

Children's Court of Victoria Listing Protocols



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CHILDREN’S COURT OF VICTORIA

LISTING PROTOCOLS

Table of Contents

1	Listing Protocols	3
	1.1 Purpose	4
	1.2 Therapeutic Jurisprudence/Restorative Justice.....	5
	1.3 Court Hours.....	5
2	Criminal Division	6
	2.1 Procedural Matters	6
	2.2 Summary Proceedings.....	8
	2.3 Bail Applications	10
	2.4 Committal Proceedings	11
	2.5 Sex Offences List.....	11
	2.6 Koori Court List	12
	2.7 CAYPINS Hearings.....	12
3	Family Violence, Stalking and Family Law	13
	3.1 Proper Venue	13
	3.2 Designated listing days.....	13
	3.3 Timeframes for applications.....	13
4	Family Division	15
	4.1 Timeframes for applications.....	15
	4.2 Procedural Matters	15
	4.3 Protection Applications.....	16
	4.4 Conferences	17
	4.5 Listing Types	18

1. Listing Protocols

1.1 Purpose

To list cases within specified timeframes and to achieve:

- Consistency of practice within the Children's Court
- Standardisation of coordination procedures throughout the State
- Timely hearing and disposal of cases
- Flexible listings
- Reduction of waiting times at Court
- Improved safety and security at Courts

Although the general principles applicable to listings are principles that apply statewide, there are some policies included in this document that are specific to the Melbourne Children's Court. These protocols will clearly state when a particular policy is Melbourne specific.

These protocols are established to support the purposes of the *Children, Youth and Families Act 2005*, *Magistrates' Court Act 1989*, *Criminal Procedure Act 2009* and the *Children's Court Criminal Procedure Rules 2009*.

These protocols apply to cases heard by the President of the Children's Court, Magistrates and Reserve Magistrates.

Background

Children, Youth and Families Act 2005

The main purposes of this Act are

- (a) To provide for community services to support children and families
- (b) To provide for the protection of children
- (c) To make provision in relation to children who have been charged with, or who have been found guilty of offences
- (d) To continue the Children's Court of Victoria as a specialist court dealing with matters relating to children.

Section 10 of the Act provides that in relation to the Family Division, that the best interests of the child must be paramount.

The Court has the following Divisions

- (a) The Criminal Division
- (b) The Family Division
- (c) The Koori Court (Criminal Division)

Section 528(1) of the *Children, Youth and Families Act 2005* states that the Court has and may exercise in relation to all matters over which it has jurisdiction all the powers and authorities that the Magistrates' Court has in relation to the matters over which it has jurisdiction.

Section 136 of the Magistrates' Court Act 1989 provides the court with the power to control its proceedings.

Section 530 of the *Children, Youth and Families Act 2005* provides the court with the power to adjourn a proceeding. Sections 530(8) to 530(11) are of particular note.

530(8) The Court must proceed with as much expedition as the requirements of the Act and a proper hearing of the proceeding permit.

530(9) The Court should avoid the granting of adjournments in Family Division proceedings to the maximum extent possible.

530(10) The Court must not grant an adjournment of a proceeding in the Family Division unless it is of the opinion that -

- (a) it is in the best interest of the child to do so; or
- (b) There is some other cogent or substantial reason to do so.

530(11) In deciding whether and for how long to adjourn a proceeding under this section, the Court must have regard to the requirements in subsection (8) to (10).

1.2 Therapeutic Jurisprudence/Restorative Justice

It is recognised that in cases where therapeutic jurisprudence or restorative justice is given greater weight, compliance with these protocols will frequently not be appropriate, however where possible the protocols will apply. Additional adjournments and/or the deferral of sentence will frequently be appropriate and necessary in these cases.

1.3 Court Hours

The Court's ordinary hours of business are between 9.00am and 4.30pm.

The Melbourne Children's Court is open until 5:00pm.

Most cases are heard between 9.30am and 4.00pm.

The Court controls all case listing by reference to case type, complexity, estimated duration of the case and the capacity of the court.

The Magistrates' Court maintains an after hours service, i.e. after 5pm until 8:30am the next sitting day as well as weekends and public holidays.

In relation to the Children's Court jurisdiction, the Magistrate's Court of Victoria after hours service is confined to urgent applications for interim intervention orders and urgent applications by Department of Human Services for emergency care search warrants.

