



**Childrens Court
Practice Direction Childrens Court No. 2 of 2021**

Case management of Care and Protection applications

Objective

1. This practice direction commences on 3 June 2021. Practice Direction No 1 of 2016 is revoked.
2. This Practice Direction outlines listing procedures in the case management of care and protection proceedings brought under the *Children and Young People Act 2008* (**the Act**). 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 *ACT Childrens Court Practice Direction – No. 1 of 2021* (**Practice Direction No. 1**) and the principles of the Act. It will be subject to flexibility where individual circumstances require.

Service of originating applications after emergency action has been taken

4. The service of applications for interim care and protection orders following emergency action should be undertaken in compliance with section 413 of the Act.
5. The application and supporting material should be provided to the persons outlined at section 427 of the Act as soon as possible after the material has been prepared, but no later than 2 hours prior to the matter being listed before the court for its first Directions Hearing so as to allow all parties sufficient time to consider the application and obtain advice.
6. Where the Director-General is unable to meet this timeframe, the Director-General shall:
 - (a) notify the Childrens Court Registry and the parties as to why there has been a delay;
and
 - (b) advise when the application and supporting material will be provided to the parties.

Directions hearing – First time originating applications and emergency actions

7. 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.

Filing and Listing of emergency interim care and protection actions

8. Prior to the matter being listed, the Director-General will contact the Childrens Court registry to provide identifying information regarding the matter (such as the names, dates of birth of the children and any previous court file numbers). This information should be provided to the Childrens Court registry no later than the day prior to the day the matter is intended to be listed.
9. Upon confirmation that all parties have been notified and provided with a copy of the emergency interim care and protection application, all applications for interim care and protection orders following emergency action will be listed at 9:30am each weekday (with the exception of public holidays) in accordance with section 410 of the Act. Court documents are to be filed with registry no later than 8:30am of the morning proposed listing to allow the Registrar sufficient time to read the application and supporting material.
10. 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 two (2) weeks, unless it is in the interests of justice to allow a longer period.

Consideration of transfer to the Care and Protection Intensive List (CPIL)

11. On the first return date of an originating application and emergency action, the Registrar will enquire with the parents or their legal representative to seek their views as to participation in the Care and Protection Intensive List (**CPIL**) (see Practice Direction No. 1, particularly paragraph 6).

Directions hearing – Second appearance

12. On the second return, where matters are not participating in CPIL, directions will ordinarily be made in accordance with Schedule 1, paragraphs 1 to 3.
13. 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.
14. Where parties wish to have the matter proceed in the CPIL, the parent or their lawyer may apply for a suitability assessment and complete the appropriate application (see Practice Direction No. 1, paragraphs 7 – 8). The Registrar will then make directions concerning the filing and service of the application, and list the matter before the CPIL magistrate to commence the Suitability Assessment Process.

Directions hearing – Application for an assessment order

15. It is expected that when the Director-General makes an application for an assessment order, the Director-General will have sufficient instructions to advise the court as to the name of the person undertaking the assessment and when the assessment is likely to take place.
16. Where the Director-General seeks an assessment order in accordance with section 448 of the Act and parties consent to the making of that order, the following directions will be made:
 - (a) The matter will be listed for a case management conference one week following the expiration of the assessment order so the Director-General may advise the court of the outcome of the assessment.
 - (b) The matter will also be listed for a compliance check six (6) weeks into the assessment order period to ensure that the assessment is progressing in a satisfactory manner.

Directions hearing – Applications to extend, amend or revoke orders

17. 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.
18. Directions will ordinarily be made in accordance with Schedule 2.
19. Parties may apply at the time of the listing hearing for a court ordered meeting.

Court ordered meeting

20. If the matter is suitable for a court ordered meeting pursuant to section 432 of the Act, directions will ordinarily be made in accordance with Schedule 3.

Listing a matter for hearing

21. 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 (e.g. 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).
22. Where parties consent to the making of orders, signed consent orders must be filed with the court by 4pm three (3) clear business days before the listing hearing date (for example if the matter is listed on Monday, the proposed consent orders must be filed with the court no later than 4pm the proceeding Tuesday).
23. All relevant evidence must be filed by the parties prior to the listing hearing. A party may seek leave 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.
24. 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.
25. If a party fails 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.

26. 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 by 4pm three (3) clear business days before the listing hearing, along with a list of the documentary evidence the Director-General will tender on the application.

Evidence

27. 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

28. 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.
29. If parties propose orders by consent to be made in chambers, those orders must be emailed to the Childrens Court Registry (childrens@courts.act.gov.au) no later than 4pm three (3) clear business days prior to the date on which the matter is listed.
30. The email must identify the name of the case and court case number, the date and time of the listing, and state that each party consents to the orders. All parties must be included into the email to the Court. The Registrar will give consideration to making the proposed orders in chambers. The parties are not excused from attending at the listed time unless notified by the Registrar that the listing has been vacated.

Subpoenas to produce

31. Parties may request the issue of up to eight (8) subpoenas per child. Leave of the court is required if additional subpoenas are sought.
32. Where subpoenas to produce documents are sought the schedule must pertain to one individual or organisation per subpoena.
33. The issuing party must take all necessary steps to ensure subpoenaed documents are produced to the court by the return date.
34. Where a party is not legally represented, access is to take place in the presence of a member of the registry staff. Photocopy access will only be provided to an unrepresented party with leave of the court.
35. If photocopy access is granted, it is a condition of that access that:

(a) copies made will not be used for any purpose other than the proceedings for which the documents have been produced, unless the court otherwise orders;

(b) all copies taken are to be destroyed at the conclusion of the proceedings.

Inability to comply with Court directions or timetable

36. 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.
37. The court must be advised if parties are unable to comply with the court's directions. 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.
38. The Court may order costs in appropriate cases in accordance with section 726 of the Act.

Pre-hearing requirement

39. Each party is to serve on each other party to the proceeding and file in court, not later than three (3) working days prior to a hearing, a list of documentary evidence (including affidavits and subpoenaed) upon which they intend to rely.
40. The Director-General will file and serve an indexed and paginated court book no later than five (5) working days prior to the hearing.

Hearing dates

41. A hearing date will not be vacated unless the party seeking to vacate the hearing date provides cogent and compelling reasons.
42. 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.
43. The party seeking to have the hearing date vacated must serve its application to vacate upon each other party.
44. Any application to vacate a hearing date will be determined by the Childrens Court Magistrate.

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

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

By direction of the Childrens Court Magistrate.



Helen Banks
Acting Registrar
ACT Childrens Court
3 June 2021