during the course of the conference. If this occurs, you may wish to use the conference agreement as the basis of preparing draft orders after the conference. You should note, the grant of legal assistance includes drafting and lodging orders.

3.15 Should I brief another lawyer for the RDM conference?

RDM offers the opportunity reach a settlement that addresses the individual needs of the family, as well as incorporate a legal outcome. A lawyer who has developed an effective, trusting relationship with their client and knows their particular needs, is in the best position to contribute and support the client in all stages of the process.

Having developed trust in their lawyer, a client may feel abandoned and confused at being represented by another lawyer who does not know them and has not heard their story. Regardless of the skill of the new lawyer, a client may feel disadvantaged. This can undermine the chances of resolution at the conference. RDM has received general feedback from clients that they have been more satisfied with the service when they had the same lawyer throughout the RDM process.

However, sometimes the practice of briefing will be unavoidable. RDM also recognises that some agents and barristers have highly developed dispute resolution skills that may assist in the resolution of the dispute. Therefore, the decision whether to brief for a conference is left to the professional judgement of each lawyer.

3.16 What are the guidelines for briefing for an RDM conference?

The following guidelines have been developed for lawyers who are briefing for an RDM conference.

Identify the matter well in advance

RDM recognises that the decision to brief a matter can often occur at the last moment. However, a successful transition is more likely to occur when the client is aware well in advance that the matter is to be briefed out. This provides the client with time to prepare themselves. It is also useful for you to advise the case manager.

Select a suitable lawyer to brief

It is important that a lawyer participating in an RDM conference is familiar with the family law jurisdiction. They also need experience in a family dispute resolution process and must be willing to participate on the basis of the RDM guidelines.

Provide the briefed lawyer with all the relevant information

It is important that the lawyer attending an RDM conference is given sufficient background information and all relevant documents, so that they can adequately assist your client in the conference. This should cover both the relationship and legal issues experienced by the client. The lawyer must have authority to settle the matter at the conference.

Provide the briefed lawyer with information regarding RDM

The lawyer should be provided with all relevant information regarding RDM, including access to this publication. It can be downloaded from Victoria Legal Aid's website at www.legalaid.vic.gov.au

Arrange for the briefed lawyer and client to meet prior to the conference

The lawyer should meet with your client prior to the conference. RDM recommends that at least 30 minutes be allowed. This ensures the briefed lawyer has sufficient time to cover all relevant issues with your client and develop a good working relationship.

Arrange for a handover after the conference

An effective handover after the conference is important. It will ensure that any outstanding issues, such as drafting and lodging of consent orders, are acted on in a timely manner. It also minimises any future problems, such as the client misunderstanding the agreement.

3.17 How do I cancel a conference?

If you need to cancel a conference, call RDM immediately. RDM has a firm cancellation policy to avoid unnecessary or strategic delaying tactics. RDM requires a minimum of 48 hours notice for cancellations or postponements. This allows sufficient time for the case manager to notify all parties and reschedule the conference. Cancellations may result in RDM issuing a family dispute resolution certificate, which may have legal consequences, including costs orders.

3.18 How are my client's confidentiality and privacy maintained?

The information that you and your client discuss with RDM is confidential under the provisions of the Family Law Act and the Legal Aid Act 1978 (Vic). RDM will not discuss this information with the other client or their lawyer without your client's expressed permission. However, RDM will need to discuss with you what your client said so you can appropriately represent your client throughout the RDM process.

The Legal Aid Act (Vic) provides for specific exceptions to this duty of confidentiality. This includes:

- if your client and Victoria Legal Aid have consented to this information being provided to another person
- if there are reasonable grounds to believe that there is risk to the safety of a person or property
- for statistical purposes, without revealing the identity of any person
- if the matter involves fraud
- to assist Victoria Legal Aid fulfil its functions and duties, including the administration of legal aid.

In these situations, Victoria Legal Aid may disclose the information to the relevant body, for example the police or child protection authorities.

The Family Law Act also has exceptions to this duty of confidentiality that are relevant to RDM. The law permits RDM to disclose information to the independent children's lawyer to assist that lawyer to fulfil their responsibilities. RDM may also disclose information to issue a certificate under the provisions of the Act.

