

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.

Evidence

17. 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

18. 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


19. The parties should take all necessary steps to ensure subpoenaed documents are produced to the court by the return date.
20. 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.
21. 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

22. 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.
23. 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.
24. 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*.

Hearing dates

25. A hearing date will not be vacated unless the party seeking to vacate the hearing date provides cogent and compelling reasons.
26. 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.
27. The party seeking to have the hearing date vacated must serve its application to vacate upon each other party.
28. Any application to vacate a hearing date will be determined by the Childrens Court Magistrate.
29. 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

Schedule 1 to Practice Direction 1 of 2016

Directions for application following Emergency Action

(or first time applications for Orders)

1. The applicant is to file and serve all evidence upon which it intends to rely, including any expert reports by (within 12 weeks).
2. A care plan and any amended applications are to be filed and served by (within 12 weeks).
3. The matter is listed for a further directions hearing on (a further week).

Further Directions Hearing

4. Subject to any directions for a court ordered meeting, all parties other than the applicant are to file and serve any evidence upon which they intend to rely and any cross application by, (within four weeks of the directions hearing set in paragraph 3).
5. Any evidence in reply is to be filed and served by (seven days from the filing of evidence pursuant to paragraph 4).
6. All parties are to file and serve a proposed minute of orders and a case management document (**Annexure A**), the latter containing:
 - a list of all affidavits, and any other documents, to be relied upon by the party at the hearing;
 - a detailed statement of the real issues in dispute (for example, a statement that an issue in dispute is "*whether there is a realistic possibility of restoration*" is not sufficient); and
 - confirmation of any witnesses required for cross-examinationby (within a further seven days after the filing of any evidence in reply pursuant to paragraph 5 or, if none, within seven days of the filing of all evidence pursuant to paragraph 4).
7. The proceedings are adjourned for a listing hearing before the Childrens Court Magistrate on (within a further two weeks of the completion of matters in paragraph 6).
8. Any subpoena is to be made returnable no later than two weeks prior to a listing hearing.
9. The parties have liberty to apply to relist before the court on 2 working days notice. Any requests for relisting will, in the first instance, come before the Registrar.

Schedule 2 to Practice Direction 1 of 2016

Directions for Applications for Extending, Amending or Revoking Care and Protection Orders

1. The respondents and children's representatives are to file and serve any evidence upon which they intend to rely, and any cross applications, by (within 6 weeks from the first return date).
2. The applicant is to file and serve any evidence in reply by (within seven days from filing of evidence pursuant to paragraph 1).
3. All parties are to file and serve a proposed minute of orders and a case management document (**Annexure A**), the latter containing:
 - a list of all affidavits, and any other documents, to be relied upon by the party at the hearing;
 - a detailed statement of the real issues in dispute (for example, a statement that an issue in dispute is "*whether there is a realistic possibility of restoration*" is not sufficient); and
 - confirmation of any witnesses required for cross-examinationby (seven days from filing of evidence pursuant to paragraph 2).
4. The proceedings are adjourned for a listing hearing before the Childrens Court Magistrate on (within two weeks from filing of documents pursuant to paragraph 3).
5. Any subpoena to be made returnable no later than two weeks prior to a listing hearing.
6. The parties have liberty to apply to relist before the court on 2 working days notice. Any requests for relisting will, in the first instance come before the Registrar

Schedule 3 to Practice Direction 1 of 2016

Directions for Court Ordered Meeting

1. A court ordered meeting pursuant to Section 432 of the *Children and Young People Act 2008* is to be held in this matter.
2. A person:
 - a. from the list of approved Family Dispute Resolution mediators (as published on the ACT Courts website from time to time); and
 - b. nominated by the Manager, Legal Aid, Dispute Resolution Program (the Manager)

is appointed to preside at the court ordered meeting.

3. The parties are to attend a court ordered meeting to be held at a time and place arranged by the Manager.
4. The parties are to do all things necessary to facilitate the court ordered meeting, as directed by the Manager.
5. The Registrar is to provide the Manager with copies of all documents filed in the proceedings, at least 7 days prior to the scheduled meeting date.
6. If the parties do not attend the court ordered meeting, the Manager is to advise the Childrens Court within 24 hours of non-compliance.
7. The parties are to approach the court ordered meeting in good faith. If resolution of all issues in dispute cannot be reached, the parties, with the assistance of the person appointed to preside, must aim to record those issues on which agreement is reached and those upon which agreement cannot be reached.
8. The Manager is to provide an outcome report to the Childrens Court within 7 days of completion of the court ordered meeting. The Registry is to provide a copy of the report to each of the parties upon receipt.
9. The Director-General is to approach the Registry within 7 days of the completion of the court ordered meeting with a date suitable to all parties for the matter to be relisted, either to finalise any Orders as agreed between the parties or to set directions for progress of the matter.

10. The Director-General is to file in Court within 7 days of the court ordered meeting:

- a. Terms of Agreement to finalise the matter; or
- b. An agreed statement of facts and issues in dispute.

If there is no agreement, each party is to file a separate statement of facts and issues which they contend are in dispute.

11. The Childrens Court registry is to forward a copy of these directions to the Manager within three days of the making of the Order.

**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. _____
NAME ORGANISATION SIGNATURE
2. _____
NAME ORGANISATION SIGNATURE
3. _____
NAME ORGANISATION SIGNATURE
4. _____
NAME ORGANISATION SIGNATURE

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

- Rebecca Curran
- Jeanine Lloyd
- Lessli Strong