



Children's Court of Western Australia

Practice Direction 6 of 2021

Protection Proceedings

1. Application of Practice Direction

- 1.1 This Practice Direction applies to protection proceedings in the Protection and Care jurisdiction of the Court and is subject to the requirements of the *Children and Community Services Act 2004* (WA).
- 1.2 Practice Directions 6 of 2006, 1 of 2007, 1 of 2008, 2 of 2015, 1 of 2016, 1 of 2017 and 6 of 2020 are revoked.
- 1.3 This Practice Direction has effect from 9 August 2021.

2. Completion of proceedings

The Court aims to complete protection proceedings within 12 months of the lodging of an application for a protection order.

3. Directions

Where this Practice Direction does not provide for a particular circumstance, the Court may give such directions as it considers necessary and appropriate.

4. Initiation of proceedings

- 4.1 An application by the Department of Communities must be in writing using the Protection Application form (www.childrenscourt.wa.gov.au - Forms) and:
 - (a) state the orders that are sought;

- (b) state the statutory provision under which each order might be made;
 - (c) state the grounds of the application;
 - (d) include particulars of the relevant and current factual allegations or circumstances relied on to make out the grounds of the application; and
 - (e) be signed by the applicant, an authorised delegate or on the applicant's behalf by the applicant's legal representative.
- 4.2 All statements and particulars in an application must be in plain language, and be set out and expressed clearly.
- 4.3 If multiple or alternative orders are sought, this must be clearly set out and, for each such order, the grounds and supporting statements and particulars relevant to each order precisely stated.
- 4.4 Applications, other than an application to initiate proceedings, must be in writing using the Application form (www.childrenscourt.wa.gov.au – Forms). The form must be signed by the applicant, an authorised delegate or on the applicant's behalf by the applicant's legal representative.

5. Multiple children from the same family

Where applications are made which initiate proceedings in relation to multiple children from the same family:

- (a) a separate application for each child is required;
- (b) a Multiple Children Schedule form must be lodged with the applications; (www.childrenscourt.wa.gov.au – Forms)
- (c) following the initial application, any subsequent document lodged by a party may set out information about any of the children from the same family; and
- (d) as far as possible, proceedings relating to the children of the same family, are to be heard together.

6. Service

- 6.1 In matters where the applicant has been unable to effect service before the hearing date and a respondent 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.
- 6.2 The applicant is then required to use best endeavours to serve the respondent with the application and the notice before the next hearing date. If service is effected, then proof of service is to be lodged before the next hearing date.
- 6.3 In matters where service has not been effected the applicant must lodge an affidavit setting out what has been done to locate and serve the respondent.
- 6.4 The Court may make an order to dispense with service, with or without conditions, in exceptional circumstances.
- 6.5 The Court may make an order for substituted service with conditions, and must consider making this order prior to making any order to dispense with service.

7. Endorsement of service

The applicant is to lodge an Endorsement of Service form (www.childrenscourt.wa.gov.au - Forms) within 7 days of service of an application.

8. Response

- 8.1 Unless otherwise directed by the Court, a party opposing any part of an application served on them, is to lodge and serve a response by no later than 7 days after the status conference.
- 8.2 The response to the application must be in writing using a Response form (www.childrenscourt.wa.gov.au - Forms) and must:
 - (a) state clearly the orders sought in the application that are opposed, any orders that are not opposed and any alternative orders that are proposed;

- (b) briefly outline which allegations contained in the application are disputed and the basis for that dispute;
- (c) outline if the party agrees there are any protection concerns and broadly which concerns are accepted;
- (d) set out any family members that should be assessed as a potential carer for the child to be placed with;
- (e) if seeking reunification, outline any steps already taken towards reunification and any proposal to address any accepted protection concerns; and
- (f) be signed by a respondent or a respondent's legal representative on instructions.

9. First hearing

9.1 Within 3 working days of the lodging of an application by the Department of Communities, the matter is to be listed for a hearing before the Court.

9.2 At this hearing the Court will:

- (a) give those standard directions in Schedule 1 which are appropriate;
- (b) consider any urgent application for an interim order of which notice has been given; and
- (c) if necessary list the application for an interim order hearing.

10. Hearing for referral of application to Pilot Therapeutic List (Pilot List), Case Management List or a mediation conference

10.1 Within 6 weeks of the first hearing of the application, the matter is to be listed for a further hearing before the Court.