2. Criminal Division

2.1 Procedural Matters

Appearances

The Court expects all legal practitioners and representatives involved in matters to notify it of their appearance as soon as possible. This should be done via phone, fax or email. Any request for a 'not before time' or preferred hearing time (time certainty) should be made by 3pm on the day prior to the hearing, otherwise it is expected that matters be ready to proceed at the time listed by the Court.

Legal practitioners should contact prosecuting agencies as soon as they receive instructions to act for an accused to ensure that discussions between the parties are commenced as soon as possible in order to reduce unnecessary delays at Court.

All Appearances should also include the following case information:

- Accurate time estimates of case
- Co-accused, if any
- If pre sentence/progress reports are available
- If witnesses will be called
- Complexity or length of a matter
- Any other issues to be considered prior to the listing of a case
- Any other matters likely to impact upon the finalisation of a case

Note: The Magistrate's Court Electronic Filing Appearance System (EFAS) is not available to be used for Children's Court matters.

Interpreters

Section 526 of the *Children, Youth and Families Act 2005* states that if the court is satisfied that a child a parent of a child or any other party to a proceeding has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding, or participating in, the proceeding, it must not hear and determine the proceeding without an interpreter interpreting it.

Adjournment Policy

Purpose

1. To set out the manner in which legal practitioners may apply for administrative adjournments in criminal cases, and to clarify the way in which the Court will deal with such applications.
2. To improve the consistency of the standard and practice of adjournment applications, and the consistency in the way the court deals with adjournment applications.
3. To promote the early notification and determination of adjournment applications.

Application of this policy

This policy applies to all adjournment applications by or on behalf of an accused and by the prosecution.

In relation to adjournments, section 344A (4) of the *Children, Youth and Families Act 2005* states that the court must take into account whether a child has had legal advice. If the court is not satisfied that the child has had legal advice, it must adjourn a hearing to enable the child to obtain that legal advice. If a child is under 15 years and not legally represented, the court may adjourn a hearing to enable a parent or guardian to attend.

Key Principles

1. A continuing commitment to timely resolution of cases
2. Prompt resolution of court proceedings whilst ensuring fairness to all parties
3. To ensure that cases are progressed on the listing day
4. A recognition that an adjournment is ultimately granted or refused at the Court's discretion
5. A recognition that there is no automatic right to an adjournment notwithstanding that the application may be made by consent or not opposed.

Adjournments

1. An application for adjournment must be supported by clear, cogent reasons and should state what will be achieved during the adjournment period. Parties should also provide sufficient information to enable a suitable date, time and length to be allocated.
2. Where an accused is not on bail (and not in custody) an adjournment request from a first return date (ie first mention date), that will genuinely advance the progress of the case, will ordinarily be processed administratively without the need for the accused or legal representative to appear. However, if the proposed adjournment does not advance the case, or appears to be the result of inadequate preparation, the application will be referred to open court.

3. An accused who is on bail is required to attend court in answer to that bail. All adjournment requests where the accused is on bail, whether from a first return date (ie first mention date) or from any subsequent listing of the case, will be determined by a Magistrate in court.

4. All adjournment requests for second or subsequent listings will be determined by a Magistrate in court pursuant to Section 329(1) of the *Criminal Procedure Act 2009*.

2.2 Summary Proceedings

Listing Timeframes

The Court aims to list criminal cases in accordance with the following timeframes:

* Return Date to further mention hearing	Up to 4 weeks
* Return Date/second mention hearing to plea	Up to 4 weeks
From *Return Date/second mention to contest mention hearing	4-8 weeks
From *Contest Mention Date to hearing	8-12 weeks

Cases involving children in custody should be given priority.

* Note: Return Date is the first date on which the proceeding is listed before the court.

One of the case management objectives of the court is to deal with cases in a timely manner. Therefore, adjournments will be granted at the discretion of the Court. There is no right to an "automatic" adjournment on the first return of a case.

Return Dates

Prosecuting agencies are to obtain dates by arrangement with the appropriate coordinating registrars.

The maximum number of cases listed on any particular day will be set by the coordinating registrar in consultation with the President or the Regional Coordinating Magistrate and Senior Registrar.

Co-accused must be listed on the same return date where practicable.

The court aims to finalise 85% of criminal cases within six months of the original filing of the charge.

Summary Contests

Any matter to be listed for summary contest shall be listed at the Court which is deemed to be the 'proper venue' unless otherwise directed by the Court.

All matters listed for contest should remain at the 'proper venue' for hearing unless there are reasons particular to the case and it is in the interest of the parties for the matter to be transferred, for example length of the hearing, particular witness requirements or security issues.

