

Part 2 – New model of Dispute Resolution Conference

Preliminary Conferences have been renamed “Dispute Resolution Conferences” in section 65 of the Care Act. The purpose of a Dispute Resolution Conference (or DRC) is to provide parties with an opportunity to agree on the action that should be taken in the best interests of the child. If the parties can’t reach an agreement on the day, then they should identify areas in agreement, and issues in dispute. The purpose of this is to narrow the scope and length of any hearing.

DRCs will be different to Preliminary Conferences. The primary difference is that there is going to be a much stronger emphasis on the child’s family *directly participating* in the decision making process. Lawyers must therefore ensure that their client is properly prepared before coming to a conference, as they will be encouraged to speak up for themselves as much as possible.

Conferences will still be conducted by Children’s Registrars. They will continue to be held in courthouse accommodation, but will now be scheduled for two hours. As stated in the Practice Note, all parties are required to attend the conference in person, with the exception of the child. Where a party is in receipt of Legal Aid, their lawyer will be funded for one hour’s preparation before a DRC, and their attendance at the DRC at a pro rata rate.

DRCs will use a model of conciliation. Conciliation is a process in which the participants, with the assistance of the conciliator, identify the issues in dispute, develop options, consider alternatives, and endeavour to reach an agreement.

This means that the Children’s Registrar, as the conciliator, will have an advisory, rather than a determinative role. They will facilitate discussions on the different issues and options raised by the parties, and will be responsible for managing the process. They may also “reality test” any options that are generated, and can express views on what the Court could consider, and might order, should the matter go to hearing.

The conferences will follow a standard model of conciliation, which is based on the LEADR model of mediation.

The Children’s Registrar will contact all of the parties or their legal representative approximately one week prior to the scheduled conference. The purpose of this is to

sort out administrative matters, any issues that will influence how the conference will be conducted, and determine who will be in attendance at the conference. Lawyers should inform the Children's Registrar at this stage of any support people that their client wishes to bring on the day, or in the case of lawyers representing children, whether their client wishes to attend.

The DRC will start off with opening comments from the Children's Registrar. This opening statement will cover the purpose and process of the conference, the roles of the parties, and confidentiality. The Children's Registrar will also cover guidelines for how the conference will be conducted.

The second stage is the parties' opening comments. The Children's Registrar will invite each of the parties to state their goal at the conference. The Children's Registrar will encourage the parties to speak for themselves, acknowledging that some parties may find this difficult and may prefer to have their legal representative speak on their behalf.

After parties' opening comments, the Children's Registrar will then briefly summarise the main interests and concerns of the parties, and clarify issues where necessary. Next is the agenda setting phase. The Children's Registrar, along with the parties, will develop an agenda for the conference, including all key issues that parties raised in their opening statements, and from the documents filed.

The fifth phase, issues exploration, is a key phase in the conference. During this stage, the parties will work through each of the issues identified in the agenda. The Children's Registrar will encourage the parties to speak directly with each other. This stage is not limited to legal issues.

After each of the issues has been fully explored, the Children's Registrar may conduct private sessions with each of parties, meeting separately with a party and their lawyer. The purpose of a private session is to reflect on the issues discussed, work through some of the options put forward, generate new options as needed and to identify anything that a party may not have felt comfortable raising in front of the whole group. This is also a valuable opportunity for the Children's Registrar to reality test any options that a party puts forward, in light of the legislation and case law.

Private sessions will be conducted at the Children's Registrar's discretion. The Children's Registrar also has the discretion to invite more than one party to the

private session. If the Children's Registrar decides not to hold a private session with one party, then private sessions will not be conducted with other parties.

These private sessions are confidential, and what was discussed will not be revealed by the Children's Registrar to the wider group without the party's consent. After the private sessions, parties will come together again for negotiation. The Children's Registrar will facilitate direct negotiation between the parties, and assist the parties to explore options for settlement. This is where the group will consider the practicality and implications of the options put forward.

The Children's Registrar might also put forward any additional options at this stage. After the negotiation stage, the Children's Registrar may conduct additional private sessions if necessary. These sessions will be used to reflect on the options generated, and any issues still outstanding.

The last stage of the conference is "agreement and closure". The Children's Registrar will seek to clarify the agreement reached, and ensure that each of parties feels that the agreement is accurate, realistic, and appropriate to the child's best interests.

If an agreement is reached, one of the lawyers at the DRC will be nominated to draft the Minute of Care order. This will ideally be done on the day of the conference, and will be circulated to all parties present.

Any conciliated agreements that are reached during the conference will be presented to a Children's Magistrate for consideration and the making of orders, where the Magistrate agrees that the orders are in the child's best interests.

If no agreement is reached, the Children's Registrar will identify with the parties the areas that are still in dispute. The Children's Registrar may also give directions for the future conduct of the matter.

The Children's Registrar will notify the Court whether or not an agreement was reached. If an agreement was not reached the Children's Registrar will inform the Court of the nature of the issues that remain in dispute.

When the matter next comes before the Court, dates for hearing of the matter will be allocated if necessary.

DRCs are supported by a number of features. These include Practice Note Number 3, the recruitment of four additional Children's Registrars and one Senior Children's Registrar. Community Services has also recruited additional in-house lawyers, to take into account the fact that they must now be legally represented at all conferences.

Information on ADR has been provided to Children's Magistrates and Community Services caseworkers, and a number of workshops were held for lawyers throughout the State. A DVD and pamphlets have been developed for families, and will be mailed to all parties before the DRC, by the Conference Co-ordinator.

This brings us to the end of part two the podcast.

If you have any further questions, please contact the Department's Project Officer for Care and Protection, Shenuka Wraight, on 8688 7467.