

Children's Court of Western Australia

Practice Direction No 6 of 2006

Procedure for Protection applications under the Children and Community Services Act 2004 ("the Act")

Commencement

1. Practice Direction No 1 of 2006 is revoked and substituted by these Practice Directions which take effect on 16 October 2006. They apply to all future protection applications and also so far as is practicable to all proceedings commenced before 1 March 2006.

Compliance

2. The Court may dispense with compliance with any requirement of these Practice Directions where it considers it necessary and appropriate. Where the Practice Directions make no or no adequate provision for a particular circumstance, the Court may give such directions as it considers necessary and appropriate.

Protection Officer

3. An officer of the Court in the Perth Registry shall be designated the Protection Officer who will, in the ordinary course, be the officer responsible for the administration of all protection applications in that Registry.

Address for Service

- 4.1 Each party must have an address for service.
- 4.2 Subject to paragraph 13 a party may give an address for service by:
 - (a) filing an application; or
 - (b) filing a Notice of Address for Service in the Form PCNAS contained in the Schedule .
- 4.3 An address for service must be an address where documents may be left or received by post.
- 4.4 An address for service may be:
 - (a) a lawyer's address, where a party is represented;
 - (b) a residential address;
 - (c) a care of address;

- (d) a post office box address; or
 - (e) a road mail box address.
- 4.5 Where a party wishes to change their address for service they must file and serve an updated Notice of Address for Service (Form PCNAS).

Court Lists

- 5.1 Each working day the Court will sit to hear protection matters under the Act.
- 5.2 The sittings will comprise of the following lists, where required:
- Protection Warrant List at 9.00am
 - Protection General List at 9.00am
 - Protection Hearings at 10.00am.
- 5.3 As required, protection matters may also be listed at other times, including at 2.15pm and on an urgent basis if the Court is satisfied of the need for urgency.

Application

- 6.1 All applications are to be in the Form PC1 contained in the Schedule or a computer generated version of the form, which has been approved by the President of the Court.
- 6.2 Applications are to be numbered and prefixed with the jurisdiction and Court location codes.
- 6.3 Subject to paragraph 13 a separate application must be filed in relation to each child.
- 6.4 The ground(s) for all applications, including the ground(s) under s28(2) for a protection application is or are to be described on page 2 of the application form (Form PC1).
- 6.5 The applicant shall present for filing the original application form, a further copy for the Court and a copy for each respondent and the Child Representative, if any.
- 6.6 Upon receiving the original application form and copies, the Court will affix its seal to the copies.
- 6.7 The Court will endorse on the application form and each of the sealed copies the time and place of the hearing date in a Protection List and return the sealed copies to the applicant for service on each respondent and the Child Representative, if any.

- 6.8 Information in support of an application for the issue of a warrant may be given by affidavit.
- 6.9 Applications under s 44 or s 69 will require an affidavit in support to be filed with the application.

Service

- 7.1 An application, other than an application for the issue of a warrant, shall be served as soon as possible after the date of filing on all parties to the case, including the Child Representative, if any.
- 7.2 In cases where the applicant has been unable to effect service before the hearing date and the respondent(s) fails to appear, the Court will prepare a Notice to the Respondent detailing the next hearing date and give it to the applicant for service on the respondent(s).

The applicant is then required to use its best endeavours to serve the respondent(s) with the application and the Notice before the next hearing date. If service is effected, then proof of it is to be filed before the next hearing date.

- 7.3 In cases where service has not been effected the Court may require the applicant to file an affidavit setting out what has been done to locate and serve the respondent(s).

Documents Filed In The Court

- 8.1 For applications other than an application for a warrant the applicant shall file or cause to be filed with the Court prior to the hearing date of the application an Endorsement of Service in the Form PC EoS contained in the Schedule, completed by the server.
- 8.2 On an application made by the CEO under s 44 or s 69, a Case Outline shall be filed and a copy served on the respondent(s) within 21 days of the hearing date endorsed on the application or within such time as otherwise allowed by the Court.
- 8.3 The Case Outline shall set out the issue(s) and essential facts to be relied upon for each issue(s).
- 8.4 A respondent opposing an application under s 44 or s 69 may file:
- (a) an affidavit in response; and/or
 - (b) a response to the Case Outline.
- 8.5 Any document(s) filed by a respondent should be filed and sealed copies served on the applicant within 14 days after service of the applicant's Case Outline.

