

ACT MAGISTRATES COURT
PRACTICE DIRECTION No 1 of 2016
CHILDRENS COURT PRACTICE DIRECTION
CARE AND PROTECTION APPLICATIONS

Objective

1. This practice direction commences on 14 June 2016.
2. This Practice Direction outlines new listing procedures in the case management of care and protection proceedings brought under the *Children and Young People Act 2008*. These procedures are being implemented with the objective of reducing the number of adjournments and delays in such proceedings in the best interests of children and young people and will introduce court ordered meetings, for the purpose of enabling parties to resolve matters, if possible, as early as possible.
3. This Practice Direction is to be applied consistently with the principles of the *Children and Young People Act 2008* and will be subject to flexibility where individual circumstances require.

Directions Hearing – First Time Originating Applications and Emergency Actions

4. All applications following an emergency action or first time applications for care and protection orders will be returnable in the first instance for a directions hearing before the Registrar (the first return). If there is an application for Interim Care and Protection Orders, uncontested matters will remain before the Registrar; contested matters will be listed before the Childrens Court Magistrate.
5. If it is necessary to adjourn an application to allow the relevant person or persons to:
 - (a) be located or served with the application; or
 - (b) prepare for the hearing of an application for interim care and protection orders following emergency action; or
 - (c) obtain legal advice and their solicitor to seek instructions on an application for care and protection orders following emergency action;

then the adjournment will normally be no longer than 2 weeks, unless it is in the interests of justice to allow a longer period.

6. On the second return, directions will ordinarily be made in accordance with Schedule 1, paragraphs 1 to 3.
7. Following completion of those directions, the matter will be listed before the Registrar. At this time, if the matter has not resolved, the Court and the parties will assess whether the matter is suitable for a court ordered meeting or whether further directions are required to prepare the matter for a hearing. If the matter is to be prepared for hearing, directions in accordance with Schedule 1 – paragraphs 4 to 9 will be made.

Directions Hearing – Applications to Extend, Amend or Revoke

9. Where an application to extend, amend or revoke a care and protection order is made, the matter will be returnable in the first instance for a directions hearing before the Registrar (the first return). The applicant is to file and serve all material upon which it relies, including any expert reports and care plans at the time of filing the application to extend, amend or revoke the care and protection orders.
10. Directions will ordinarily be made in accordance with Schedule 2.
11. Whilst ordinarily these matters may not be amenable to a court ordered meeting, the parties may apply at the time of the listing hearing for a court ordered meeting.

Court Ordered Meeting

12. If the matter is suitable for a court ordered meeting pursuant to section 432 of the *Children and Young People Act 2008*, the directions in accordance with Schedule 3 will ordinarily be made.

Listing a matter for Hearing

13. If the matter is not suitable for a court ordered meeting (or has failed to resolve at a court ordered meeting), the matter will be listed directly for a listing hearing. At this time, the Childrens Court Magistrate may:
 - (a) finalise the matter (eg with consent of the parties);
 - (b) adjourn the matter for hearing (with further directions);
 - (c) adjourn the matter to another directions hearing (if the matter is not ready to proceed to hearing and the Childrens Court Magistrate is satisfied that the parties have acted reasonably in preparing for hearing).
14. Although all relevant evidence must be filed by the parties prior to the listing hearing, at the listing hearing the court may grant leave to a party to file prior to

the hearing an affidavit which updates a previously filed affidavit, or make any other necessary orders in the interests of justice.

15. If at the listing hearing the court is satisfied that parties have complied with all court directions and that the matter is ready for hearing, the court will adjourn the matter to a hearing date.
16. If at the listing hearing the court finds that a party has failed to comply with court directions or this practice direction, a hearing date may still be allocated in the best interests of the child or young person. However, the defaulting party will be given specific directions to prepare the matter for hearing. If it is in the interests of justice, non-compliance with directions may result in the exclusion of evidence at hearing.
17. This paragraph applies if the Director-General intends to make an ex parte written or oral application that the Court finalise the matter on the papers at any stage in the proceedings prior to a hearing date without the consent of one or both of the child's parents. The Director-General must provide proof of service of correspondence to all parties putting them on notice of the intended application and the possible consequences should the parent or parents fail to attend the listing hearing. A copy of any correspondence so provided and an affidavit of service must be filed with the court at least two full business days before the listing hearing, along with a list of the documentary evidence the Director-General will tender on the application.

