



**Children's Court
Victoria**

**PRACTICE DIRECTION
NO. 14 OF 2020**

**FAMILY DIVISION – CHILD PROTECTION PROCEEDINGS –
COVID-19 EMERGENCY PROTOCOL
READINESS HEARINGS**

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

PREAMBLE

- A. This Practice Direction introduces further measures necessitated by the COVID-19 pandemic for the management of child protection proceedings in the Family Division of the Children's Court of Victoria (**the Court**). This Practice Direction revokes Practice Direction No. 6 of 2020.
- B. This Practice Direction is to be read in conjunction with Practice Direction No. 15 of 2020.
- C. This Practice Direction applies at Melbourne Children's Court with effect from **23 November 2020** and at all other venues of the Children's Court from **7 December 2020**.
- D. 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.

- E. In exercise of its powers under Section 215B of the CYFA, the Court intends to continue the operation of 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 processes¹.
- F. 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, conducted by 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 for fully remote 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.
- G. 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.² As the situation is continuously 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.

¹ No evidence of anything said or done in a Readiness Hearing will be admissible in a subsequent hearing unless the Court otherwise directs.

² [See *Re A \(Children\)\(Remote Hearing: Care and Permanent Placement Orders\)*\[2020\] EWCA Civ 583](#)

DIRECTIONS

Listing of a Readiness Hearing

1. Where a child protection proceeding is listed for a Readiness Hearing, the following directions will apply.

2. 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 or other means of electronic communication.

3. The parties are required to file a [Remote Hearing Appearance Form](#) 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.

4. 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 complete the proposed consent or unopposed minutes and file them electronically with the relevant registry. Unless otherwise advised

by the Court, no appearance will be required by the parties at the online hearing.

Conduct of a Readiness Hearing

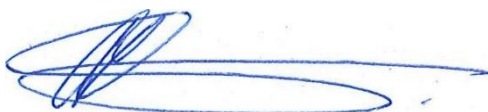
5. The parties, and where legally represented their legal representatives, will attend the Readiness Hearing by audio or audio-visual link unless otherwise directed by the Court. The child protection practitioner attending the Readiness Hearing must be authorised to make decisions in relation to the case.
6. 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.
7. 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

8. 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 where the Court considers they are in the best interests of the child.
9. 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, fair and effective conduct of the hearing. No Directions Hearing will be held prior to the contest.
10. 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 February 2021 unless the Court adjourns it for some other purpose. The Court will review any matters listed for special mention from February 2021 and reschedule the matter earlier if practicable and the method of hearing is consistent with advice of the Chief Health Officer.

This Practice Direction commences on 23 November 2020.



Judge Amanda Chambers
President
Children's Court of Victoria
18 November 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	

Do any witnesses have particular vulnerabilities due to age or pre-existing medical conditions?			
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.			
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?			
Does any party/witness seek to bring a support person to the hearing? If so, which party and which support person?			
Is it requested that another room within the court complex will also be used for the hearing?	YES	NO	If yes, has the availability of this room been discussed with the registrar?
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?			
Are there any objections (and if so, what) to admissibility of evidence which, once determined, may shorten the hearing?			
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.			
Is a party likely to be unfairly prejudiced by conducting the hearing in the manner proposed? If so, give details of the prejudice.			