Filing of Certified Copy of Birth Certificate

- 9.1 The party that commences proceedings for a warrant or a Protection Order shall file a certified copy of the birth certificate of the child the subject of the proceedings within 21 days of the commencement date if the child was born in Western Australia and within 42 days if the child was born elsewhere.
- 9.2 A party is relieved of the requirement in paragraph 9.1 if a certified copy of the birth certificate has already been filed in some other proceedings relating to the same child.

Applications for Interim and Other Orders

- 10.1 Subject to paragraph 13 any party to an application may apply to the Court for any interim or interlocutory orders by filing an application (Form PC1). The application number will be the same number as endorsed on the original protection application form.
- 10.2 Applications for interim or interlocutory orders will be given a hearing date in the Protection Party List.
- 10.3 Subject to paragraph 13 all applications in this paragraph will require an affidavit(s) in support to be filed with the application.

Early Court Appearances

- 11.1 Where one or more parties other than the CEO are common to more than one application, then the applications shall be case managed together, unless otherwise ordered by the Court.
- 11.2 On the first or subsequent hearing of any application the following matters may be dealt with:
- (a) If a respondent(s) to proceedings wishes to contest the application the Court should be advised on the next court appearance.
 - (b) The Court may make orders in relation to the appointment of a Child Representative for the child the subject of an application.
 - (c) A date shall be fixed for the filing and service of the Case Outline, which in the ordinary course will be within 21 days of the first hearing date.
 - (d) The Court will consider case management options, including but not necessarily limited to:
 - (i) adjournment to the appropriate Protection List;
 - (ii) adjournment to a pre-hearing conference; or
 - (iii) the Court may re-list the proceedings of its own motion.

Urgent Listings

- 12.1 In cases where a party wants an application listed early before the Court for urgent orders then the party shall provide a letter to the Registrar of the Court setting out the reasons for the urgency. Such a request is to be put before a Judge or Magistrate as soon as possible for determination.
- 12.2 Paragraph 12.1 does not apply to applications for a warrant which will be listed early in the ordinary course.

Cases Involving Multiple Children from the same Family

- 13.1 Where applications are made which initiate proceedings of one sort in relation to a multiple number of children from the same family then:
- (a) There must be a separate application for each child.
 - (b) Material of the same deponent relied upon in support of two or more of the applications can be set out in the one affidavit provided:
 - (i) the heading of the affidavit includes the name of each child and the file numbers or provision for the file numbers to be inserted by a Registry Officer for each application;
 - (ii) the affidavit is structured in parts and clearly identifies those parts which relate to a multiple number of children and those parts which relate to a particular child only;
 - (iii) the original of the affidavit and sufficient copies of it are filed to enable the original or a copy to be placed on the court file for each child, a further copy for the court, a copy for each of the other parties to the proceedings and a copy for each Child Representative, if any.
- 13.2 Where there are current proceedings of one sort in relation to a multiple number of children from the same family then:
- (a) If during the course of such proceedings a Notice of Address for Service (Form PCNAS) is filed, an application is made or some document is filed which relates to a multiple number of children then only one of such document whatever it may be needs to be prepared provided the heading of it includes the name and file number for each child to which it relates;
 - (b) The same requirement as provided in paragraph 13.1(b)(iii) also applies to the filing of documents which come within the operation of paragraph 13.2(a); and

- (c) The same allowance and requirements as provided in paragraphs 13.1(b)(i) to (iii) inclusive also apply to affidavits made and filed in the course of such proceedings.
- 13.3 Where pursuant to paragraphs 13.1 and 13.2 a party files a document of any kind which relates to a multiple number of children from the same family then one copy only of the document needs to be served on each of the other parties, and the Child Representatives, if any.
- 13.4 For the purpose of this paragraph proceedings for each of a Warrant (access), a Warrant (provisional protection and care) and a Protection Order are to be regarded as separate and distinct proceedings.

Child Representation

- 14.1 Where the Court makes an order that the child be separately represented and the Director, Legal Aid Western Australia is requested to arrange such representation, the Protection Officer shall cause the Solicitor in Charge, Assignments Section, Legal Aid Western Australia to be provided with copies of all the documents filed in the proceedings.
- 14.2 The appointment of a child representative ceases:
- (a) when the application is finally determined or withdrawn; or
 - (b) if there is an appeal, when the appeal is determined or withdrawn.