Evidence

18. Unless contrary directions are given, all lay witness evidence in chief is to be given in affidavit form. All expert evidence is to comply with the Expert Code of Conduct provided for in the *Court Procedure Rules 2006*.

Adjournments

19. Any application for an adjournment must be supported by written reasons and, if granted, directions will be made having regard to the reasons for the adjournment.

Subpoenas to produce

20. The parties should take all necessary steps to ensure subpoenaed documents are produced to the court by the return date.
21. Where a party is not legally represented, access is to take place in the presence of a member of the registry staff. Photocopy access may only be provided to an unrepresented party with leave of the court.
22. If photocopy access is granted, it is a condition of that access that:

- copies made shall not be used for any purpose other than the proceedings for which the documents have been produced, unless the court otherwise orders.
- all copies taken are to be destroyed at the conclusion of the proceedings.

Inability to comply with Court directions or timetable

23. If a party is unable to comply with the court's directions, the defaulting party must immediately contact all other parties and make alternative arrangements to ensure that progress of the matter is not delayed.
24. If inability to comply with the court's directions will delay finalisation of the matter, the court must be advised. That advice must be in writing no later than the next working day after the party becomes aware that the default cannot be cured by arrangements agreed between the parties. The court may then re-list the matter for further directions to ensure that the case is finalised appropriately.
25. Legal practitioners and persons appearing in the Childrens Court should be alert to the court's power to order costs in appropriate cases - see s. 726 of the *Children and Young People Act 2008*.

Pre-hearing requirement

26. Each party is to serve on each other party to the proceeding and file in Court, not later than three working days prior to a hearing, a list of documentary evidence (including affidavits and subpoenaed) upon which they intend to rely.

Hearing dates

27. A hearing date will not be vacated unless the party seeking to vacate the hearing date provides cogent and compelling reasons.
28. An application to vacate a hearing date must be in writing in accordance with the Court Procedure Rules (Form 6.2) and must be made as soon as practicable after a party becomes aware of the need to make such an application.
29. The party seeking to have the hearing date vacated must serve its application to vacate upon each other party.
30. Any application to vacate a hearing date will be determined by the Childrens Court Magistrate.

31. If an application to vacate a hearing date is based on the grounds of illness, the applicant will be required to produce a medical certificate to the Childrens Court. That medical certificate must certify that in the opinion of the medical practitioner:

- (a) that the party suffers from a medical condition; and
- (b) that medical condition makes the person unfit to appear in Court on the specified hearing date.

Childrens Court Magistrate

3 June 2016

Amendment History

Paragraphs 17 and 26 inserted on 23 February 2018

**Annexure A: Case Management Document
Care Hearings**

Name of matter:	
Court file number/s	
Legal representation (please list for all parties)	Director/General: Mother: Father: Children's Representative: Other:
Listing hearing date	

WITNESSES REQUIRED

Name of witness	Party calling	Party requiring for cross examination, if any

SPECIAL ARRANGEMENTS (please tick)

	Yes	No
Remote witness room/video conferencing link		
Audio visual facilities		
Telephone witness		
Interpreter		

ISSUES IN DISPUTE:

HEARING TIME REQUIRED

SIGNED BY PARTIES (please print name and organisation and sign)

1.

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NAME	ORGANISATION	SIGNATURE

2.

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NAME	ORGANISATION	SIGNATURE

3.

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NAME	ORGANISATION	SIGNATURE

4.

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NAME	ORGANISATION	SIGNATURE

**APPROVED FAMILY DISPUTE RESOLUTION MEDIATORS FOR THE
PURPOSES OF CARE AND PROTECTION COURT ORDERED MEETINGS**

- Rebecca Curran
- Jeanine Lloyd
- Lessli Strong
- Ken Hubert
- Claire Naidu
- Michelle Bryant-Smith
- Jane Godtschalk
- Michael Eley
- Jennifer Crawley

