



What is a pre-trial conference in family law matters?

Date: Monday September 13, 2021

A family law pre-trial conference is similar to a [mediation-style conference](#), however, it is conducted by a Registrar of the Court rather than a mediator. Pre-trial conferences are only held in respect of financial disputes (including [property settlement](#) and [spousal maintenance](#)) and [parenting disputes](#).

What is a pre-trial conference and when is it held?

A pre-trial conference is a final attempt to resolve a dispute in your family law matter before proceeding to trial and judicial determination.

It is often held later in the course of family court proceedings when the matter has already been programmed to trial. That is, the matter may already have a date for trial when a pre-trial conference is listed.

How is a pre-trial conference run?

A pre-trial conference is chaired by an experienced Registrar of the Court. The Registrar is a different officer of the Court to the Judicial Officer (a Magistrate or Judge) who would ultimately determine the parties' dispute (if necessary) if the matter proceeds to a contested trial. The Registrar assists the parties to explore options for resolution and can provide their view on the issues in dispute.

Pre-trial conferences are conducted on a "without prejudice" basis. This means that all discussions had during the conference are confidential and cannot be repeated in open Court. This is to encourage parties to negotiate freely without compromising their position before the Court.

The exception is that Court staff are required, by law, to report to a child welfare authority if certain matters about child abuse are

raised in the conference.

The Registrar chairing the conference does not publish a report outlining what is discussed in the conference. Further, the Registrar does not communicate with the presiding Judicial Officer, any discussions had between the parties during the conference, should the matter proceed to trial.

Do I have to attend a pre-trial conference?

Not all matters proceed to a pre-trial conference. Generally, matters are listed for pre-trial conference when one or both of the parties are self-represented, and there is a reasonable prospect of agreement being reached. Matters with irretractable disputes will not ordinarily be listed for pre-trial conference.

Both parties are required to attend the pre-trial conference in person. If you are legally represented, your lawyer is also able to attend.

What happens at a pre-trial conference?

A pre-trial conference is listed for a full day. The conference will commence at 9.00 am and conclude at 4.00 pm (or earlier, if agreement is reached).

Prior to the pre-trial conference, both parties will have a pre-mediation intake interview with the Registrar. The other party will not be present during your pre-mediation interview. The pre-mediation intake interview will last for approximately 45 minutes.

During these interviews, which are confidential, the Registrar will explain to each party what will happen in the conference, possible approaches to reaching a settlement and have a short discussion about the issues in dispute.

During the interviews, if the Registrar concludes that factors exist that make it inappropriate to continue with the pre-trial conference (such as [family violence](#)), then the Registrar may elect to cancel the conference.

After both parties have had their pre-mediation intake interview, settlement discussions will proceed.

During this stage, the Registrar will assist you and the other party (or parties) in exploring ways to try to settle your dispute without you having to go to trial and wait for a Judicial Officer to decide the dispute for you.

Throughout the course of discussions, the Registrar may opt to speak separately to each party.

If a party is represented, they may speak privately to their lawyer at any time during the conference.

How do I prepare for a pre-trial conference?

When the Court programs a matter to a pre-trial conference, directions will be made for the parties to file a Minute of Proposed

Orders and Papers for the Judicial Officer.

The Minute of Proposed Orders must set out in detail, the final orders sought by you; i.e., what orders do you want the Court to make?

These documents will be exchanged with the other party and the Registrar chairing the conference.

The Papers for the Judicial Officer set out the factors each party relies on and their position for the conference. If your matter is in relation to [financial matters](#), you must include a schedule of assets, liabilities and financial resources in your Papers for the Judicial Officer. It assists the Registrar in identifying the issues in dispute.

If your matter is a financial dispute, you should also:

Ensure that you have exchanged [disclosure documents](#) and the documents exchanged are comprehensive. This includes all documents to identify the parties' assets, liabilities and financial resources.

If you are seeking a [superannuation splitting order](#), provide notice to the Trustee of the superannuation fund of the orders you intend to seek. This is necessary as the Registrar will not be able to pronounce a superannuation splitting order if agreement is reached, if the Trustee has not been provided procedural fairness.

If the value of assets or other entities is in dispute (such as real property, businesses, companies or trusts), ensure these are valued by a jointly appointed valuer prior to the conference to narrow the issues in dispute. Narrowing the issues in dispute will give a greater prospect of agreement being reached at the conference.

What happens at the conclusion of a pre-trial conference?

If agreement is reached at a pre-trial conference, the Family Court proceedings can be finalised by consent. The Registrar can pronounce orders in chambers if they are satisfied that the orders agreed between the parties are:

- [just and equitable in the case of financial matters](#); or

in the bests interest of the child or children in the case of parenting matters.

If agreement is not reached, the matter will proceed to trial.

The Registrar may make further procedural orders about what is to happen next. This may include:

An Order to place the matter in a Callover, which allows for the allocation of a trial date;

An Order to make a compulsory offer to settle; or

Other orders to ensure that the matter is ready to proceed to trial.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.