



The Court Process

Once a family law matter has been referred to the Court for resolution there is a set process to follow. Most importantly, even if a matter is referred to the Court, it is still possible to resolve the dispute without having the Court impose a decision – the process is designed to afford opportunities for discussion, negotiation and resolution throughout and only a small amount of matters end up at a Final Hearing.

The steps involved in the court process are outlined in the diagram entitled “The Court Process”. Following is an overview of those steps and some of the important terms used.

Your family law specialist in the Hills District

First Return Date

When a family law matter is first referred for litigation, an Application to hear a matter is made to the Court. A First Return Date or Case Assessment Conference is then scheduled for a date which is usually about six weeks from the lodgement of the Application. At this First Return Date, the Court determines how the matter should proceed and makes directions about the future conduct of the case.

If one of the parties involved is seeking temporary Orders from the Court regarding parenting arrangements or property issues and what should happen in the time before final decisions are made, the Court can conduct an interim hearing. At this hearing the Court can make "Interim Orders" or instructions for the parties. In some cases, particularly if the matter is urgent, these Interim Orders can be made at the First Return Date, but usually a separate date will be set aside for the Court to determine what the Orders should be.

Child Dispute Conference

A Child Dispute Conference is an opportunity for separating parents to meet with a Family Consultant or Family Dispute Resolution Practitioner to discuss and resolve the issues they have in relation to parenting arrangements.

Attendance at a Child Dispute Conference is compulsory whenever children are involved, and the aim is to reach a decision regarding which parent the child/children will live with, how much time they will spend with the other parent, and who will be responsible for decisions concerning their health, welfare and education etc.

Generally speaking, the Family Consultant or FDRP is a psychologist, counsellor, or other accredited professional who specialises in helping families to resolve their disputes and in working with children. The parties' lawyers do not attend the mediation.

Once an agreement has been reached the Consultant prepares a memorandum to the Court which outlines whether an agreement has been reached, if there are any issues still in dispute, and what their recommendations are concerning the issues.

A Child Dispute Conference is usually held on the same day as the First Return Date or soon after (around two to four weeks later).

Conciliation Conference

A Conciliation Conference is a Mediation conducted by a Registrar, who is a Solicitor employed by the Court. The aim of the mediation is to assist parties to try and negotiate a mutually agreeable property settlement.

Attendance at the Conciliation Conference is compulsory and lawyers attend with the parties, although a lawyer may not necessarily be present for the whole of the settlement discussions.

At the conference, the Registrar will look at the case from both sides and help the parties to explore options for settling the case without any further Court dates.

A Registrar cannot give legal advice, however they can talk about the legal principles that are applied when deciding cases. The Registrar gives his or her independent assessment of what would be a reasonable settlement in an attempt to encourage the parties to settle the case. The settlement negotiations during the conference may be privileged which means that what is said during the conference cannot be used in court later.

A Conciliation Conference is usually held approximately three months after the First Return date.

If an Agreement is Reached

Many cases are settled during the Child Dispute Conference and Conciliation Conference stage. If an agreement is reached the Registrar can arrange for Terms of Settlement to be signed then make Consent Orders finalising the matter and no further Court intervention is required.

At Karen L Haga & Associates we work hard on your behalf to try and resolve the majority of issues at this stage, whilst protecting your interests. If no agreement is reached the Registrar may make procedural orders setting out what each party must do to prepare for the next stage of the case.

If an Agreement is Not Reached

If an agreement is not reached following a Child Dispute Conference or Conciliation Conference the matter is re-listed for a further mention and a Directions Hearing will be scheduled.



If one of the parties are seeking Interim Orders, if time permits, the Court can conduct an interim hearing and make interim orders on this date or an Interim Hearing date can be set for a separate day.

If an Application seeks only Final Orders, the Court will set a date for a Final Hearing and make directions about what steps each party needs to take before the Final Hearing date.

Sometimes the Court may order the appointment of a lawyer to represent the children (called an Independent Children's Lawyer). The matter will be listed on a further mention date following the appointment of the Independent Children's Lawyer.

Other times, the Court might appoint an expert to investigate and report on issues involving children. If the Court orders that a Family Report or Expert Report be prepared the Court will list the matter on a further mention date after the Report has been released to the parties.

Family Reports

Family Reports assist the Court in making decisions about the children and can be used as an aid to settle a matter. If a Family Report is ordered, a series of interviews can occur with the family both individually and with both parties present. Children are commonly interviewed separately and the Family Consultant may also interview other persons of significance in your child's life, such as grandparents or the new partner of one of the parties.

The information obtained by the Family Consultant will include the issues in dispute, the views and wishes of the children, past and current parenting arrangements and each party's availability for the future. The information that each of the parties and the children provide to the Family Consultant is not confidential and is admissible at future Court hearings. The Family Consultant will include all of the relevant information provided as well as their own observations and recommendations into a Report which is then provided to the Court, each of the parties and their lawyers.

It is important to note that cases can still be negotiated and settled at this point. For example, in some instances, once the Family Report has been prepared with the Consultant's recommendations the parties are able to use the recommendations to negotiate and reach an agreement.

If the matter is still not resolved after a Family Report has been prepared, the Court will set a date for a Final Hearing and make directions about what steps each party needs to take before the Final Hearing date (these directions are called Trial Directions).

In the Family Court, the Court is often unable to give Final Hearing dates straight away so the matter is placed in a list of matters awaiting final hearing dates and the dates are provided by the Court when available.

Shortly before the Final Hearing the Court will check that the Trial Directions have been complied with and will confirm the Final Hearing dates.

Final Hearing / Trial

It is very important to note that over 95% of contested cases are settled by agreement at one of the earlier stages in the process, without the necessity for a final hearing. Only the remaining 5% proceed to a Final Hearing where the parties and their witnesses are cross-examined by the opposing party's solicitor or barrister.

The Final Hearing usually occurs one to two years after the First Return date but can sometimes be many years after if there have been numerous attempts to settle and negotiate an agreement.

Judgment

If a case does proceed to a Final Hearing, the Court will sometimes give a Judgment immediately which outlines the Final Orders in a case. If not, the Court will reserve Judgment and the decision will be handed down at a later date. This can be up to twelve weeks (or longer) after the Final Hearing.

**For more information please contact
Karen L Haga & Associates on 02 9894 9133
or email: info@karenhagalawyers.com.au**



The Court Process

Once a family law matter has been referred to the Court for resolution there is a set process to follow. Most importantly, even if a matter is referred to the Court, it is still possible to resolve the dispute without having the Court impose a decision – the process is designed to afford opportunities for discussion, negotiation and resolution throughout and only a small amount of matters end up at a Final Hearing.

The steps involved in the court process are outlined in the diagram entitled “The Court Process”. Following is an overview of those steps and some of the important terms used.