



Children's Court Victoria

PRACTICE DIRECTION

No. 1 of 2023

This Practice Direction is issued pursuant to section 592 of the *Children, Youth and Families Act 2005* (the Act). It revokes and replaces Practice Direction No. 2 of 2022 dated 2 September 2022 and applies with effect from **20 March 2023** to the following proceedings in the Family Division:

- child protection proceedings; and
- proceedings under the *Terrorism (Community Protection) Act 2003*.

MANAGEMENT OF CHILD PROTECTION PROCEEDINGS

1. The case management of any child protection proceeding before the Court will be conducted with as much expedition as the requirements of the Act and a proper hearing of the proceeding permit¹ and adjournments will not be granted without proper reason². 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 so³.
2. 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.

¹ *Children, Youth and Families Act 2005* s 530(8).

² *Children, Youth and Families Act 2005* s 530(9).

³ *Children, Youth and Families Act 2005* s 530(10).

3. Unless the Court otherwise directs, cases will be managed wherever practicable by the same Judicial Officer.
4. All initiating documents/applications, Court Reports and other relevant documentation in child protection proceedings must be filed electronically with the relevant [Children's Court Registry](#).
5. All protection applications (including breaches and extensions of orders) 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.
6. The parties must confer between all Court events and be able to address the Court on matters that remain in dispute.
7. 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 Orders⁴.
8. Cases may be heard online or in person.
9. The question of whether a case is suitable to be heard online 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.⁵
10. At the Children's Court of Victoria sitting at Melbourne, Broadmeadows and Moorabbin, unless otherwise directed by the Court, all hearing types will be heard in person and require physical attendance by the legal representatives and parties at Court, except for Readiness Hearings which will be heard online.
11. At all remaining Children's Court of Victoria locations, hearings will be listed in accordance with local directions except for Readiness Hearings which will be heard online state-wide.

⁴ And in doing so, to avoid duplication, the parties are not to copy the Court into the exchange of emails.

⁵ See *Re A (Children)(Remote Hearing: Care and Permanent Placement Orders)[2020] EWCA Civ 583*.

CHILD PROTECTION PRACTITIONERS

12. A DFFH child protection practitioner, or a person authorised 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

13. 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.
14. In all cases appearances must be filed by electronic communication with the relevant Children's Court Registry.
15. 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. In the event that a legal practitioner seeks to cease to act within 7 days of the listing of a final contested hearing leave must be sought from the Court to do so.
16. 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.
17. If a party attends court their legal practitioner must also attend, unless otherwise directed by the Court.

ADULT PARTY TO CHILD PROTECTION APPLICATION IN CUSTODY

18. 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](#).

19. For all hearings, other than emergency care applications, the arrangements referred to in paragraph 18 are to be made no less than 5 working days before the return date but in the event a party is remanded less than 5 working days prior to the return date, as soon as the legal representative or DFFH (as the case may be) is aware of that situation.

DIGITAL RECORDINGS

20. 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](#).

INTERSTATE CHILD PROTECTION ORDERS

21. A copy of any child protection Order transferred to Victoria under an interstate law⁶, must be filed for registration by the Secretary of the DFFH at the Children's Court of Victoria, Melbourne Registry.

CHILDREN'S COURT CLINIC

22. 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 CHILD PROTECTION CASES

23. 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-
- provided the application is filed by 1pm and is ready to proceed no later than 3pm.

⁶ Schedule 1, Part 4, Clause 1 *Children, Youth and Families Act 2005*.

24. 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.
25. 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 decision⁷;
 - 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.
26. A party seeking an Order for the release of CRIS notes or updated CRIS notes or any other document(s)⁸, 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.
27. 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.
28. Unless otherwise directed by the Court, all protection applications issued by notice and any other application not referred to in paragraphs 23 and 24, will be listed for a first return date within 4 weeks. DFFH must file an affidavit of service upon the Application being filed.
29. DFFH must file and serve a protection report and recommendation report in support of any applications referred to in paragraph 28 no later than 7 days prior to the first return date.

⁷ 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.

⁸ Properly redacted.

CONCILIATION CONFERENCES

30. The Court may adjourn a child protection matter to a Conciliation Conference⁹ under s. 217(1) of the Act.
31. Conciliation Conferences may be heard online or in person.
32. Pursuant to s.220 of the Act, the Court will issue [Guidelines](#) from time to time, directing how Conciliation Conferences are to be conducted.
33. 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.
34. Proposed Minutes of Order must be filed by DFFH within 30 minutes of the conclusion of the Conciliation Conference.
35. 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.

READINESS HEARINGS

36. Readiness Hearings incorporate features of case management as well as judicially led dispute resolution processes.
37. Unless the Court directs otherwise, no evidence of anything said or done in a Readiness Hearing will be admissible in any subsequent hearing.
38. 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:

⁹ Part 4.7, Division 2 – Conciliation Conference *Children, Youth and Families Act 2005*.

