

ALTERNATIVE DISPUTE RESOLUTION

Overview

The Supreme Court supports mediation as a method of alternative dispute resolution for civil proceedings. Litigants in any contested civil case (including appeals) can consider using mediation. Mediation is generally inapplicable for cases where no defendant contests the claim, applications for an uncontested grant of probate, adoption of children, winding-up of companies, proceeds of crime cases and for miscellaneous applications where only administrative processing is required. For other civil cases mediation is considered generally applicable, although individual cases may have circumstances that make mediation inadvisable or inappropriate.

During 2023, there was an estimated 4,784 civil cases finalised for which mediation would be considered generally applicable. This is an increase of 6% from the estimated 4,474 cases finalised during 2022.

The ‘mediation referral index’ is the total number of cases referred for mediation in the year, expressed as a percentage of the total number of finalisations of cases where mediation was considered to be generally applicable.²⁷ The mediation referral index in 2023 was 57.3%, an increase from 39.1% in 2022. The mediation referral index was at its highest rate on record in 2023.

The number of court-annexed mediation listings increased by 76%, from 235 in 2022 to 414 in 2023. Overall, the registry recorded a total number of 2,746 referrals to mediation (court-annexed or private), a 57% increase from the 2022 total of 1,751 referrals. It is likely that the total number of referrals does not accurately capture the use of private mediation, as it is not essential for litigants to obtain a formal referral for private mediation, nor to disclose to the Court that private mediation has occurred.²⁸

Court-annexed mediations are conducted by Supreme Court registrars who are additionally qualified as mediators. Of the 414 cases listed for court-annexed mediation during the year, 45 cases did not proceed to their allotted mediation session. Of the 369 cases that proceeded to a court-annexed mediation session, the settlement rate was 48%, a notable increase from the rate in 2022 (37%). The Court has a stringent convention for recording cases as “settled at mediation”: the parties must have agreed to finalising orders or have drafted heads of agreement by the close of the mediation procedure. In addition to the settled cases, a further 14% of cases were recorded as ‘still negotiating’ at the close of the mediation session, and many of those are likely to have settled subsequently.²⁹ The Court does not collect statistics on settlement rates for cases referred to private mediation.

²⁷ Prior to 2023, mediation referral index was determined by new filings rather than finalisations

²⁸ In cases where a referral order has not been made

²⁹ Statistics for the court-annexed mediations are collated independently of the JusticeLink system

	2019	2020	2021	2022	2023
Court-annexed mediations listed ³⁰					
Total	488	352	285	235	414
Common Law Division	32	29	31	33	39
Equity Division	187	156	149	121	127
Succession & Probate	268	167	104	79	248
Court of Appeal	1	0	1	2	0
Percentage settled at mediation	41%	42%	39%	37%	48%
Referrals to mediation					
Total referrals recorded ³¹	1,698	1,520	1,543	1,751	2,746
Mediation referral index	38.3%	33.8%	35.6%	39.1%	57.3%

³³ This excludes settlement conferences conducted by judges and mediations conducted externally to the court. The statistics refers to court-annexed mediation listings for the year – note that referrals to court-annexed mediation that are made late in one year may result in listings early in the following year

³⁴ Referrals include all cases in which a referral to mediation was made or directions were given that involved mediation, regardless of whether the mediation would be through the court-annexed mediation program or conducted by a private mediator. Extensive audits in 2023 has resulted in remediation of mediation statistics, retrospectively recording referrals that were previously overlooked.