



**Children's Court
Victoria**

**PRACTICE DIRECTION
NO. 6 OF 2020**

**FAMILY DIVISION – COVID-19 EMERGENCY PROTOCOL –
READINESS HEARINGS AND THE REINTRODUCTION OF
RESERVED SUBMISSIONS**

This Practice Direction is issued pursuant to Section 592 of the *Children, Youth and Families Act 2005*.

PREAMBLE

- A. This Practice Direction introduces further temporary measures necessitated by the COVID-19 pandemic for the management of proceedings in the Family Division of the Children's Court of Victoria (**the Court**) and is to be read in conjunction with Practice Direction No.1 of 2020 dated 23 March 2020.
- B. Practice Direction No.1 of 2020 made significant operational changes to the Family Division of the Court to ensure the health, safety and wellbeing of all Court users with effect from 24 March 2020. Since that date, non-urgent hearings have been adjourned for 12 weeks where the order placed a child in out-of-home care (**OHC**) or for 20 weeks where the order placed a child with a parent.
- C. Matters listed for a Directions Hearing, an interim accommodation order (**IAO**) contest or a final contested hearing have been adjourned for special

mention according to the timeframes provided for by Practice Direction No.1 of 2020.

- D. It is now appropriate to review the current arrangements with a view to increasing the capacity of the Court to finalise child protection matters through modified Court processes that are consistent with the advice of the Chief Health Officer.
- E. This Practice Direction applies to matters that were listed at Melbourne, Moorabbin or Broadmeadows Children's Court (including regional directions hearings and fixtures that are being case managed by Melbourne Children's Court) and that have been adjourned in accordance with Practice Direction No.1 of 2020.
- F. Pursuant to Section 215B of the *Children, Youth and Families Act 2005* (CYFA), the Court has broad powers to manage child protection proceedings, including the power to actively direct, control and manage proceedings, to narrow the issues in dispute, to deal with the matter where possible without requiring the parties to attend Court and to make appropriate use of technology such as video conferencing.
- G. In exercise of its powers under Section 215B of the CYFA, the Court intends to introduce Readiness Hearings. Readiness Hearings aim to explore the possible resolution of matters by incorporating the features of a First Directions Hearing and a pre-contest Directions Hearing as well as judicially led dispute resolution processes. If a matter does not resolve at a Readiness hearing, the Court will explore whether it is feasible to hear a contested IAO or final hearing, facilitated through audio visual link or otherwise, in a manner that meets the requirements of fairness and justice and is also consistent with the safety advice of the Chief Health Officer. Priority is likely to be given to 1-3 day hearings. The judicial officer conducting the

Readiness Hearing will not preside over the contested hearing unless they consider it appropriate to do so in the circumstances of the case and the parties do not object.

- H. This Practice Direction sets out the process by which a Readiness Hearing will be listed by the Court where a Directions Hearing, an IAO contest or a final contested hearing has been adjourned in accordance with Practice Direction No.1 of 2020 and the manner in which the Readiness Hearing will be conducted. It also sets out directions in relation to the reintroduction of reserved submissions.
- I. The question of whether a case is suitable to be dealt with remotely is a case management decision over which the Court will have a wide discretion, based on the ordinary principles of fairness, justice and the need to promote the best interests of the child.¹ As the situation is rapidly evolving, the circumstances that will impact on this decision are likely to differ, even from week to week. Accordingly, the question of whether a particular case can be heard remotely, or in a hybrid fashion, must be considered in light of the circumstances prevailing at the time, on a case-by-case basis.

DIRECTIONS

Listing of Readiness Hearings – on and after 16 June 2020

1. Where a Directions Hearing, an IAO contest or a final contest has been adjourned for special mention in accordance with Practice Direction No. 1 of 2020, the case will instead be listed for a Readiness Hearing on and after 16 June 2020. The parties will be provided with a listing notice for the Readiness Hearing by the Court at least fourteen (14) days prior to the listing.

¹ [See *Re A \(Children\)\(Remote Hearing: Care and Permanent Placement Orders\)*\[2020\] EWCA Civ 583](#)

2. Where a matter is listed for mention on or after 16 June 2020 and the matter has already had a conciliation conference or the Court otherwise considers the matter is not suitable for a conciliation conference, the case may be listed for a Readiness Hearing on a date to be fixed by the Court.
3. DHHS must file with the relevant registry and serve on the other parties:
 - (a) at least seven (7) days prior to the Readiness Hearing: any updated DHHS report [which must be in short-form (conciliation conference style) format] and any other report upon which DHHS proposes to rely; and
 - (b) at least four (4) days prior to the Readiness Hearing: a completed 'Readiness Certificate' in Form C6 prepared after consultation with the other parties.