- 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.
39. 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.
40. If the matter resolves prior to the listed Readiness Hearing 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 the orders made.¹⁰
41. 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.
42. 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.¹¹
43. In the event the matter is listed for a final contested hearing, procedural orders will be made and a witness list will be drafted with the input of all parties. Where the final contested hearing date is more than 3 months after the Readiness Hearing, a directions hearing may be listed not less than 6 weeks prior to the contest hearing date.

¹⁰ This may include adjourning the matter if the Judicial Officer considers that the proposed consent or unopposed orders may not be in the best interests of the child.

¹¹ For example, the Court may list the matter for special mention if it is of the view that further time is required to assist the matter to resolve.

WITNESS SUMMONS TO PRODUCE

44. A party issuing a witness summons to produce¹² must request that a copy of any document be provided in an electronic form that complies with Rule 9B(2)(b) of the Rules¹³, unless it is impracticable to do so. Unless otherwise ordered, the return date of the summons to produce is to be no less than 14 days before the next hearing date.
45. The issuing party must file with the Court as soon as practicable after service upon the producing party:
- a. an affidavit or declaration of service upon the producing party; and
 - b. confirmation that all legal practitioners for the parties to the proceedings and any parties who are self-represented have been provided a copy of the issued subpoena.
46. 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 Rules¹⁴ and produce the document or thing by electronic communication to the relevant [Children's Court Registry](#) unless it is impracticable to do so.
47. In the event an objection is taken to material being produced and/or inspected, the matter will be listed before the Court for determination.¹⁵
48. Where there is no objection to the production and/or inspection of material produced, legal representatives for the parties may request to inspect the material by completing and signing 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.

¹² Including a witness summons to produce and to give evidence.

¹³ *Children, Youth and Families (Children's Court Family Division) Rules 2017*.

¹⁴ 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.

¹⁵ See *Children, Youth and Families (Children's Court Family Division) Rules 2017* Rule 9E(2) & (3) in relation to objections relating to hospital or medical file or record concerning another party or another party's medical condition.

49. The inspection of subpoenaed material by a party not legally represented is to occur only with the leave of the Court. If leave is granted, the party must contact the relevant [Children's Court Registry](#) to make an appointment to inspect the subpoenaed material, unless the Court has otherwise ordered that the party may view the relevant subpoenaed material remotely.

MARRAM-NGALA GANBU (KOORI FAMILY HEARING DAY)¹⁶

50. Paragraphs 51 to 56 apply at the Children's Court of Victoria sitting at Broadmeadows and Shepparton.
51. Where a [Protection Application Information Form](#)¹⁷ 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.¹⁸
52. 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.
53. 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/ACSASS¹⁹ worker and, where appropriate, the KSC and representatives from service providers utilised by the child or family.
54. 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.

¹⁶ 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 Woiwurrung language. The Children's Court acknowledges the Wurundjeri people for allowing the use of Woiwurrung language.

¹⁷ As updated from time to time.

¹⁸ 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.

¹⁹ 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.

55. Where possible, child protection applications heard in the Koori Family Hearing Day will be listed before the same Judicial Officer.
56. 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.

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SUPPORT AND ENGAGEMENT ORDERS

57. Matters pursuant to the *Terrorism (Community Protection) Act 2003* are to be listed in the Family Division at the Children's Court of Victoria sitting at Melbourne.²⁰ Physical attendance by the legal representatives and parties are required unless otherwise directed by the Court.
58. An application to make²¹, vary or revoke²², or extend²³ a Support and Engagement Order pursuant to the *Terrorism (Community Protection) Act 2003* (SEO) must be in the relevant Form and, together with any supporting documentation, is to be electronically filed with the Melbourne Court Registry at melbournecoordinator@courts.vic.gov.au.
59. If an application has been made for a Counter-Terrorism Intelligence Protection Order (CTIPO), the Court may adjourn the SEO hearing until the CTIPO application has been determined.
60. An application to make an SEO will be listed before the Court for a mention no later than 2 working days from the date of filing. An application to vary, revoke or extend an SEO will be listed before the Court for a mention no later than 10 working days from the date of filing.
61. The first listing date of a Review Hearing²⁴ will be at the direction of the presiding judicial officer.
62. An Inability to Serve²⁵ and an Additional Notice for Children²⁶ must be in Form 6 and Form 7 respectively.
63. An application for Permission to Publish²⁷ must be in Form 8.

This Practice Direction commences on 20 March 2022.



Judge Jack Vandersteen

President

Children's Court of Victoria

14 March 2023

²⁰ Matters pursuant to the *Terrorism (Community Protection) Act 2003* will only be heard at Melbourne.

²¹ *Terrorism (Community Protection) Act 2003*, s 22CK & 22CL – (Application for SEO) - Form 1.

²² *Terrorism (Community Protection) Act 2003*, s 22DB & 22DS – (Application to vary or revoke an SEO) - Form 2.

²³ *Terrorism (Community Protection) Act 2003*, s 22DI - (Application to extend an SEO) - Form 3.

²⁴ *Terrorism (Community Protection) Act 2003*, s 22CW.

²⁵ *Terrorism (Community Protection) Act 2003*, s 22EA.

²⁶ *Terrorism (Community Protection) Act 2003*, s 22DZ.

²⁷ *Terrorism (Community Protection) Act 2003*, s 22EE.