Privacy is important to Victoria Legal Aid. RDM is bound by Victoria Legal Aid's Privacy Management Policy. You can access the policy on the internet www.legalaid.vic.gov.au or telephone Legal Aid's privacy officer on (03) 9269 0234.

3.19 If a lawyer from Victoria legal Aid is acting for one party, does use of RDM lead to a conflict of interest?

No. Whilst RDM is part of Victoria Legal Aid it operates independently and it's staff are acting as dispute resolution practitioners, and do not act as lawyers or provide legal

advice. . There is a 'chinese wall' of confidentiality operating between RDM and all other areas of Legal Aid, so that no confidential information is exchanged about your client.

If an inhouse VLA lawyer is representing a client, then to avoid conflict of interest another inhouse lawyer cannot represent the other party in the conference. Either the other party receives a grant of assistance and is referred to a private firm registered on the VLA Panel, the client is privately represented or the client attends unrepresented.

3.20 How can I provide feedback?

We are committed to offering a high quality family dispute resolution service. RDM invites client and practitioner feedback on all aspects of the RDM process, including this manual. This assists us to improve the service and develop a working relationship between RDM and the legal profession. You can put for feedback in writing and send by post or email. You can also contact the case manager, their supervisor or the RDM manager directly.

Roundtable Dispute Management

Postal address: GPO Box 4380, Melbourne VIC 3001
DX 210646 Melbourne Vic

Telephone: 03 9269 0500 or toll free 1800 136 832

Fax: 03 9269 0530

Email: rdm@vla.vic.gov.au

3.21 How do I make a complaint?

If you have a complaint or concern about the service you have received at RDM, you can contact the RDM case manager. If you are unsatisfied with the outcome, speak with their supervisor or the manager of RDM.

If you are still unsatisfied, you may contact Victoria Legal Aid's client relations officer by:

- telephone on 03 9269 0234 or 1800 677 402
- email to clientcomplaint@vla.vic.gov.au.

For further information, please refer to Victoria Legal Aid's *Client service charter* brochure. This brochure can be downloaded from our website. It is also available at any of our offices or from the client relations officer.

Part 4: The A to Z of RDM

Admissibility — The following can be used in court:

- a family dispute resolution certificate issued by RDM
- a signed agreement (including a parenting plan) or parenting order
- an admission of child abuse, unless there is sufficient evidence from other sources available to the court
- information to prevent or minimise injury to persons or property.

However, any document or information received during the course of RDM is inadmissible in court under the provisions of the Family Law Act and the Legal Aid Act (Vic). If RDM contacts a professional for the purposes of consultation or referral, this communication is also inadmissible.

Adviser — Lawyers and FDR practitioners are advisers under the provision of the Family Law Act. Advisers are required to provide information regarding issues such as parental responsibility and parenting plans. (See: Family dispute resolution practitioners)

Agreements — When a conference resolves some or all of the issues in dispute, it will be drafted into a written agreement. The chairperson will summarise agreements reached between clients during and at the end of the conference. It is recommended that these agreements be written down. Lawyers will then provide advice as to the form of agreement that should be used.

There are different types of agreements:

- **Full agreements** are reached when all issues are resolved. RDM generally recommends that the clients make these agreements legally binding.
- **Partial agreements** are when some, but not all, of the substantial issues in dispute are resolved. For example, there is an agreement about parenting issues, but no agreement about financial issues. A partial agreement can also be if there is a full agreement on all the substantial issues in dispute, but only for a limited period of time. For example, the clients agree on financial and parenting issues, but want to trial out the parenting arrangements for a set period of time before finalising the settlement. RDM recommends that clients who reach a partial agreement seek legal advice as to their options for full resolution of the issues.
- **No agreement** is when none of the substantial issues in dispute are resolved at conference and there is no agreement recorded.

Signed Agreements

Agreements can also be signed or unsigned. Signed agreements generally have legal implications. If clients sign and date an agreement, it has the legal effect of a parenting plan under the provisions of the Family Law Act. Also, agreements signed ‘for the express purposes of submitting to court’ are admissible under the provisions of the Victoria Legal Aid Act.

RDM strongly recommends that all clients receive legal advice before they sign a conference agreement. If a client chooses not to receive this advice, the chairperson will request that the agreement reflects this decision.