10.2 At this hearing:

- (a) the Court is to consider any outstanding interim applications; and
- (b) the Court may refer an eligible matter to the Pilot List for management and resolution; or

- (c) where the parties consent, the Court may refer defended applications to a mediation conference and so far as is practicable, the mediation is to be held within 4 weeks of this hearing date; or
- (d) the Court may refer an eligible matter to the Case Management List for management and resolution; or
- (e) the Court may adjourn a matter to a status conference.

11. Pilot Therapeutic List

- 11.1 The Court is undertaking a Pilot List within the Protection and Care jurisdiction of the Court.
- 11.2 The primary aim of the Pilot List is to encourage reunification between families.
- 11.3 The Pilot List applies a non-adversarial, solution focused approach that incorporates the principles of therapeutic jurisprudence.
- 11.4 The Pilot List is not subject to the same timeframes as the Protection and Care General List.
- 11.5 The Court will assess the suitability of a matter for referral to the Pilot List by application of the Pilot Therapeutic List Eligibility Guidelines.
- 11.6 Referral to the Pilot List is at the Court's discretion.
- 11.7 Acceptance of a matter into the Pilot List is at the discretion of the judicial officer in charge of the Pilot List and subject to available placements.

12. Mediation conference

- 12.1 Where the parties agree to mediate, the Court may adjourn a matter to allow that to occur. The mediation conference is to be organised by Legal Aid Western Australia or as otherwise agreed by the parties and ordered by the Court.
- 12.2 Where Aboriginal families are to participate in a mediation conference, the mediation process should be flexible to ensure that it meets the needs of the family in their particular circumstances and, where possible,

provides an opportunity for Aboriginal family and support service involvement.

- 12.3 Subject to availability, an Aboriginal convenor should convene a mediation conference involving Aboriginal families.
- 12.4 Immediately following referral to a mediation conference to be organised by Legal Aid Western Australia, the applicant in consultation with the other parties is to contact the Child Protection Mediation Conference Coordinator, Legal Aid Western Australia to arrange a suitable date for the conference. Email ChildProtectionMediation@legalaid.wa.gov.au; telephone 9218 0160.

13. Mediation conference - draft minute of orders

- 13.1 Following a mediation conference, if there are still matters which are not resolved, the parties are to:
- (a) agree on a statement of issues that remain in dispute; and
 - (b) specify any necessary directions.
- 13.2 Unless otherwise agreed:
- (a) the statement will be drafted by the applicant; and
 - (b) the statement is to be signed by the parties and lodged with the Court at least 2 working days before the next listed court date.
- 13.3 Where the matter has been resolved, unless otherwise agreed, the consent orders will be drafted by the applicant and signed by the parties.

14. Mediation conference - convenor's report

- 14.1 The mediation conference convenor must prepare a written report and, within 14 days after the mediation conference, give a copy of the report to:
- (a) each participant; and
 - (b) the CEO.

- 14.2 The report must be signed by the convenor and contain the following:
- (a) details of the time and place the mediation conference was held;
 - (b) a list of the persons who were invited to the mediation conference;
 - (c) a list of the participants; and
 - (d) a summary of the outcomes of the mediation conference.
- 14.3 The report must not disclose any matters that were discussed at the mediation conference, except as required by this Practice Direction.
- 14.4 A copy of the convenor's report is to be lodged with the Court at least 2 working days before the next mention date.

15. Case Management List

- 15.1 Subject to resource availability, there will be a Case Management List within the Protection and Care jurisdiction of the Court.
- 15.2 The primary aim of the Case Management List is to manage those cases that will benefit from intensive case management by a magistrate.
- 15.3 The Case Management List is not subject to the same timeframes as the Protection and Care General List.
- 15.4 The Court will assess the suitability of a matter for referral to the Case Management List by application of the Case Management List Eligibility Guidelines.
- 15.5 Referral to the Case Management List is at the Court's discretion.
- 15.6 Acceptance of a matter into the Case Management List is at the discretion of the judicial officer in charge of the Case Management List and subject to available placements.

16. Status conference

At a status conference the Court is to:

- (a) consider the outcome of the mediation conference;
- (b) make case management directions, if required;
- (c) refer an eligible matter to the Case Management List for management and resolution; and
- (d) fix a date for a pre-hearing conference within 4 weeks of the status conference.

