



Children's Court  
Victoria

## **PRACTICE DIRECTION**

**NO. 6 of 2021**

### **FAMILY DIVISION – CHILD PROTECTION PROCEEDINGS**

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

1. All persons who attend court buildings must comply with any direction:
  - a) of the Chief Health Officer;
  - b) pursuant to the *Court Security Act 1980*; and
  - c) of the Court.
  
2. The following Practice Directions are revoked:
  - a) 1 of 2021
  - b) 10, 14 and 15 of 2020
  - c) 3 of 2018
  - d) 1 of 2017
  - e) 2, 3, 4 and 6 of 2015
  - f) 1, 2, 3 and 6 of 2014
  - g) 4 and 5 of 2013

- h) 2 and 3 of 2012; and
- i) 2, 3, 4, 5 and 6 of 2006.

3. This Practice Direction applies to Family Division child protection proceedings with effect from **12 July 2021.**

## **MANAGEMENT OF FAMILY DIVISION CHILD PROTECTION PROCEEDINGS**

4. The case management of any proceeding before the Court will be conducted with as much expedition as the requirements of the Act and a proper hearing of the proceeding permit<sup>1</sup> and adjournments will not be granted without proper reason<sup>2</sup>. Further, in determining whether to grant an adjournment of a proceeding the Court will consider whether:

- a) it is in the best interests of the child to do so; or
- b) there is some other cogent or substantial reason to do so<sup>3</sup>.

5. Where an application is adjourned, the Department of Fairness, Families and Housing (DFFH) is directed to complete and file electronically a [Record of Adjournment Form](#) together with the proposed minutes.

6. Unless the Court otherwise directs, cases will be managed wherever practicable by the same Judicial Officer.

7. All initiating documents/applications, Court Reports and other relevant documentation must be filed electronically with the relevant [Children's Court Registry](#).

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<sup>1</sup> Children, Youth and Families Act 2005 s 530(8).

<sup>2</sup> Children, Youth and Families Act 2005 s 530(9).

<sup>3</sup> Children, Youth and Families Act 2005 s 530(10).

8. All protection applications<sup>4</sup> filed with the Children’s Court must be accompanied by a [Protection Application Information Form](#) and, if an Application by Emergency Care, the Form B and any CRIS notes relevant to the Application.
9. The parties must confer between all Court events and be able to address the Court on matters that remain in dispute.
10. Unless otherwise directed by the Court, in all cases Minutes of Order are to be filed electronically with the relevant registry no later than 30 minutes following the Court making the Order. If Minutes of Order are not filed within 30 minutes, the matter may be adjourned to the following day and any existing Orders will be extended on terms and conditions deemed appropriate by the Court. The DFFH is responsible for the filing of the Minutes of Orders<sup>5</sup>.
11. As a result of the current COVID pandemic or other urgent circumstances, the Online Children’s Court (OCC) may be utilised for the hearing of cases.
12. The question of whether a case is suitable to be dealt with in the OCC 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.<sup>6</sup>
13. At the Children’s Court of Victoria sitting at Melbourne, Broadmeadows and Moorabbin, unless otherwise directed by the Court, the following hearing types will be listed in the OCC until further notice-
  - a) Emergency Care Applications;
  - b) Reserved Submissions;
  - c) Conciliation Conferences;
  - d) Readiness Hearings;
  - e) Special Mentions;
  - f) Release of Children’s Court Clinic Report(s); and
  - g) Applications for the release of subpoenaed material-

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<sup>4</sup> This includes breaches and extensions of Orders.

<sup>5</sup> And in doing so, to avoid duplication, the parties are not to copy the Court into the exchange of emails.

<sup>6</sup> See [Re A \(Children\)\(Remote Hearing: Care and Permanent Placement Orders\)\[2020\] EWCA Civ 583](#).

and, unless otherwise directed by the Court, the following hearing types will be listed in a Court room-

- h) Mentions;
- i) Interim Accommodation Order Contested Hearings; and
- j) Final Hearings.

14. At all remaining Children's Court of Victoria locations,<sup>7</sup> unless otherwise directed by the Court, the following hearing types will be listed in the OCC-

- a) Conciliation Conferences; and
- b) Readiness Hearings.

All other hearing types will be listed in accordance with local directions.

