



**Children's Court  
Victoria**

**PRACTICE DIRECTION**

**No. 3 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. 1 of 2023 dated 20 June 2023 and applies with effect from **23 October 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 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>.
2. Legal practitioners, the Secretary of the Department of Families, Fairness and Housing and their delegates (DFFH), and the principal officer of an authorised Aboriginal agency and their delegates

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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).

(authorised Aboriginal agency), must file applications, court reports and other documents in child protection proceedings in the Case Management System portal (CMS portal).

3. Self-represented parties may file documents by email to the relevant [Children's Court Registry](#) or in person at the counter, or by mail.
4. Unless the Court otherwise directs, cases will be managed wherever practicable by the same judicial officer.
5. Cases may be heard online or in person. 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.<sup>4</sup>
6. At the Children's Court of Victoria sitting at Melbourne, Broadmeadows, Moorabbin and Dandenong, 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.
7. 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.
8. The parties must confer between all Court events and be able to address the Court on matters that remain in dispute.
9. If draft orders have not already been provided during the hearing, DFFH or the authorised Aboriginal agency are required to ensure that they are filed in the CMS portal within 30 minutes of the conclusion of the court event. If the draft orders are not filed in the CMS portal in accordance with this direction, the matter may be adjourned to the next court sitting day and if so any existing Orders will be extended on terms and conditions deemed appropriate by the Court.

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<sup>4</sup> [See \*Re A \(Children\)\(Remote Hearing: Care and Permanent Placement Orders\)\[2020\] EWCA Civ 583\*](#).

### **CHILD PROTECTION PRACTITIONERS**

10. A DFFH child protection practitioner, or a person delegated by the principal officer of an authorised Aboriginal agency, who has 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**

11. Legal practitioners must obtain a CMS portal account, and file all applications, forms and documents in the CMS portal.
12. 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.
13. Upon ceasing to act, legal practitioners must immediately notify the relevant Children's Court Registry via the CMS portal 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.
14. 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.
15. 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**

16. 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 or the authorised Aboriginal agency is to do so with the relevant [Children's Court Registry](#).

17. For all hearings other than emergency care applications, the arrangements referred to in paragraph 16 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 or the authorised Aboriginal agency (as the case may be) is aware of that situation.

#### **DIGITAL RECORDINGS**

18. An application by an unrepresented party for a copy of a digital recording in a proceeding is to be made by filing a [Request for Copy of Audio Recording Form](#) with the relevant [Children's Court Registry](#).

19. An application by a represented party for a copy of a digital recording in a proceeding is to be made by the legal practitioner filing the [Request for Copy of Audio Recording Form](#) in the CMS portal.

#### **INTERSTATE CHILD PROTECTION ORDERS**

20. A copy of any child protection Order transferred to Victoria under an interstate law<sup>5</sup>, must be filed by DFFH in the CMS portal at the Children's Court of Victoria at Melbourne.

#### **CHILDREN'S COURT CLINIC**

21. 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**

22. 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>5</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.

23. 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.
24. 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>6</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.
25. DFFH or an authorised Aboriginal agency must file all relevant CRIS notes (and when relevant the Form B) with applications referred to in paragraph 22.
26. CRIS notes relevant to any application must be filed in the CMS portal in unredacted form and (where necessary) in redacted form. Only the redacted CRIS notes will be available to CMS users unless the Court otherwise orders.
27. At the conclusion of the hearing, any electronic copies of the CRIS notes and other documents must be permanently deleted, and any printed copies returned to the legal representative for DFFH or the authorised Aboriginal agency 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 22 and 23, will be listed for a first return date within 4 weeks if practicable and no later than 6 weeks. DFFH or the authorised Aboriginal agency must file an affidavit of service at least 7 days prior to the first return date.

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<sup>6</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.

29. DFFH or the authorised Aboriginal agency must file in the CMS portal and serve on the parties a protection report and disposition report in support of any applications referred to in paragraph 28 no less than 3 working days prior to the first return date.

### **CONCILIATION CONFERENCES**

30. The Court may adjourn a child protection matter to a Conciliation Conference<sup>7</sup> under s. 217(1) of the Act.

31. Conciliation Conferences may be held 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. Draft orders must be filed by DFFH or the authorised Aboriginal agency in the CMS portal within 30 minutes of the conclusion of the Conciliation Conference. If the draft orders are not filed in the CMS portal in accordance with this direction, the matter may be adjourned to the next court sitting day and if so any existing Orders will be extended on terms and conditions deemed appropriate by the Court.

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.