Metropolitan courts may make arrangements with the Melbourne Children's Court for transfer of matters to Melbourne in certain circumstances. In this instance, agreement must be sought from the appropriate court coordinator or judicial officer.

Adjournment of Summary Contests

All applications for the adjournment of a summary contest will be determined by a magistrate and should be made at the earliest opportunity. Ordinarily, applications for an adjournment made on the date of hearing will not be granted unless there are exceptional circumstances.

Matters listed for a Contest Mention

Cases should not be listed for contest mention unless the accused has indicated an intention to plead not guilty to the charges. This indication must be given by the accused's legal representative.

Cases should not be listed for contest mention without confirmation that the accused's representative has received the prosecution brief.

All cases listed at Melbourne Children's Court, where there is an indication that the accused will plead not guilty, must be listed for a contest mention.

Any request to list a case for contest mention contrary to these protocols will be determined at the discretion of the Court.

Matters listed for a Special Mention

Special mentions may be listed on application of either prosecution, defence or at the direction of the Court at any time prior to the hearing date for a case. Where practicable, special mentions will be listed before the magistrate allocated to hear the case.

Serious/Complex Criminal Cases

Any criminal case identified by the Court or parties to be a serious or complex matter may require case management by a magistrate and should be booked in with the coordinator. These cases will be listed at a time that takes account of their nature, duration and complexity.

Consolidations and Lengthy Pleas

Lengthy consolidations or lengthy pleas (total time greater than 30 minutes) must be booked in with the co-ordinator. The primary considerations when assessing where a consolidated matter should be heard is “proper venue” and the capacity of the Court.

The Court will only list such matters after confirmation of the following points is received:

- Parties are ready to proceed
- All briefs are available
- All charges, withdrawals and summaries have been negotiated
- An estimate of the length of the hearing of the matter has been provided

Prior to a court transferring a file to another venue, the party requesting the consolidation and transfer must confirm that they have sought and obtained consent of the coordinating registrar of the hearing Court.

2.3 Bail Applications

Bail application on first remand date

- It is not necessary for practitioners to file an application for bail where there is an intention to make an application at the first remand hearing.
- It is the expectation of the Court that the informant will be present at a first remand hearing.
- Where possible such application will proceed on the day subject to duration and available hearing time.

Applications for bail after first remand hearing

- Practitioners must contact the relevant coordinator to obtain a suitable hearing date and time for any application for bail.
- Practitioners must advise as to estimated duration, number of witnesses and any other information requested by the coordinator.
- Where a magistrate has previously refused bail, the practitioner must advise the coordinator of the date of the hearing and the name of the presiding magistrate. Such applications will be listed before the magistrate who refused bail where this is possible within acceptable timeframes.
- Gaol orders are the responsibility of the practitioner listing the application.
- Practitioners must give reasonable notice to the informant and prosecuting agency of the date allocated for the hearing of the application.
- The coordinator will attempt to accommodate date requests by practitioners but will list according to resource availability.
- Applications involving co-accused will be listed before the same magistrate where this is possible within acceptable timeframes.

2.4 Committal Proceedings

The conduct of committal proceedings is governed by Chapter 4 of the *Criminal Procedure Act 2009*, Order 2.05 of the *Children's Court Criminal Procedure Rules 2009* and Order 4 of the *Magistrates' Court Criminal Procedure Rules 2009*.

Section 356 (3) and 356 (4) of the *Children, Youth and Families Act 2005* states that the Court must hear and determine summarily any charge for an indictable offence, other than murder, attempted murder, manslaughter, child homicide, defensive homicide, arson causing death and culpable driving causing death unless:

- a) before the hearing of any evidence the child objects, or if the child is under the age of 15 and is not legally represented, a parent objects on the child's behalf or
- b) at any stage the Court considers that the charge is unsuitable by reason of exceptional circumstances to be heard and determined summarily.

Listing Timeframes

Filing Hearing to Committal Mention	8-12 weeks
Committal Mention to Committal	8-12 weeks

All applications for adjournment of matters within the committal stream must be determined by a magistrate.

2.5 Sexual Offences List

Pursuant to Practice Direction 1 and 2 of 2009, the Melbourne Children's Court maintains a Sexual Offences List.

Metropolitan courts may refer matters into the Sexual Offences List at Melbourne Children's Court. An appropriate date must be obtained from the Coordinator at Melbourne. A contested hearing date is not likely to be allocated prior to the matter having been referred into the Sexual Offences List.