## **CHILD PROTECTION PRACTITIONERS**

15. A DFFH child protection practitioner, or a delegate under s.18 of the Act, with responsibility for the application and with the authorisation to make decisions in relation to the case, must attend every hearing. This includes, but is not limited to, Mentions, Conciliation Conferences, Contested Interim Accommodation Order Contests, Readiness or Direction Hearings and Final Hearings.

## **LEGAL PRACTITIONERS**

16. Legal practitioners must notify the Court of their appearance by 3pm on the day prior to the listing other than for the first listing of emergency care applications, in which case the Court must be notified as soon as possible.

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<sup>7</sup> Other than those referred to in paragraph 13.

17. In all cases appearances must be filed by electronic communication with the relevant Children's Court Registry.
18. Upon ceasing to act, legal practitioners must immediately notify the relevant Children's Court Registry and all other parties or, if represented, their legal practitioner.
19. Legal practitioners must ensure that if they are appearing in 2 or more matters on the one day that those matters are not listed at the same time. It is expected that all matters will proceed at the time listed by the Court and that the legal practitioners must be ready to proceed when the matter is called.

#### **ADULT PARTY IN CUSTODY**

20. Unless otherwise directed by the Court, where an adult party to a child protection application is in custody, their appearance is to be by audio visual link. If the adult party is represented, the legal practitioner is to make the appropriate arrangements for the appearance. In any other case DFFH is to do so with the relevant [Children's Court Registry](#).
21. For all hearings, other than emergency care applications, the arrangements referred to in paragraph 20 are to be made no less than 5 working days before the return date and in the event a party is remanded less than 5 working days prior to the return date, as soon as DFFH is aware of that situation.

#### **DIGITAL RECORDINGS**

22. An application for a copy of a digital recording of a proceeding is to be made by filing a [Request for Copy of Audio Recording Form](#) with the relevant [Children's Court Registry](#).
23. The Judicial Officer who presided over the proceeding will determine whether the recording may be released in whole or in part.

24. If the presiding Judicial Officer is not available to provide such authorisation, the application will, in the event of a Children's Court of Victoria case heard at either Melbourne, Broadmeadows or Moorabbin or at any other Court venue where a Magistrate assigned to the Children's Court presided, be referred to the President of the Children's Court for determination. In the event of a case heard at another Court, the application will be referred to the relevant Regional Coordinating Magistrate for determination.

## **INTERSTATE CHILD PROTECTION ORDERS**

25. A copy of any child protection Order transferred to Victoria under an interstate law<sup>8</sup>, must be filed for registration by the Secretary of the DFFH at the Children's Court of Victoria, Melbourne Registry.

## **CHILDREN'S COURT CLINIC**

26. Upon the Children's Court requesting the Children's Court Clinic to provide a report, assessments will be conducted either in person, remotely by Telehealth or by other non-contact means as are required to facilitate the preparation and provision of the report.

## **LISTING AND HEARING OF CASES**

27. The following proceedings will generally be heard on the same day the application is filed-

- a) Protection Application by Emergency Care;
- b) Breach by Emergency Care;
- c) Application for a new Interim Accommodation Order due to a proposed placement change; or
- d) Application for an urgent interim variation of a Family Reunification Order-

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<sup>8</sup> Schedule 1, Part 4, Clause 1 *Children, Youth and Families Act 2005*.

provided the application is filed by 1pm and is ready to proceed no later than 3pm.

28. A proceeding where a child is proposed to be admitted to, or discharged from, a declared hospital or is proposed to be placed on an Interim Accommodation Order to a secure welfare service, will be heard on the same day provided the application is filed by 2pm, and is ready to proceed no later than 3pm.

29. The following matters may be adjourned and listed for reserved submissions:

- a) an Application for an Interim Accommodation Order where the issue in dispute relates to placement of the child and/or a dispute about contact between a child and parent/s where it arises from the placement decision<sup>9</sup>;
- b) an Application for a new Interim Accommodation Order due to a proposed placement change;
- c) an Application for an urgent interim variation of a Family Reunification Order; or
- d) any other matter the Court considers appropriate.

30. A party seeking an Order for the release of CRIS notes or updated CRIS notes or any other document(s)<sup>10</sup>, must do so as soon as practicable prior to the submissions hearing. In the case of reserved submissions, the party seeking access to the CRIS notes should make an application for the release or retention of the CRIS notes when the matter is being adjourned for Reserved Submissions. Updated CRIS notes must be provided by DFFH to the parties or their legal representatives by midday of the Court working day preceding the Reserved Submissions.