Unsigned agreements do not have any legal effect and can not be used in future court action. They can still be used as the basis for developing future parenting plans or orders. They may be useful when:

- clients have not yet reached a full agreement
- all the information is not yet available for consideration
- clients require further advice or time to consider their position
- a client does not have a lawyer assisting them in the conference
- a client does not want the agreement to be admissible or have the effect of a parenting plan.

Ambit claim — An ambit claim is an excessive initial demand. It is made with the expectation that there will be a counter-offer and then a compromise. An ambit claim generally represents a client's best possible outcome and is a common tactic used in the course of negotiation or litigation. Making an ambit claim is not a suitable strategy to use at an RDM conference, as it does not represent 'good faith' negotiations. Taking a fixed position, or making an ambit claim, is also inconsistent with the RDM guidelines.

Assisted negotiation — Assisted negotiation is when the chairperson meets with the lawyer's involved during the RDM conference. This form of negotiation is usually used by the chairperson for the purposes of dealing with an impasse or possibly to work out the fine detail of a proposed agreement.

Best interests — The Family Law Act states that the best interests of the child are paramount for making decisions regarding the future parenting of children. The RDM guidelines require that all discussions, proposals, negotiations and agreements are consistent with this best interests principle. RDM recommends that clients receive legal advice on how this applies to their situation.

Case manager — Each client using the service is provided with a case manager, who is their contact point while they use the service. The same case manager is allocated to all participants involved in the dispute.

The case manager is a trained professional. Their role is to:

- provide relevant information about RDM
- assess whether a dispute is suitable for RDM
- provide relevant professional input, but not legal advice
- assess how RDM can best assist each family
- prepare the participants for resolution
- collect relevant information to brief the chairperson
- provide follow-up referral and support.

Chairperson — The chairperson is an experienced professional who works with all participants to resolve their family law dispute. The chairperson is an accredited family

dispute resolution practitioner under the provisions of the Family Law Act. As a family dispute resolution practitioner, the chairperson has responsibilities they must fulfil under the Act.

The chairperson may be a lawyer, psychologist or social worker who has experience working with families in dispute. The role of the chairperson is to assist the participants to develop a safe, child-focused and workable outcome. The chairperson may express their professional opinion regarding a situation. The chairperson cannot provide legal advice or make any decisions or findings of fact.

Chairperson's report — After the conference, the chairperson will complete a brief report. This report is a record of your client's participation in family dispute resolution with RDM. A copy of this report will be sent to each client or their lawyer, if they have one.

If there are unresolved issues, the chairperson will also make a recommendation about further funding to clients with a grant of legal assistance. This recommendation is kept confidential from the other client. However, the Assessments Unit of Victoria Legal Aid will get a full copy of the report.

Child abuse — Child abuse is an act or a failure to act by an adult that endangers or impairs a child's physical or emotional health and development. RDM has a duty under the law to act to protect children and minimise harm.

Child consultant — A child consultant is a social science professional, who has received specialist training in interviewing children, as part of the RDM process. Anything said to the child consultant is inadmissible under the provisions of the Legal Aid Act.

Child focus — RDM is a child-focused service. RDM has a duty to help all participants to focus on the needs and interests of children when exploring the dispute and options for resolution. This approach is consistent with the Family Law Act and the RDM guidelines.

The case manager and chairperson will indirectly involve the children by:

- asking the parents about the children
- involving other family members, where appropriate
- reviewing reports and other documentation
- speaking with relevant professionals, such as the independent children's lawyer.

In some situations, the case manager may assess that it would be helpful for a child consultant to interview the child or children. They may recommend they go to Kid's Talk.

As a child-focused service, RDM helps clients to:

- focus on the individual needs of each child
- take into account the age and stage of development for each child
- minimise parental conflict, and protect children when this does occur
- work co-operatively as parents
- listen to the child

- think about how an agreement may look from the child's perspective
- put the safety and wellbeing of the children first.

At RDM, the parents make the decisions, not the children. However, these decisions should be guided by the needs of the children and any views expressed by the children. What children say can be influenced by many factors, such as:

- a child's reaction to the separation
- what a child believes will please one or both parents
- wanting to avoid 'choosing sides' in favour of one parent over the other
- trying to protect a parent or other family member, for example, a sibling
- their age, developmental stage and level of maturity.