17. Pre-hearing conference

- 17.1 A pre-hearing conference will be presided over by a judicial officer (including a registrar) of the Children's Court. A magistrate who has presided over a pre-hearing conference should not preside over the trial of the same matter unless listed to do so by the President of the Court and the parties consent.
- 17.2 The purpose of the pre-hearing conference is to give the parties to the proceedings an opportunity to discuss the issues raised in the application and work together to reach an agreement that is in the best interests of the child. If no agreement is reached, the parties are to identify the issues in dispute.
- 17.3 The proceedings of a pre-hearing conference are confidential and not to be recorded.
- 17.4 If an agreement is reached then consent orders are to be drafted by the Department of Communities at the pre-hearing conference, where practicable, and signed by the parties.
- 17.5 If no agreement is reached, then the matter is to be listed for a hearing in the Trial Allocation List.
- 17.6 When a pre-hearing conference is presided over by a registrar, the registrar is to prepare a report using the Pre-Hearing Conference Report form (www.childrenscourt.wa.gov.au - Forms). The report will be retained on the Court file and a copy provided to each of the parties.

18. Trial Allocation List

- 18.1 No later than 3 working days before the Trial Allocation List hearing all parties are to lodge a Trial Listing Callover Certificate - (www.childrenscourt.wa.gov.au - Forms).
- 18.2 When a matter is listed for trial, the Court may order that the parties attend a readiness hearing which will, if practicable, be presided over by the magistrate who is to hear the matter.
- 18.3 When a matter is listed for trial, the Court may order that the parties lodge any affidavits and documentary evidence to be relied upon at trial.
- 18.4 Affidavits and documentary evidence relied upon by the applicant must be lodged and served on the other parties at least 21 days before the readiness hearing (or 21 days before the trial if no readiness hearing is ordered), unless otherwise ordered by the Court.
- 18.5 Affidavits and documentary evidence relied upon by the other parties must be lodged and served at least 14 days before the readiness hearing (or 14 days before the trial if no readiness hearing is ordered), unless otherwise ordered by the Court.

19. Readiness hearing

- 19.1 No later than 7 days before the readiness hearing (or 7 days before the trial if no readiness hearing is ordered) all parties are to lodge and serve on the other parties a case outline which contains:
 - (a) a list of all the affidavits and documentary evidence to be relied upon by the party at the trial;
 - (b) a schedule of all documents produced by summons upon which a party proposes to rely at the trial, including for cross examination purposes;
 - (c) a statement of issues which are still in dispute; and
 - (d) confirmation of the witnesses required for cross examination.
- 19.2 No later than 7 days before the readiness hearing (or 7 days before the trial if no readiness hearing is ordered) the applicant is to lodge and serve on the other parties a chronology of events.

19.3 At a readiness hearing, the Court may make such further directions as the Court considers appropriate.

20. Final orders in the absence of a party

Where a party who has been served and has failed to respond to an application or without reasonable excuse has failed to comply with the directions of the Court, the Court may direct that the application be listed for trial and determined on the material that has been lodged in the proceedings and any additional material required by the Court.

21. Duties of legal practitioner acting for a party to notify Court

21.1 On being instructed to act for a party, other than the Department of Communities, a legal practitioner must lodge and serve a Notice of Acting form (www.childrenscourt.wa.gov.au – Forms).

21.2 A legal practitioner who ceases to be instructed to act for a party, other than the Department of Communities, must lodge and serve a Notice of Ceasing to Act form (www.childrenscourt.wa.gov.au – Forms) at least 14 days before the date when the next court proceedings involving the party are listed.

21.3 A legal practitioner who has lodged a Notice of Acting form is to be taken as acting for the party until:

(a) the legal practitioner lodges a Notice of Ceasing to Act form; or

(b) another legal practitioner, who acts in the same capacity, lodges a Notice of Acting form; or

(c) the Court gives leave for a legal practitioner to cease to act for a party.

22. Unrepresented party

Compliance by an unrepresented party with paragraphs 8.1, 18.1, 18.3 and 19.1 of these directions is at the Court's discretion.

23. Regional Courts

- 23.1 Compliance with paragraphs 10, 11 and 15 of these directions is not required by a regional Children's Court.
- 23.2 Where a protection application has been lodged in the registry of a regional Children's Court, the regional Court should manage the protection proceedings until the time of a status conference. The matter may then be listed for a pre-hearing conference in the regional Court or, in the Court's discretion, adjourned to a status conference at the Perth Children's Court.
- 23.3 If a matter is not resolved at a regional pre-hearing conference it must be adjourned to a status conference at the Perth Children's Court.