For the purpose of the Sexual Offences List, a sexual offence includes any offence involving a sexual act or attempt to commit a sexual act or an act alleged to have been committed with the purpose of committing a sexual act.

All matters listed at the Melbourne Children's Court that include one or more sexual offence should be adjourned in to the Sexual Offences List.

However, if the accused's plea of guilty is entered on the first return date or if the judicial officer otherwise orders, the matter may be finalised on that day.

Any request for an adjournment listed in the Sexual Offences List must be determined by a judicial officer.

The Sexual Offence List sits on the first Friday of every month.

(For further detail regarding listing practices for the Sexual Offences List refer to Practice Directions 1 and 2 of 2009).

2.6 Koori Court List

The Koori Court (Criminal Division) has all the powers of the court that are necessary to enable it to exercise its jurisdiction.

The Koori Court sits in a number of venues across the state.

The Melbourne Children's Koori Court catchment area includes all of metropolitan Melbourne. Metropolitan courts may refer matters into the Koori Court List at Melbourne Children's Court. An appropriate date must be obtained from the Coordinator or Koori Court officer at Melbourne.

The Koori Court is governed by section 518 and section 519 of the *Children, Youth and Families Act 2005*. The Koori Court has jurisdiction to deal with a proceeding for an offence if the child is Aboriginal and the offence is within the jurisdiction of the Criminal Division, other than a sexual offence as defined in s6B(1) of the *Sentencing Act 1991*.

The child must plead guilty to an offence, intend to plead guilty to an offence or have been found guilty of an offence. The child must also consent to the proceeding being dealt with by the Koori Court.

The Koori Court may deal with a breach or variation of a sentence imposed by it.

Any request for an adjournment listed in the Koori Court List must be determined by a judicial officer.

2.7 CAYPINS Hearings

CAYPINS stands for Children and Young Persons Infringement Notice System and is a method of enforcing infringement notices when the fine is not paid in the first instance.

All CAYPINS cases are initiated in Melbourne and listed on Children's Court days at the Children's Court venue closest to the child's residence.

Registrars from the Melbourne Children's Court conduct the CAYPINS hearings at all suburban court locations on designated listing days.

Regional court registrars conduct hearings at each regional court location.

If a young person disagrees with the registrars order, they can apply for a review of the order before a Magistrate. If a review of the registrar's order is sought an "Application for review of registrar's order" must be completed and provided to the court within 28 days of the registrar's order being made. The prosecution may also apply for a review in certain circumstances.

Please refer to the CAYPINS manual on the WIKI for further information about CAYPINS procedures.

3. Family Violence and Personal Safety Intervention Orders

3.1 Proper venue

Applications should be listed at the proper venue of the Court as defined in section 3(1) of the *Children, Youth and Families Act 2005*. Other than at the Neighbourhood Justice Centre, when determining proper venue for the hearing of a Family Violence or Personal Safety Intervention Order application, the court must have regard to the following:

- A) The safety of the parties;
- B) The need to prevent disclosure of a party's whereabouts;
- C) The ability of the parties to attend a particular venue of the court, taking into account their places of work, residence or any childcare requirements;
- D) The availability of family violence support services at particular venues of the Court;
- E) The need to manage case flow;
- F) Any other considerations the Court thinks relevant

3.2 Designated listing days

Family Violence and Personal Safety Intervention Order applications should be listed on designated Children's court sitting days where possible.

Information about designated listing days and the services available at each court venue can be obtained from each court location, the Magistrates' Court after-hours service or the WIKI.

3.3 Timeframes for applications

The Court aims to finalise 97% of all applications within six months of initiation.

The following timeframes apply:

**Application and summons; and
Application to extend, revoke or vary an intervention order**

For service in Victoria	Within 7 to 14 days of summons being issued
For service interstate	Within 21 days of summons being issued

Application and Warrant

NOTE: An application and warrant to arrest can not be issued for a child respondent. It can, however, be issued for the arrest of an adult respondent where a child is the affected family member/protected person.

Warrant executed and respondent remanded in custody	Next business day
Warrant executed and respondent released on bail	As soon as possible, preferably on a day designated for family violence proceedings.

Interim applications

Interim intervention order Interim variation of intervention order Application for leave to apply to vary or revoke an intervention order	On the same day the application is filed or as soon as practicable.
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Contested Applications

Applications for final intervention orders Applications for variation, revocation or extension	Within 4 to 6 weeks from the date on which the application is adjourned.
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Listings for contested applications should take account of the urgency of the matter.