31. At the conclusion of the hearing, all electronic copies of the CRIS notes and other documents must be permanently deleted, and any hard copies returned to the legal representative of DFFH, unless the Court otherwise orders.

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<sup>9</sup> For example, where an Interim Accommodation Order places a child with a member of the paternal family and the dispute that arises from the placement decision is contact between the child and the mother.

<sup>10</sup> Properly redacted.

32. Unless otherwise directed by the Court, all protection applications issued by notice and any other application not referred to in paragraphs 27 and 28, will be listed for a first return date within 4 weeks. DFFH must file an affidavit of service upon the Application being filed.
33. DFFH must file and serve a protection report and recommendation report in support of any applications referred to in paragraph 32 no later than 7 days prior to the first return date.

### **CONCILIATION CONFERENCES**

34. The Court may adjourn a matter to a Conciliation Conference<sup>11</sup> under s. 217(1) of the Act.
35. Pursuant to s.220 of the Act, the Court will issue [Guidelines](#) from time to time, directing how Conciliation Conferences are to be conducted.
36. At the conclusion of the Conciliation Conference, the matter will be listed for a post Conciliation Conference mention on the same day, or on the next available Family Division sitting day, to be conducted in accordance with the hearing procedures set out herein unless otherwise directed by the Court.
37. Proposed Minutes of Order must be filed by DFFH within 30 minutes of the conclusion of the Conciliation Conference.
38. At the post Conciliation Conference mention, the Court may make any order it deems appropriate including, but not limited to:
- a) making the orders agreed to by the parties; or
  - b) listing the matter for a Readiness Hearing; or
  - c) listing the matter for a Contested Hearing.

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<sup>11</sup> Part 4.7, Division 2 – Conciliation Conference *Children, Youth and Families Act 2005*.



## READINESS HEARINGS

39. Readiness Hearings incorporate features of case management as well as judicially led dispute resolution processes.
40. Unless the Court directs otherwise, no evidence of anything said or done in a Readiness Hearing will be admissible in any subsequent hearing.
41. At least 7 days prior to the listing of the Readiness Hearing DFFH must file with the relevant [Children's Court Registry](#) and serve on all parties:
- a) an updated DFFH report which must be in short-form (Conciliation Conference style) format; and
  - b) any other new report upon which DFFH proposes to rely; and
  - c) at least 4 days prior to the Readiness Hearing: a completed '[Readiness Certificate](#)' in Form C6 prepared after consultation with the other parties.
42. All parties are required to file a [Remote Hearing Appearance Form](#) with the relevant registry no later than 7 days before the Readiness Hearing which includes the phone number and email address for all parties and practitioners. The email address provided in that Notice is used to send a hearing invitation to join the Readiness Hearing. It is expected that practitioners and parties will appear by audio visual link and only if parties do not have the necessary technology will they be permitted to appear by audio link only.
43. If the matter resolves prior to the listed Readiness Hearing or the parties consider that the Readiness Hearing is no longer required, the parties must immediately advise the relevant registry in writing and complete the proposed consent or unopposed minutes and file them electronically with the relevant [Children's Court Registry](#) for consideration by a Judicial Officer. The parties will be advised as to whether the order has been made or the matter has been adjourned for mention.

44. The legal practitioners for the parties (including Counsel or Solicitor for DFFH) are required to have obtained their client's updated instructions prior to the Readiness Hearing. All parties, including those parties appearing on their own behalf, are expected to have conferred prior to the Readiness Hearing and are required to be able to identify the issues in dispute in the case and the relevant witnesses to be called if the matter is to be listed for a Final Contested Hearing.
45. If the matter does not resolve at the Readiness Hearing the matter will be adjourned on such terms and conditions as ordered by the Court. In the event the matter is listed for a final contested hearing, procedural orders will be made<sup>12</sup> and a witness list will be drafted with the input of all parties.