Service on a party under this provision may be effected by serving the party or a legal representative of the party by email.

4. The parties will be required to file a [remote hearing appearance notice](#) with the relevant registry no later than three (3) days before the Readiness Hearing. The email address provided in that notice is used to send a hearing invitation to join the Readiness Hearing.
5. If the matter resolves prior to the listed Readiness Hearing or a Readiness Hearing is no longer required, the parties must advise the registry in writing immediately and must complete the electronic form "Consent/Unopposed Proposed Orders – Family Division" with the relevant registry. No attendance is required at that hearing unless advised otherwise by the Court.

Conduct of a Readiness Hearing

6. The parties, and where legally represented their legal representatives, will attend the Readiness Hearing by audio or audio-visual link unless otherwise directed by the Court. The child protection practitioner attending the Readiness Hearing must be authorised to make decisions in relation to the case.
7. For information about appearing by audio-visual link, the parties are directed to the [Fact Sheet for Online hearings](#) published on the [Children's Court website](#).
8. The parties are expected to have conferred prior to the Readiness Hearing to identify potential arrangements that will enable any ensuing contest to proceed in a manner consistent with the advice of the Chief Health Officer. Importantly, all parties attending a Readiness Hearing will be expected to be in a position to identify the issues in dispute in the case, not simply to argue for court time for a contested hearing.
9. In determining whether an IAO hearing or a final contested hearing can proceed by audio-visual link and/or otherwise, the Court will have regard to a number of factors in conducting the Readiness Hearing, including but not limited to:
 - the best interests of the child generally, including the impact of further delay on the best interests of the child;
 - the number of parties involved in the proceeding and whether it is appropriate or possible for one or more parties to appear by audio-visual link from another room within the Court facility or from an appropriate external location;

- whether the parties are legally represented and the ability of the legal representatives to obtain instructions prior to and during the hearing;
- whether the participation of a party or a witness in a modified court process poses a risk to their safety or that of any other person or is otherwise inappropriate having regard to their circumstances or capacity;
- the anticipated length and scope of the hearing;
- the issues in dispute, both factual and legal (if any);
- whether or not particular proposed witnesses are sufficiently relevant to the issues in dispute;
- whether the evidence of any or all of the witnesses could be dealt with ‘on the papers’, by witness statements or by an exchange of reports/documents;
- whether particular witnesses are required for cross-examination and if so, the number of witnesses required and whether it is appropriate or possible for their evidence to be given by audio-visual link;
- whether interpreters are required for any person involved in the hearing and whether suitable arrangements can be made to enable an interpreter to assist the person for the whole or part of the hearing;
- whether professional witnesses, including health professionals, are required to give evidence and the impact of the proceedings on their other professional obligations in respect of COVID-19;
- the size and configuration of the court room and the logistics of adopting appropriate social distancing practices during the hearing;
- whether written submissions ought to be made at the conclusion of the hearing; and
- whether any party is likely to be unfairly prejudiced by conducting the hearing in the manner proposed.

Outcome of a Readiness Hearing

10. If the matter resolves in a Readiness Hearing, at the conclusion of the hearing the Court will make the orders agreed upon by the parties if the Court considers they are in the best interests of the child.
11. If the matter does not resolve in a Readiness Hearing and the Court determines that an IAO hearing or final contested hearing can proceed safely, fairly and effectively at this time, the matter will be adjourned for an IAO contest or a final contested hearing on a date to be provided at the conclusion of the Readiness Hearing. The Court may give whatever directions it considers necessary for the safe, efficient and fair conduct of the hearing. No Directions Hearing will be held prior to the contest.
12. Where the Court determines that an IAO hearing or a final contested hearing cannot proceed safely or satisfactorily at this time, the matter will be listed for special mention on a date to be fixed in or after September 2020. The Court will review any matters listed for special mention in September 2020 and reschedule the matter earlier if practicable and the method of hearing is consistent with advice of the Chief Health Officer.

Reintroduction of reserved submissions on and after 16 June 2020

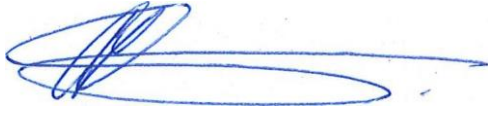
13. On and after 16 June 2020, in addition to the urgent hearings referred to in paragraphs 12 & 13 of Practice Direction No.1 of 2020, the Court will consider whether it is in the best interests of the child to adjourn for reserved submissions on a later date:
 - i. any application for an IAO; or
 - ii. any application for an urgent interim variation to a family reunification order.