Separation and divorce can be confusing and upsetting for children. It is not uncommon that a child will hold a particular view, even when this has not been expressed by one of the parents. RDM will assist you to consider how your children feel about the situation to help you to make decisions that are in your children's best interests.

Conference — An RDM conference is a meeting to make plans for the future. The conference is conducted by a chairperson and lasts up to four hours.

Conference format — RDM has different types of conferences. The case manager will identify the conference format that will be most likely to provide a safe and supportive environment for each client.

If your client is willing to have contact with the other person, the case manager can arrange a conference:

- face-to-face
- over the telephone
- via video link up.

If your client does not want to have contact with the other person, the case manager can arrange a conference in:

- the same building, but different rooms, in a shuttle format
- a different building to the other person, in a shuttle format or over the telephone.

The case manager will only arrange a face-to-face conference, if requested by all clients and if it is assessed as a safe and supportive format for each client. It is important that clients understand that they will not be pressured by the case manager, or the chairperson, to be in the same room as the other person.

In some situations, the chairperson may discuss with the participants the possibility of altering the format during the conference. This is more likely to occur for face-to-face conferences, rather than shuttle conferences.

Consent order — A consent order is a court order made with the agreement of the persons involved. Once signed by each person and approved by the court, this

agreement is legally binding. Consent orders usually cover issues relating to the future parenting of children (parenting orders) or financial matters.

Usually, at the conclusion or after the conference, one of the lawyers will write up the conference agreement into minutes of consent orders. The other person's lawyer checks this document and then it is signed and lodged at the court with an application.

Family dispute resolution — Family dispute resolution is a process where an independent person helps people affected by separation resolve some or all of their family law disputes. RDM is a recognised family dispute resolution service under the provisions of the Family Law Act.

Family dispute resolution certificate — A family dispute resolution certificate is issued by a family dispute resolution practitioner. The practitioner can issue different types of certificates depending on whether the clients:

- attended family dispute resolution and made a genuine effort to resolve the issues
- attended family dispute resolution; however one or more of the participants did not make a genuine effort to resolve the issues
- did not attend family dispute resolution
- did not attend family dispute resolution, as the practitioner's assessed that the matter was not suitable.

In most cases the court cannot hear a new application in relation to a child unless the applicant files a family dispute resolution certificate with the court. A RDM chairperson, as a family dispute resolution practitioner, is authorised to issue the certificate.

The court may take the certificate into account when deciding whether to order:

- the parties to attend further family dispute resolution
- costs against one party.

Your client does not need a family dispute resolution certificate if:

- applications are made by consent
- a person is responding to the other person's application
- the application is urgent
- a person is unable to participate effectively in family dispute resolution
- there has been, or is a risk of, child abuse or family violence.
- you claim an exception to compulsory FDR, including the reasons above.

Family dispute resolution practitioner — A family dispute resolution practitioner is a person who is accredited under the Family Law Act. They are required to:

- ensure an assessment has been conducted
- ensure the parties have information on the family dispute resolution process
- fulfil their responsibilities as 'advisers'
- issue family dispute resolution certificates.

An RDM chairperson is a recognised family dispute resolution practitioner.

Family members — Usually a family law dispute involves two parents. RDM also encourages the involvement of other significant family members, such as a grandparent, step-parent, uncle or aunt, where appropriate. The Family Law Act recognises the importance of children maintaining relationships with significant family members.

The case manager may discuss with your client whether other family members should also be invited to participate in RDM. It is important for the case manager to understand the nature of the relationship that the family member has with the child.

Clients may decide to access RDM without the involvement of both parents. For example a family law dispute between a parent and a grandparent. However, before an agreement can be used as a parenting plan or parenting orders, both parents are required to provide their signed written consent to the agreement. Also, the court may also require a written report by an expert appointed by the court, or other similar evidence, before it will make a parenting order to a person who is not a parent.

Family report — A family report provides an assessment of a family's background and situation. The report is usually prepared by a psychologist or social worker, who will interview everyone involved, including the children. The report writer may make recommendations, including:

- where the child should live
- how much time the children should spend with each parent or family member
- what services may be needed to support the child and family.

A family report is usually ordered by the court to help it gather evidence and provide an expert, independent opinion. The court may then accept or reject some or all of these recommendations. Sometimes, reports may be prepared by different experts.