## **WITNESS SUMMONS TO PRODUCE**

46. A party issuing a witness summons to produce<sup>13</sup>, must request that a copy of any document be provided in an electronic form that complies with Rule 9B(2)(b)<sup>2</sup> of the Rules<sup>14</sup>, unless it is impracticable to do so.
47. An addressee (recipient) of a witness summons to produce must produce a copy of the document or thing identified in the witness summons in an electronic form that complies with Rule 9B(2)(b) of the Rules<sup>15</sup> and produce the document or thing by electronic communication to the relevant [Children's Court Registry](#) unless it is impracticable to do so.
48. A witness summons to produce must be returnable no less than 7 days before the next hearing date. A Judicial Officer will make a determination as to the release of the material produced in response to the subpoena or any other issue raised in respect to the subpoena.
49. The legal representatives for the parties may request to view the subpoenaed material that was provided to the Court electronically by completing and signing

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<sup>12</sup> See [Readiness Hearings Procedural Directions](#).

<sup>13</sup> Including a witness summons to produce and to give evidence.

<sup>14</sup> *Children, Youth and Families (Children's Court Family Division) Rules 2017*.

<sup>15</sup> Rule 9B(2)(b) of the Rules provides that a copy of a document may be in an electronic form in any of the following formats: (i) .doc and .docx—Microsoft Word documents; (ii) .pdf—Adobe Acrobat documents; (iii) .xls and .xlsx—Microsoft Excel spreadsheets; (iv) .jpg—image files; (v) .rtf—rich text format; (vi) .gif—graphics interchange format.

the Form [Request to Inspect Subpoenaed Material Electronically](#). In signing the request, the legal representative undertakes that they will not copy, print or cause to be distributed any document or thing to which they are granted electronic access, unless otherwise permitted by the Court and save for the purpose of being used in a hearing.

50. Parties who are not legally represented must contact the relevant [Children's Court Registry](#) to make an appointment to inspect the subpoenaed material unless the Court otherwise permits the party to view the relevant subpoenaed material remotely.

### **MARRAM-NGALA GANBU (KOORI FAMILY HEARING DAY)<sup>16</sup>**

51. The following paragraphs 52 to 57 apply at the Children's Court of Victoria sitting at Broadmeadows and Shepparton.

52. Where a [Protection Application Information Form](#)<sup>17</sup> identifies a child as Aboriginal and/or Torres Strait Islander or where a child is subsequently identified as Aboriginal and/or Torres Strait Islander the protection application will be listed before a Judicial Officer on the Koori Family Hearing Day.<sup>18</sup>

53. The Koori Services Coordinator (KSC) will be responsible for co-ordination of the Koori Family Hearing Day. The KSC will be the contact point for Koori children and their families and will provide information and referrals to relevant services in collaboration with child protection, including culturally appropriate support programs and legal services. The KSC aims to assist Koori children and families to participate fully in culturally appropriate Court processes.

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<sup>16</sup> The Wurundjeri Tribe, Land & Compensation Cultural Heritage Council Inc. has provided the name *Marram-Ngala Ganbu* as an appropriate name for the Koori Family Hearing Day. *Marram-Ngala Ganbu* means **We are One** in Woivurrung language. The Children's Court acknowledges the Wurundjeri people for allowing the use of Woivurrung language.

<sup>17</sup> As updated from time to time.

<sup>18</sup> First listings of all protection applications by emergency care will remain in the general Family Division list. Subsequent listings will be adjourned to the Marram-Ngala Ganbu hearing list.

54. Subject to the direction of the presiding Judicial Officer, participants in the Koori Family Hearing Day will include the parties and their legal representatives, the case worker, a Lakidjeka/ACSASS<sup>19</sup> worker and, where appropriate, the KSC and representatives from service providers utilised by the child or family.
55. Subject to the direction of the presiding Judicial Officer, proceedings in the Koori Family Hearing Day will be conducted at the bar table where all participants are seated.
56. Where possible, child protection applications heard in the Koori Family Hearing Day will be listed before the same Judicial Officer.
57. Where an application is referred for a Conciliation Conference under s. 217 of the Act, a Conciliation Conference will be conducted, where possible on a Koori Family Hearing Day by a Koori convener appointed under s. 227 of the Act.



**Judge Jack Vandersteen**  
President  
Children's Court of Victoria  
5 July 2021

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<sup>19</sup> The Lakidjeka Aboriginal Child Specialist Advice and Support Service (ACSASS) program provides culturally appropriate advice and consultation on decisions that determine the future of at-risk Aboriginal children.