4. Family Division

Commencement of Proceedings

Cases involving child protection matters should always be given the earliest possible listing dates, taking into account the circumstances of each case.

With this in mind, the following timeframes have been set. If it is possible to provide an earlier date, then the court should always do so.

4.1 Timeframes for applications

The Court aims to list family division cases in accordance with the following timeframes.

Mention to Conference (The Court aims to refer cases to conference at second or third mention.)	4 - 6 weeks
Mention to Interim Accommodation Order contest	4 - 6 weeks
Interim Accommodation Order contest to Conference	4 - 6 weeks
Conference to Final Contest	8 - 12 weeks
Conference to First Directions Hearing	Within 6 weeks

4.2 Procedural Matters

Appearances

The Court expects all legal practitioners and representatives involved in matters to notify it of their appearance by 3pm the day prior to the hearing. Where possible, this should be done via phone, fax or email. Any request for a 'not before time' or preferred hearing time (time certainty) should also be made by 3pm on the day prior to the hearing and must be by consent of all parties, otherwise it is expected that matters be ready to proceed at the time listed by the Court.

Legal practitioners should contact DoHS as soon as they receive instructions to act for a party to ensure that discussions between the parties are commenced as soon as possible in order to reduce unnecessary delays at Court.

Interpreters

Section 526 of the *Children, Youth and Families Act 2005* states that if the court is satisfied that a child, a parent of a child or any other party to a proceeding has a difficulty in communicating in the English language that is sufficient to prevent him or her from understanding, or participating in, the proceeding, it must not hear and determine the proceeding without an interpreter interpreting it.

Adjournment Policy

Purpose

1. To set out the manner in which legal practitioners may apply for adjournments in family division cases, and to clarify the way in which the Court will deal with such applications.

Application of this policy

This policy applies to all adjournment applications.

Key Principles

1. A continuing commitment to timely resolution of cases.
2. The best interests of the child are always paramount
3. A commitment to early resolution of cases through conferencing

Adjournments

1. All applications for adjournment of matters listed within the family division must be determined by a magistrate.

4.3 Protections Applications

Section 240(1) of the *Children, Children, Youth and Families Act 2005* states that if a protective intervener is satisfied on reasonable grounds that a child is in need of protection, he or she may;

- (a) serve a notice under section 243 directing that the child appear, or be produced before the court for the hearing of a protection application; or
- (b) With or without a warrant, under section 241, place the child into emergency care or cause another protective intervener to place the child into emergency care pending the hearing of a protection application.

Emergency care Applications

When a protective intervener places a child into emergency care, the protective intervener must file the appropriate paperwork with the relevant court registry.

See Practice Direction 5 of 2013 on the Children's Court website for further information relating to applications filed at the Melbourne Children's Court. At the Melbourne Children's Court, the paperwork must be filed with the registry prior to 1pm to allow sufficient time to prepare for the matter to be heard before the court that day. Secure welfare related placements may be filed up until 2pm.

Local filing times will apply at other venues of the Children's Court. Filing times are to be fixed in consultation with the regional coordinating magistrate and senior registrar.

Protection Application by notice

The maximum number of cases listed on any particular day will be set by the coordinating registrar in consultation with the President or the regional coordinating magistrate and senior registrar.

Siblings must be listed on the same date where practicable.

Other Applications

The *Children, Youth and Families Act 2005* provides for a range of other applications to be filed such as applications to vary, extend and revoke protection orders. Some of these applications may be filed by either notice or by safe custody, depending on the urgency and circumstances of each application.

4.4 Conferences

Sections 217-227 of the *Children, Youth and Families Act 2005* govern the operation of conciliation conferences (formerly dispute resolution conferences) in the Children's Court of Victoria.

Section 217(2) provides that the purpose of a conciliation conference is to give the parties to the application an opportunity to agree or advise on the action that should be taken in the best interests of the child.

In July 2010, the Court introduced a new model of conferencing. (New model conferences.) This new model was initially introduced at Melbourne Children's Court and is being progressively rolled out throughout the state of Victoria. The rollout is expected to be completed state wide by mid 2014.

Conferences are intended to facilitate the early resolution of applications through a non-adversarial process.