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<sup>7</sup> Part 4.7, Division 2 – Conciliation Conference *Children, Youth and Families Act 2005*.

## 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 or the authorised Aboriginal agency must file in the CMS portal and serve on all parties:
  - a. an updated report which must be in short-form (Conciliation Conference style) format; and
  - b. any other new report upon which it proposes to rely; and
  - c. at least 4 days prior to the Readiness Hearing: a completed [Readiness Hearing Certificate](#) prepared after consultation with the other parties.
39. The legal representative (or, if unrepresented, the party) is required to file an [appearance form](#) no later than 7 days before the Readiness Hearing which includes the phone number and email address for the party and the legal practitioner (if any). The email address provided 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 are required to immediately advise the relevant registry. When the matter has been abridged, draft orders must be filed in the CMS portal.
41. The legal practitioners for the parties (including Counsel or Solicitor for DFFH or an authorised Aboriginal agency) 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.<sup>8</sup>
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.

### **WITNESS SUMMONS TO PRODUCE**

44. Self-represented parties should seek the assistance of the relevant [Children's Court Registry](#) in relation to a witness summons to produce.
45. Witness summons to produce<sup>9</sup> must be filed in the CMS portal. Unless otherwise ordered, the return date of the summons to produce is to be no less than 14 days before the next hearing date.
46. The issuing party must file in the CMS portal 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.
47. Where DFFH or an authorised Aboriginal agency is an addressee (recipient) of a witness summons to produce they must produce the document or thing by filing in the CMS portal unless it is impracticable to do so.
48. Any other 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 is listed in Rule

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<sup>8</sup> 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.

<sup>9</sup> Including a witness summons to produce and to give evidence.



9B(2)(b) of the Rules<sup>10</sup> by email to the relevant [Children's Court Registry](#) unless it is impracticable to do so.

49. In the event an objection is taken to material being produced and/or inspected, the matter will be listed before the Court for determination.<sup>11</sup>

50. 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 filing the form [Request to Inspect Subpoenaed Material Electronically](#) in the CMS portal. In completing the form, 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.

51. 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)<sup>12</sup>**

52. Paragraphs 53 to 58 apply at the Children's Court of Victoria sitting at Broadmeadows and Shepparton.

53. Where an application 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>13</sup>

54. 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

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<sup>10</sup> *Children, Youth and Families (Children's Court Family Division) Rules 2017*.

<sup>11</sup> 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.

<sup>12</sup> The Wurrundjeri 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 Wurrundjeri people for allowing the use of Woiwurrung language.

<sup>13</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.

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.

55. 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>14</sup> worker and, where appropriate, the KSC and representatives from service providers utilised by the child or family.
56. 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.
57. Where possible, child protection applications heard in the Koori Family Hearing Day will be listed before the same Judicial Officer.
58. 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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<sup>14</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.

## **SUPPORT AND ENGAGEMENT ORDERS**

59. 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.<sup>15</sup> Physical attendance by the legal representatives and parties is required unless otherwise directed by the Court.
60. An application to make<sup>16</sup>, vary or revoke<sup>17</sup>, or extend<sup>18</sup> 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](mailto:melbournecoordinator@courts.vic.gov.au).
61. 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.
62. 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.
63. The first listing date of a Review Hearing<sup>19</sup> will be at the direction of the presiding judicial officer.
64. An Inability to Serve<sup>20</sup> and an Additional Notice for Children<sup>21</sup> must be in Form 6 and Form 7 respectively.
65. An application for Permission to Publish<sup>22</sup> must be in Form 8.

**This Practice Direction commences on 23 October 2023.**



**Judge Jack Vandersteen**

President, Children’s Court of Victoria  
20 October 2023

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<sup>15</sup> Matters pursuant to the *Terrorism (Community Protection) Act 2003* will only be heard at Melbourne.

<sup>16</sup> *Terrorism (Community Protection) Act 2003*, s 22CK & 22CL – (Application for SEO) - Form 1.

<sup>17</sup> *Terrorism (Community Protection) Act 2003*, s 22DB & 22DS – (Application to vary or revoke an SEO) - Form 2.

<sup>18</sup> *Terrorism (Community Protection) Act 2003*, s 22DI - (Application to extend an SEO) - Form 3.

<sup>19</sup> *Terrorism (Community Protection) Act 2003*, s 22CW.

<sup>20</sup> *Terrorism (Community Protection) Act 2003*, s 22EA.

<sup>21</sup> *Terrorism (Community Protection) Act 2003*, s 22DZ.

<sup>22</sup> *Terrorism (Community Protection) Act 2003*, s 22EE.