14. Priority for reserved submissions will be given to the following categories:
- where the child is under 6 months of age;
 - where the child is under 2 years of age and has been subject to an order placing the child in OHC for less than six months;
 - where the child is placed in OHC and a family member or other person significant to the child may be a suitable carer;
 - where the child is Aboriginal or a Torres Strait Islander; or
 - where previously listed reserved submissions were vacated due to the operation of Practice Direction No. 1 of 2020.
15. For the duration of this COVID-19 emergency protocol, the Court will also consider whether it is in the best interests of the child to adjourn a matter for reserved submissions where there is a dispute regarding contact with the child and the issue is whether there is a suitable nominee to supervise contact.
16. The parties, and where legally represented their legal representatives, will attend the reserved submissions hearing by audio or audio-visual link unless otherwise directed by the Court.

General

17. The directions in Practice Direction No. 1 of 2020 about attending at the Children's Court (in paragraphs 2-8) and the Social Distancing Protocol at Court (in paragraphs 19-23) continue to apply.

This Practice Direction commences on 3 August 2020.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Judge Amanda Chambers

President

Children's Court of Victoria

31 July 2020

Form C6 Readiness Certificate

(IMPORTANT –This document is to be prepared by the Department of Health and Human Services [DHHS] after consultation with all other parties to the proceeding prior to the Readiness Hearing. It is expected that parties will have canvassed practical arrangements that might assist the conduct of the proceeding having regard to general government advice with regard to social distancing practices during the COVID-19 pandemic. Current social distancing practices include allowing for 1.5 metres spacing between each court participant and a total of four square metres of floor space per person within a court room.)

Case Nr(s):			
Case name:	DHHS v.		
DHHS	Worker/Team leader:		
	Office:		
Child 1:	Name:	Age:	Legal rep-ICL:
Child 2:	Name:	Age:	Legal rep-ICL:
Child 3:	Name:	Age:	Legal rep-ICL:
Child 4:	Name:	Age:	Legal rep-ICL:
<input type="checkbox"/> Are there additional children whose details are included on the last page?			
Mother:	Name:	Legal rep:	
Father:	Name:	Legal rep:	
Other party 1:	Name/Status:	Legal rep:	
Other party 2:	Name/Status:	Legal rep:	
Other party 3:	Name/Status:	Legal rep:	
<input type="checkbox"/> Are there any other parties whose details are included in the last page?			
Current order(s)/date(s):			
Children currently reside with:			
Date and place of the Readiness Hearing:	CHILDREN'S COURT / /		
How many parties will be involved in the Readiness Hearing?			

Have all material/evidence/ reports to be relied upon been filed and served and all material to be subpoenaed been released?	Yes	No (If no please specify when all material will be available?)	
What disposition is sought by DHHS?			
What disposition(s) are sought by the other parties?			
What issues (other than the ultimate dispositions) remain in dispute?			
Is any party/legal representative seeking to appear by audio-visual link or audio link, including a party in custody? If so, specify place and proposed method of appearance.			
Name of proposed witnesses	Witness required for cross-examination and estimated length of time.		Dates on which the witness is unavailable (including days and times)
1.	Yes / No	min/hr	
2.	Yes / No	min/hr	
3.	Yes / No	min/hr	
4.	Yes / No	min/hr	
5.	Yes / No	min/hr	
6.	Yes / No	min/hr	
7.	Yes / No	min/hr	
8.	Yes / No	min/hr	
9.	Yes / No	min/hr	
10.	Yes / No	min/hr	

<p>Do any witnesses have particular vulnerabilities due to age or pre-existing medical conditions?</p>			
<p>Is it appropriate/practical for any witness, including experts, to give evidence by audio-visual link or audio link? If so, specify any place of appearance and proposed method for each such witness.</p>			
<p>If an interpreter is required for a party or witness, what language and for whom? If so, can suitable arrangements be made to properly assist the conduct of the hearing?</p>			
<p>Does any party/witness seek to bring a support person to the hearing? If so, which party and which support person?</p>			
<p>Is it requested that another room within the court complex will also be used for the hearing?</p>	<p>YES</p>	<p>NO</p>	<p>If yes, has the availability of this room been discussed with the registrar?</p>
<p>Is there any evidence other than oral and documentary evidence that will be relied upon during the hearing (e.g. VARE or Record of interview)? If so, how is it proposed that the evidence to be tendered/ played?</p>			
<p>Are there any objections (and if so, what) to admissibility of evidence which, once determined, may shorten the hearing?</p>			
<p>Is there any negative impact on any persons involved in the case if the hearing is delayed due to Covid-19 concerns (e.g. stability of placement, health, including mental health & wellbeing of the child/ren and/or parents). If so, give details of the negative impact.</p>			
<p>Is a party likely to be unfairly prejudiced by conducting the hearing in the manner proposed? If so, give details of the prejudice.</p>			