Participants in RDM who have had family reports prepared in their matter are requested to provide copies of these to RDM. A conference booking cannot proceed until RDM has a copy of the family report on the file. The report is then given to the chairperson to help them prepare for the conference.

Family violence — Family violence is when someone tries to control, threaten, force or dominate a family member in a way that makes them fear for their safety or wellbeing.

This includes behaviour that is:

- physically abusive, such as hitting or pushing
- sexually abusive, such as forcing a person to have sex
- emotionally or psychologically abusive, such as stopping someone from seeing their family or friends
- economically abusive, such as taking control of a person's money.

Family violence is also behaviour that:

- damages or threatens to damage property
- uses animal abuse or threats to hurt an animal to intimidate or frighten a person

- makes a person fear for the safety or wellbeing of another person.

If a child hears, sees or is exposed to family violence in any way, they are also covered by the law. This includes if a child:

- comforts or helps a family member who has been abused
- sees damaged property in the family home
- is there when police officers arrive during or after a family violence incident.

The Family Law Act requires the court to take into account whether there has been family violence. If there has been family violence or child abuse:

- your client does not have to attend family dispute resolution before making an application to the court
- the presumption of equal shared parental responsibility may not apply.

The pre-conference interview conducted by a case manager with each client, includes a detailed screening checklist for all forms of family violence. Some matters may be screened out where safety of the children or parties is significantly at risk. Other matters which involve family violence may be assessed as suitable for conference with an appropriate conference format or safety plan implemented.

Family violence intervention order — Family violence intervention orders protect a person from a family member who is using family violence. The orders are made by a magistrate to make sure a person, child and property are safe.

If there is a current intervention order, you must tell RDM immediately and send a copy of the order to RDM. If the order limits the direct contact, RDM must take care not to breach the terms of the order. If the order allows contact for the purposes of counselling, mediation or family dispute resolution, contact during an RDM conference is permitted. If not, RDM can conduct a shuttle conference so clients have no direct contact with each other.

Sometimes the terms of the order may prevent clients participating in RDM at all. If RDM is unable to offer a service under the terms of the order, the case manager will let you know so you can then advise your client whether an application should be made to alter the terms of the order.

If the intervention order is not altered, the case manager will close the case and tell everyone in writing. If, at a later date, the court changes the order or the order lapses, the case manager can re-open the case at the request of a client.

Grant of legal assistance — Victoria Legal Aid provides grants of legal assistance to those who are eligible. At least one person must have a grant for RDM to be involved. This person can be the independent children's lawyer. It is possible for more than one person to have a grant. If you need more information, go to Victoria Legal Aid's *Grants handbook* at www.legalaid.vic.gov.au

The RDM chairperson will make a recommendation about whether a client who has a grant of legal assistance should receive a further grant if the matter does not fully settle at the conference.

Good faith participation — RDM guidelines require clients and lawyers to participate in ‘good faith’. This means that you will act in a way that shows that you are genuinely committed to resolving this dispute. When you act in good faith, you do not deceive other participants through any action you take or do not take, for example by withholding important information.

Independent children’s lawyer – Where a case has been before the court, the court may make an order requesting the appointment of an independent children’s lawyer to represent the children’s interests. Independent children’s lawyers have a duty to act in accordance with the best interests of each child based on a consideration of all the material available.

If there is an independent children’s lawyer, the case manager will speak directly to this person before the conference. The matter will only proceed to conference if it is supported by the independent children’s lawyer. An independent children’s lawyer may also refer a case to the RDM service.

Once the matter goes to conference, the independent children’s lawyer will be involved in all individual and joint meetings conducted by the chairperson. Whilst the independent children’s lawyer is bound by confidentiality requirements at the conference, he or she may make further enquiries, where necessary, based on information discussed at the RDM conference. Information obtained as a result of these further enquiries could become admissible evidence in court.

The independent children’s lawyer must consent to any proposed agreement before the agreement can become legally binding.

Interpreters – If your client does not feel comfortable communicating in English, RDM can arrange an accredited interpreter. People with hearing loss can also be provided with qualified interpreters. RDM will not allow a family member or a friend to interpret for a client.

If both clients require an interpreter in the same language, they will each get their own interpreter. It is not appropriate to share an interpreter between two people, due to issues of confidentiality. Also, when the conference breaks for individual sessions, each person then has an interpreter available to help them.