24. Exemption from electronic lodgment

A person is exempt from lodging a document electronically with the Court if the person is an unrepresented party and does not have access to resources to complete an electronic lodgment.

25. Warrants

- 25.1 An application for the issue of a warrant may be made without notice and must be supported by affidavit.
- 25.2 A warrant is to be in writing using the appropriate Warrant form (www.childrenscourt.wa.gov.au - Forms).
- 25.3 The form and supporting affidavit must be served at the same time as the warrant.

26. Court appointed expert reports

An application for a Court appointed expert report must be in writing using the Court Appointed Expert Report form (www.childrenscourt.wa.gov.au - Forms) and attach:

- (a) the expert's curriculum vitae;
- (b) instructions setting out questions or issues to be addressed;

- (c) consent to appointment; and
- (d) quote for the costs of the report.

27. Extraction of orders

27.1 The Court's general practice is to extract:

- (a) interim and final protection orders;
- (b) orders which include:
 - i. a condition to be complied with by the Department of Communities, 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. an order for the preparation of a report pursuant to s 139 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; and
 - v. any leave granted pursuant to s 240 of the Act.

27.2 A party requiring an extracted order, other than the orders referred to above, must lodge the draft order electronically with the Court registry for settlement and extraction.

28. Transitional arrangements

28.1 The forms referred to in paragraphs 4.1, 4.4, 5, 8.1, 21 and 26 of these directions must be used from 1 December 2021.

28.2 Forms and documents which comply with the Court's practices immediately prior to the commencement of this Practice Direction will be accepted for lodgment until 30 November 2021.