The Conference Intake Officer will list the case for a conference to be held at the earliest available date within six weeks and refer the case to a judicial officer to make the order formally adjourning the matter to the conference date. If there is a compelling reason for the Conference Intake Officer to list outside the six week period, the Conference Intake Officer

may do so. In the event that a party disputes the decision of the Conference Intake Officer on this matter, the judicial officer will determine the matter.

All parties and/or their legal representatives must attend conferences.

All cases must be listed for conference before a final contest date will be allocated, unless a Magistrate deems that the conference is not necessary.

Please refer to conference guidelines on the Children's Court website for further information.

4.5 Listing Types

Submissions Contest

Where a protective intervener places a child into emergency care and the parties are unable to agree on a placement for the child for the interim period, the parties may require a non-evidence submissions contest be listed. On occasions parties may not be ready to proceed on the first day and may require a booking on a subsequent date.

Submissions contests are listed for disputes relating to the placement of a child or any other urgent issue.

Special Mention

Special mentions may be requested by any party at any stage during a proceeding or listed at the direction of the Court.

Interim Accommodation Order Contest

An Interim accommodation order contest is a contested hearing before a Magistrate to determine interim issues.

The Court may adjourn a matter for an interim accommodation order (IAO) contest. A contest may be in relation to the placement of a child, contact with a child or any other interim issue in dispute.

In Melbourne, an IAO contest will not ordinarily be booked in for longer than 4 days unless a magistrates otherwise orders.

Directions Hearing Listings

There are currently two types of directions hearings for family division matters.

First Directions Hearing

First directions hearings commenced at the Melbourne Children's Court on 1 October 2012 pursuant to Practice Direction 3 of 2012. A first directions hearing is a preliminary hearing held within 6 weeks of the conference and prior to any contest dates being provided by the court.

First directions hearings were initially listed at both Melbourne and Moorabbin and have now been rolled out state wide for contested matters where Melbourne magistrates will be allocated the contests.

First directions hearing dates are provided by the coordinator for cases–

- That don't resolve at conference or
- Where a magistrates determines that a conference will not be held

If the case does not resolve at the first directions hearing the Magistrate will either case manage the matter to a subsequent directions hearing soon after or list the case for contest with another directions hearing one month prior to the contest date. Case management will include identifying the matters in dispute, the witnesses required and the length of Court time required for the contest.

Where the court has determined that the case is unsuitable for a conference, the case will be listed by the coordinator directly for first directions hearing within 6 weeks. If the case does not resolve at the directions hearing, the process will be the same as described in the previous paragraph.

Directions Hearing

A directions hearing is a preliminary hearing held prior to a final contest.

The distinction between this type of directions hearing and a first directions hearing is that a first directions hearing is allocated without assigning a contest date, where as this type of directions hearing is allocated at the same time contest dates are provided as a final check of readiness for the pending contest.

Directions hearings should be held approximately 4 weeks before a final contest. At a directions hearing, the court will make enquiries of the parties to inform itself of the issues in dispute, and establish if those issues are able to be resolved and ensure the matter is ready to proceed if still contested.

Pursuant to Practice Directions 3 of 2006, the Department of Human Services at or prior to the directions hearing must file a chronology with the Court. Pursuant to Practice Direction 4 of 2006, each party must file a witness list with the court.

If, at a directions hearing, the case is able to be resolved the case can be finalised and the contest date will be vacated.

If the case is unable to be resolved at the directions hearing, the case will proceed to the contested hearing.

Final Contest

A final contested hearing deals with any issues in dispute between the parties and makes a final determination on the application before the Court.

Cases must have proceeded to a form of conference, before a final contest date is set, unless a magistrate deems the matter is not suitable for conference.

All final contests must have a directions hearing listed prior to the final contest date, unless a magistrate deems that it is not necessary.

The Melbourne Children's Court assists regional courts by providing a magistrate to hear lengthy final contests in regional locations. If the time estimate for the contest is four days or longer in duration Melbourne will ordinarily provide a magistrate and bench clerk.

The regional Court must obtain a suitable contest date from the state coordinator at the Melbourne Children's Court. The matter will also be allocated a directions hearing date. The type of directions hearing will be determined by Melbourne. The directions hearing will generally be conducted via video link from Melbourne to the regional Court and will where possible be conducted by the allocated contest magistrate. In most cases, the directions hearing will be listed at 9:30am.

The magistrate conducting the directions hearing will confirm the matter is ready to proceed on the allocated contest date. If the matter resolves a final order may be made at directions hearing and the contest date vacated.