Legal advice — RDM cannot provide legal advice. However, we do recommend clients get legal advice before the conference, even if they decide not to have legal representation. The case manager can help a client find a lawyer. Also, as signing a document generally has legal consequences, RDM recommends that each client get

legal advice before signing any agreement. If a client chooses to proceed without getting advice, RDM will note this in the conference agreement.

Legal representation — A client has legal representation if they have engaged a lawyer to act on their behalf. Legal representation in the RDM process may involve:

- taking instructions and providing legal advice
- writing to the other client or their lawyer, if they have one
- helping to complete documents
- preparing for the conference
- attending the conference
- developing conference agreements
- drafting and lodging court orders

Your client may be eligible for a grant of legal assistance from Victoria Legal Aid for legal representation.

Observation — RDM will get your client's permission for RDM staff, or people authorised by RDM, to observe your conference. If they agree, they will be assisting RDM to improve its services for other families. It also provides an opportunity for authorised people to better understand the services we provide. People observing a conference must comply with RDM's confidentiality requirements.

Most conferences that are observed are conducted in our Melbourne, La Trobe Street office. We usually use a one-way screen and a discreet video-camera, which means you are unlikely to notice that the conference is being observed. In other locations, someone may sit silently in the back of the room. In either situation, it is important that the clients are comfortable with the arrangement. Consent will be checked by the case manager in the preparation stage and again at the commencement of the conference. Your client can withdraw consent at any time.

Parenting order — A parenting order is an order made by the court regarding the future parenting of the children. A parenting order is legally enforceable by a court. The order can either be made by the consent of the parties or as ordered by the court.

Parenting plan — A parenting plan is a written agreement between the parents about the parenting arrangements for children. It must be signed by both parents and dated without any threat, duress or coercion. The plan can include:

- where the children live
- who and how much time the children spend with a parent or another person
- parenting decisions and how they are made
- how parent will communicate with each other about the children
- when and where the children will travel
- what to do if there are disagreements about the children.

Parents may enter into a parenting plan by using a service such as RDM. Before signing, clients should be aware that a parenting plan:

- is not legally enforceable, although the court must take the parenting plan into consideration
- can be used to clarify the terms of a parenting order, for example, the time a child will spend with a person
- made after a parenting order and can change the legal effect of that order, unless there are exceptional circumstances.

Parental responsibility — The Family Law Act defines parental responsibility as all the duties, powers, responsibilities and authority that, by law, parents have in relation to children. In the absence of a court order, parents have joint parental responsibility. If parenting orders are sought there is a presumption that equal shared parental responsibility will apply. This presumption does not always apply and can be reversed by the court.

If parents share joint parental responsibility, there is an obligation for them to talk about major issues and make a genuine effort to come to a decision together. Major issues include:

- the child's education
- the child's religious and cultural upbringing
- the child's health
- the child's name
- changes to the child's living arrangements that make it significantly more difficult for a child to spend time with a parent.

There is no obligation to consult on issues:

- which are not major long-term issues
- if there is not joint parental responsibility.

Research and evaluation — RDM regularly conducts and participates in various forms of research and evaluation. This helps us to:

- assess the effectiveness of RDM's services
- improve our service delivery
- gain a better understanding of the needs of people experiencing family conflict.

RDM relies upon the goodwill of participants for the success of its research strategy. This research may be conducted by Victoria Legal Aid, external researchers or research institutions. Client information will be handled confidentially and will not be provided to external individuals or organisations without consent.

If your client gives consent, RDM may write to them after the conference and invite them to participate in research projects. At any time they can ask RDM to stop contacting them for this purpose.

Safety plan — A safety plan sets out a practical plan to keep clients safe if they have experienced family violence in the past and they are concerned about their safety. A safety plan can be put in place each time the client uses RDM, or when dealing with the other person, for example, when children are dropped off for a visit.

Second conference — To qualify for a second conference, the parties must still have a substantial dispute outstanding after the first conference, and it is likely that a second conference will resolve the issues. Other relevant reasons for a second conference include:

- the level of complexity of the dispute, for example, disability issues
- having a grant of legal assistance for multiple, substantial issues, for example, property and children's issues
- the agreement did not work after the first conference, but the issues are likely to be resolved with a second conference.

To conduct a second conference, RDM must have the support of all participants. The client with the grant of legal assistance must request the conference.