Judge Hylton Quail

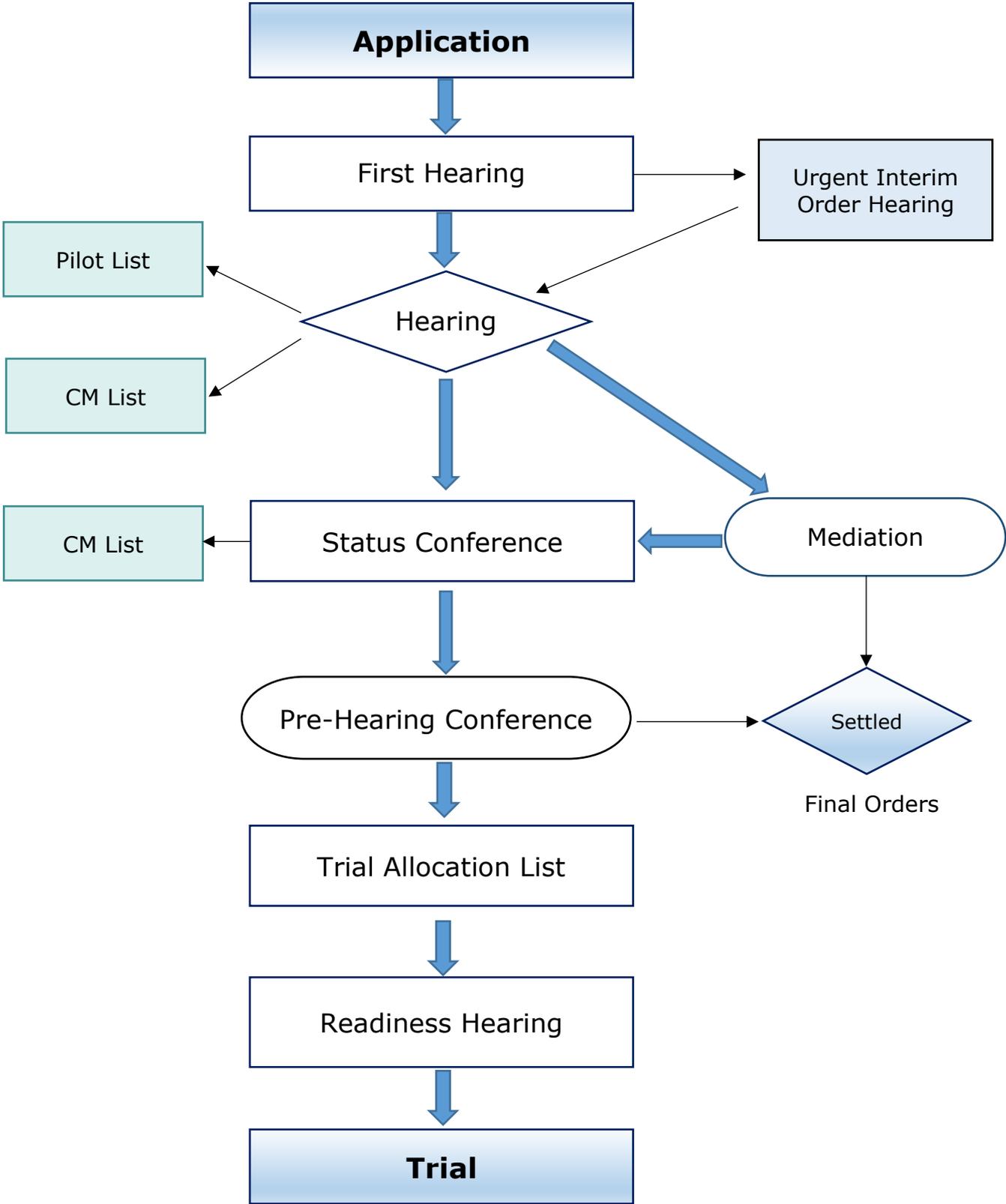
President

Children's Court of Western Australia

2 August 2021

Children's Court of Western Australia

Protection and Care Proceedings



Schedule 1: Standard Directions

The Court orders [*if appropriate*]:

Child representative

1. A child representative be appointed to separately represent [*name of child*].
2. The Director of Legal Aid Western Australia be requested to arrange the separate representation of [*name of child*].
3. Within 14 days, the Registry shall provide copies of all documents lodged in these proceedings to the Solicitor in Charge, Assignments Section, Legal Aid Western Australia.

Proceedings [*If not already served*]

4. By [*date*] the applicant lodge and serve on all parties its:
 - (a) application; and
 - (b) case outline; and
 - (c) [*other documents, if relevant*].
5. By [*date*] the applicant lodge and serve on all parties [*any other document specified by the Court*].

Service

6. Personal service on the respondent [*name*] of the application [*list other documents if relevant*] lodged by the applicant on [*date*] is dispensed with.

Interim order hearing

7. The proceedings are listed for an interim order hearing on [*date*] at [*time*].
8. By [*date*] the applicant lodge and serve on all parties:
 - (a) an application for an interim order;

- (b) an affidavit in support of the application;
 - (c) *[any other document specified by the Court]*.
9. By *[date]* the respondent is to lodge and serve on all parties an affidavit in response.

Multiple children of same family

10. The following applications: *[application number, name of child]* are to be heard together.

Expert evidence

11. Any party who intends to make an application for leave to rely on expert evidence is to lodge and serve an application by *[date and time before the next hearing date]*.

OR

12. The parties have leave to rely on expert evidence at trial.
[At status Conference or readiness hearing, directions will be made as to the exchange of expert reports]

Further hearing

13. The matter is listed for a further hearing on *[date and time is to be fixed within 6 weeks of first hearing]*.

Liberty to apply

14. The parties have liberty to apply in relation to these orders.



Children's Court of Western Australia

Pilot Therapeutic List Eligibility Guidelines

1. The Court may refer a matter to the Pilot Therapeutic List (the Pilot List) at its discretion.
2. The Pilot List is a pilot program within the Protection and Care jurisdiction of the Court.
3. Matters may be referred to the Pilot List, where:
 - (a) parties are willing to participate in a therapeutic process; and
 - (b) there is a strong likelihood of the matter resolving by consent.
4. Referral of a matter to the Pilot List is subject to available placements.



Children's Court of Western Australia

Case Management List Eligibility Guidelines

1. The Court may refer a matter to the Case Management List at its discretion.
2. The Case Management List is a List within the Protection and Care jurisdiction of the Court.
3. Matters may be referred to the Case Management List, where:
 - (a) the applicant is the Department of Communities; and
 - (b) the parties are likely to benefit from case management by a magistrate or the matter is complex; and
 - (c) the applicant and at least one respondent parent are prepared to constructively engage in case management in the best interests of the child.
4. Referral of a matter to the Case Management List is subject to available placements.