Notice of Ceasing to Act

- 15.1 Where solicitors cease to act for a party they are to file and serve on the other parties a Notice of Ceasing to Act in the Form PC NoCTA Contained in the Schedule

Directions

- 16.1 Where an application has been given a date for a final hearing in the Protection Hearing List it may also be given a date in the Protection General List for the purpose of making directions for the final hearing.
- 16.2 Directions may be given in relation to the conduct of the proceedings and in the ordinary course the following matters may be dealt with:
- (a) Noting any issues or matters of fact that are agreed or conceded and need not be the subject of evidence at the hearing.
 - (b) The preparation of an updated Case Outline or response.
 - (c) Programming for the preparation and exchange of lists of witnesses, witness statements, medical reports or other expert reports if required.

In the ordinary course the applicant will file and serve copies of witness statements and medical or expert reports on the respondent at least 14 days prior to the final hearing. The respondent will file and serve copies of witness statements and medical or expert reports at least 7 days prior to the final hearing.

- (d) Any early return date of subpoenas if required.
- (e) A further mention date in the Protection General List to enquire as to compliance with directions.
- (f) Whether the final hearing date should be vacated.
- (g) Determine objections to the use of witness statements as evidence and to any issues that arise in relation to witness statements or other relevant matters prior to the final hearing.

Pre-Hearing Conferences

17.1 If the parties reach consent on final orders at a pre-hearing conference a written Minute of Consent Orders should be prepared and signed by all parties to the agreement. The Minute can then be referred to the President or a Magistrate who may make final orders in terms of the Minute in relation to the parties to the agreement.

17.2 Where a pre-hearing conference does not result in consent for final orders the President, a Magistrate or Convenor may adjourn the case to:

- (a) a further pre-hearing conference; or
- (b) a court date in a Protection List.

Final orders in the absence of a party

18.1 If at, or as a result of a pre-hearing conference:

- (a) the applicant and one or more of the respondent(s) consent to final orders and prepare and sign a Minute of Consent Orders as provided for in Practice Direction 17.1; and
- (b) one or more of the respondents failed to attend the pre-hearing conference at which the consent was reached; and
- (c) the Court is satisfied that the application(s) should be heard and determined ex parte in relation to the respondent(s) who failed to appear;

then the Court may rely on all of the information contained in the documents required to be filed pursuant to these Practice Directions to satisfy itself of what final orders should be made in relation to the respondent(s) who failed to appear.

18.2 Where:

- (a) no Minute of Consent Orders has been prepared and signed by the applicant and any of the respondent(s), or some other satisfactory evidence of consent produced; and
- (b) the Court is satisfied that the application should be heard and determined ex parte;

then the Court may rely on all of the information contained in the documents filed pursuant to these Practice Directions to satisfy itself of what final orders should be made in relation to all of the parties.

18.3 The Court may make directions for the filing of affidavit(s) to avoid a witness(es) being called to give oral evidence when an application is heard and determined ex parte.

Warrants

19.1 An application for the issue of a warrant may be heard on an ex parte basis.

19.2 All warrants are to be in the appropriate approved form contained in the schedule.

- (a) A warrant (access) will be Form PCWACC.
- (b) A warrant (apprehension) will be Form PCWAPP.
- (c) A warrant (provisional protection and care) will be Form PCWPROV.

Extraction of Orders

20.1 In proceedings under the Act the Court Registry will prepare and distribute to the parties the following orders:

- (a) Interim and final Protection Orders.
- (b) Orders which include:
 - (i) a condition to be complied with by the Department for Community Development, a child, a parent or an adult with whom the child is living;
 - (ii) an entitlement to any person on or about placement of or about access to or contact with a child;

- (iii) an order for separate legal representation of a child and any order the Court may consider appropriate to facilitate the ability of the Child Representative to fulfil the responsibilities of the role;
 - (iv) orders for the preparation of a report pursuant to s139 of the Act and any order the Court may consider appropriate to facilitate the ability of the Report Writer to fulfil the requirements of their role;
 - (v) any leave granted pursuant to s 240 of the Act.
- (c) any Order as directed by a Judge or Magistrate.

20.2 If a party wants to extract an Order which does not fall within 20.1(a), (b) or (c) above then that party is to lodge a draft of the order electronically with the Court Registry for settlement and extraction.

**His Honour Judge D J Reynolds
PRESIDENT**

Dated this 28 day of September 2006

SCHEDULE

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| Form PC1 | - Application |
| Form PCNAS | - Notice of Address for Service |
| Form PCWACC | - Warrant (access) |
| Form PCWAPP | - Warrant (apprehension) |
| Form PCWPROV | - Warrant (provisional protection and care) |
| Form PC_EoS | - Endorsement of Service |
| Form PC NoCTA | - Notice of Ceasing to Act |