The timing of a second conference should take into account whether:

- the matter needs to be resolved as soon as possible
- additional information is required, for example, financial documents or legal advice
- certain activities need to be addressed first, for example, a drug screen test
- a sufficient period of time needs to elapse, for example, trialling an interim agreement.

Refer to the Victoria Legal Aid grants policy about second conferences for more information.

Support persons — A support person offers the client personal support and assistance, but is not involved in the negotiation or in the actual conference. A support person may be a friend, family member or professional, such as a counsellor, but may not be a current partner of a client. If your client wants to bring a support person to the conference, they must discuss this with their case manager.

In some instances, particular friends or family members may be advised not to attend by the case manager as a support person, if there are issues of safety or potential escalation of conflict occurring.

RDM encourages clients to bring only one support person to the conference. This is so the other person does not feel out-numbered. RDM experience shows that conferences are more likely to break down if they involve more than one support person.

Team support officers — RDM has several team support officers. The officers are responsible for:

- initial contact
- arranging a suitable date, time and location for the conference

- dealing with requests for changes to conference appointments
- following up administrative tasks, such as ensuring your case manager has the required documentation
- providing reminder telephone calls for conference bookings, when required
- managing the RDM reception.

Telephone appointments — RDM will frequently conduct appointments over the telephone, especially screening and preparation interviews. The case manager will telephone your client at a pre-arranged convenient time. It is important that they have privacy for these telephone calls. It is not suitable for children to be in hearing range of the conversation.

Telephone conferences — RDM will arrange a telephone conference if:

- the participants are in different geographical locations and it is not convenient to arrange a face-to-face conference
- there is safety, or other concerns, which mean that it is not appropriate for clients to meet face-to-face.

In the first circumstance, the case manager is likely to organise a telephone conference with all participants being involved in one single linked telephone call. You can hear the other parties and they can hear you.

In the second circumstance, the chairperson will conduct individual telephone conversations with each client and their respective lawyer. You will not be able to hear the other client and their lawyer. They will not be able to hear you. Instead, the chairperson relays relevant information from person-to-person.

Third party — A third party is a person not related by blood or kin to the relevant child or children. A third party may have a legal interest in the dispute. They may represent a particular organisation, for example, the Department of Human Services may be involved if there are child protection issues. If a third party has a legal interest, they may have to provide written consent before there can be a change to a legal order. This is one reason to involve a third party before the conference.

Part 5: Summary of the RDM process

Here is a brief summary to help you to run your RDM case.

5.1 Legal requirements

The general legislative requirements include:

- the definition of family dispute resolution under s. 10F of the Family Law Act
- RDM chairpersons are family dispute resolution practitioners under s. 10G of the Family Law Act
- RDM fulfils the court's pre-action requirements Family Law Rules 2004, rule 1.05
- RDM chairpersons and lawyers have obligations as 'advisers' under s. 63DA (5) of the Family Law Act
- parties must attend family dispute resolution prior to applying for a parenting order s. 60I of the Family Law Act
- RDM also operates under the protection of the Legal Aid Act (Vic) Part VIB
- RDM must comply with the provisions of intervention orders.

Family dispute resolution practitioners, including RDM chairpersons, must:

- provide information on reconciliation services, under s. 12G of the Family Law Act
- issue family dispute resolution certificates, under s. 60I (8) of the Family Law Act
- after conducting an assessment offer family dispute resolution Family Law Rules, rule 62
- provide written information to the parties Family Law Rules, rule 63
- meet general obligations Family Law Rules, rule 64
- can not provide family dispute resolution where the practitioner has a conflict of interest Family Law Rules, rule 65
- comply with the qualifications, training and experience and fulfil continuing training requirements Family Law Act Reg 83
- comply with future accreditation requirements s. 10G (a) of the Family Law Act.

The RDM confidentiality and admissibility provisions are:

- ss. 10H–J of the Family Law Act
- family dispute resolution certificates are admissible under s. 10J (3) of the Family Law Act
- ss. 40I, 40J and 40L of the Legal Aid Act.

5.2 Key points about the RDM service

General program

Key points about the program include:

- There is no charge for using RDM and there is no waiting list.
- RDM has purpose built premises at 338 La Trobe Street, Melbourne.
- RDM conducts conferences in many metropolitan and regional locations.
- To access the service, at least one client must have a grant of legal assistance.
- Victoria Legal Aid's guidelines require that all suitable matters are referred to RDM.

- Participation is voluntary, although the court or Victoria Legal Aid may require attendance at RDM or a similar process.
- Participants are requested to abide by the RDM guidelines.
- RDM will arrange interpreters, where required, for interviews and conferences.
- Sometimes, RDM may recommend the involvement of family members in the process, for example, grandparents.
- RDM may agree to a support person's involvement, and has guidelines for their participation.
- RDM seeks participant's permission for observation and research.
- RDM does not provide child care, and can not proceed with appointments if clients bring their children.

Safety

Key points about safety include:

- RDM conducts a comprehensive risk assessment with every case.
- The case manager can develop individual safety plans with each client and the plan must be followed by participants using the service.
- RDM will take matters where there has been a history of family violence, although some matters may be screened out as unsuitable.
- Clients may choose to have no direct contact with each other, including conducting conferences in different buildings.

Lawyer involvement

Key points about clients having legal representation include:

- RDM recommends lawyers to exchange brief initial correspondence.
- Clients who are not eligible for a grant of legal assistance can choose whether or not to have a private legal practitioner.
- RDM will refer clients without lawyers for legal advice and recommends legal representation.
- RDM prefers that clients have consistent legal representation throughout the process.
- RDM does not allow partial representation during the conference.
- RDM allows lawyers to brief another lawyer for conferences and requests lawyers comply with the briefing guidelines.
- Copies of all relevant reports and orders should be provided to RDM.
- Telephone conferences may be conducted from your office, if you have a conference phone.

Independent children's lawyer involvement

Key points about independent children's lawyer involvement include:

- An independent children's lawyer may initiate RDM.
- If an independent children's lawyer is involved, a parent can raise with them a referral to RDM.
- Using RDM is consistent with the independent children's lawyer duty to 'facilitate an agreed resolution in the best interests of the child' under s. 68LA(5)(e) of the Family Law Act.

- An independent children's lawyer is fully involved in the RDM process, including all meetings conducted by the chairperson during the conference.
- Before a matter can proceed to conference, it must be supported by the independent children's lawyer.
- The Family Law Act family dispute resolution confidentiality provisions permit a chairperson to provide information to the independent children's lawyer to assist them to perform their role under s. 10H(4)(f).
- Whilst the independent children's lawyer is bound by confidentiality requirements at the conference, he or she may make further enquiries, where necessary, based on information discussed at the RDM conference. Information obtained as a result of these further enquiries could become admissible evidence in court.

Kid's Talk

Key points about Kid's Talk include:

- The client or their lawyer may request that RDM interview the children prior to the conference, using an RDM service called Kid's Talk.
- The case manager can also recommend Kid's Talk.
- Kid's Talk is only used where both parents have provided signed consent and have the capacity to use the information gathered in a constructive manner.
- Kid's Talk is inadmissible; it is a therapeutic rather than a forensic tool.
- Using Kid's Talk is unlikely to replace the need for a family report or updated report.
- Kid's Talk is unlikely to be used where a child has been, or is likely to be, interviewed by another professional for a similar reason, for example, a recent family report.

Conference agreements

Key points about conference agreements include:

- You (not the chairperson) are responsible for the drafting of conference agreements.
- You are responsible for advising your client what form of agreement to use.
- Conference agreements signed and dated by both parents by definition have the legal effect of a parenting plan under s. 63C (1) of the Family Law Act.
- Conference agreements that are signed, but not by both parents, are not parenting plans, however these agreements may be admissible under the provisions of the s. 40L (2) of the Legal Aid Act.
- RDM recommends all clients receive legal advice before signing conference agreements.
- RDM recommends, where appropriate, conference agreements are used as the basis of parenting orders.
- Where possible, RDM encourages that conference agreements are drafted in the terms of parenting orders.

Chairperson's report

The chairperson's report:

- is issued after the conference
- includes a recommendation on further grants of legal assistance
- includes recommendations that are not binding.

Second conferences

In the event that a matter has not fully settled, Victoria Legal Aid has made provision for a second RDM conference, where appropriate. Grants do not require lawyers to apply for an extension of a grant of assistance. RDM advises lawyers to contact RDM a month in advance of a preferred date for a second conference.