

Representing yourself at a final hearing in a protection and care case in the Children's Court of WA

This information may help you if you are representing yourself at a final hearing (sometimes called a trial) in the Children's Court of WA to decide if your child is in need of protection and whether a protection order should be made. The Legal Aid WA infosheet *Preparing for a final hearing in a protection and care case in the Children's Court of WA* may also help you.

You should get legal advice before appearing at a final hearing.

Who is involved in a final hearing?

In most cases the Department of Communities, (sometimes called "the Department" or just "Child Protection") is the "applicant" and the parents and any other parties are the "respondents".

Proposed "special guardians" are also respondents unless they are the applicants for a protection order (special guardianship).

If a lawyer has been appointed by the court to assist the child they are the "child representative".

What to do before the court date

As a respondent, before the date for the final hearing in court, you should:

- Get legal advice. Legal Aid WA provides a protection and care duty lawyer service at the Children's Court in Perth, called Children's Court (Protection) Services. The duty lawyer cannot represent you at a final hearing but they may be able to give you advice or information before your case is heard in court.
- Get all your paperwork organised so that you can easily find documents. These include the Department's application, any affidavits filed by the Department, any specialist reports (for example, by psychologists, paediatricians)

prepared in relation to your children and your family that are going to be evidence in court, the Department's Section 143 Written Proposal (if filed) and any documents (including applications and affidavits) filed by you or other parties (for example, the child representative).

- Make sure you have parking for the day or have organised transport to and from court.
- Organise childcare for any children you have at home because you might have to be at court all day. There is no childcare available at the court.
- If there are reports and letters (for example, from counsellors) that you want to give to the court as evidence at the hearing, you should ask the Department whether it will agree to you using them without the author being required to be at court to be questioned about the contents. If the Department doesn't agree you will have to make sure the person who wrote the document comes to court to give evidence. For how to do this see the Legal Aid WA infosheet: *Preparing for a final hearing in a protection and care case in the Children's Court of WA*.

What if I change my mind about opposing the case?

You can change your mind about opposing the Department's application on the day of the hearing.

Tell the court this when your case is called in.

If you change your mind before the day of the hearing you should let the other parties know as soon as possible so that the application can be early listed. This will save the court time which can be used for another case. It also prevents inconvenience for witnesses.

Checking the Written Proposal

Even if you now agree with the protection order that the Department is seeking you should carefully check the contents of the Section 143 Written Proposal. This is because it is the 'road map' for what will be happening while your child is in the care of the Department or being supervised on a protection order. A time limited protection order includes information about things like where your child is to live, contact, how you can show you can make it safe for your child to live at home, or have more contact, or have unsupervised contact, and the time frame for your child to return to your care if that is planned, so it is important that you check all the details.

If you disagree with some of the contents of the Written Proposal, or think there should be more detail included, you should try to negotiate with the Department for the changes you want before the protection order is made by the magistrate.

On the day of court

- Get to the court early. If you are running late it is important that you phone to let the court know you will be late. If you are not there and your case is called it can be decided without you being there.
- Bring all your paperwork with you.
- Bring a pen (and a spare) and paper to write notes.

At court

- Tell security when you arrive at court if you are worried about your safety from another party. Ask if there is a separate room where you can sit while you are waiting for court to start.

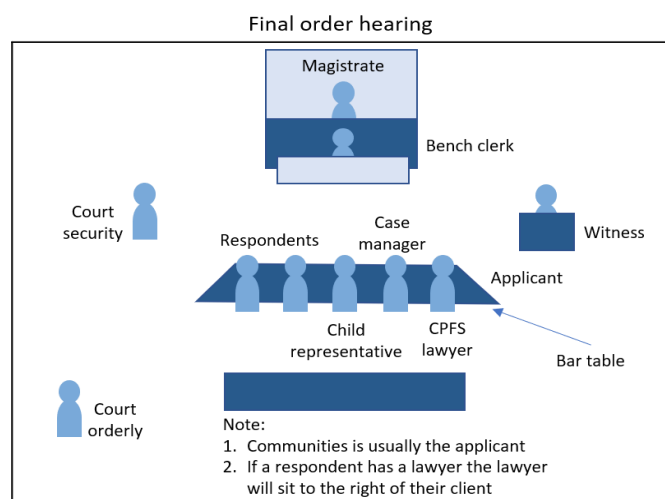
- Check the court lists on the walls or ask court security to tell you the court room for your hearing.
- If you have asked for an interpreter go to the court registry to see if the interpreter has arrived.
- As soon as you get to the courtroom you should tell the orderly in the court that you have arrived.
- The orderly will call your child's family name when your case is ready to start.
- Turn off your mobile phone and take off your sunglasses before going into court.
- Try not to talk or whisper while you are waiting in the courtroom or during the hearing.
- Do not eat or chew gum in court.
- You should call the magistrate "Your Honour".

What happens at the final hearing?

Where to sit

- As the respondent you sit on the left side of the table facing the magistrate.
- Any other parties and their lawyers sit on the left with you.
- The Department lawyer and the case manager (the applicant) sit on the right side of the table.
- The child representative, if there is one, sits in the middle of the table.

A picture of the courtroom is shown below.

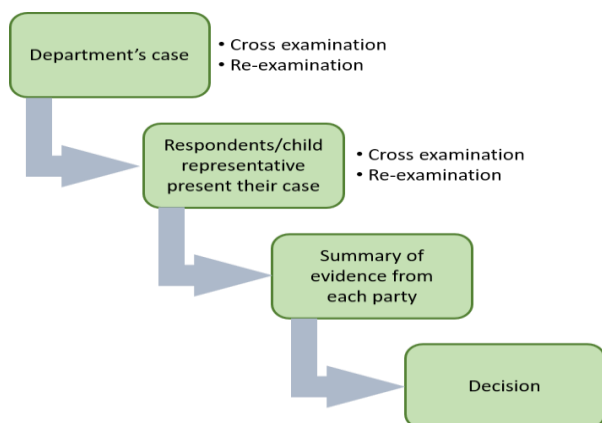


The beginning

- The magistrate will help you with all aspects of court procedure and the rules of evidence.
- Listening carefully will help you to follow what is going on, but if you still don't understand something, you can ask the court to explain.
- If you have not received, or have only just received, some documents from the Department or another party and you have not had enough time to read the documents and prepare your response, you should tell the court this at the beginning of the hearing. The court may delay the start of the hearing to give you the time you need.
- Each party will be given a chance to make a short opening statement about what they think should happen. The Department goes first because it is the applicant. When it is your turn as the respondent you could, for example, tell the court that:
 - you think it is in your child's best interests to have a protection order that is different to the one the Department wants, or
 - you think no protection order should be made.

Overview of the hearing

In cases where the Department is the applicant:



Each witness will make an oath on the bible or other holy book or make an affirmation to tell the truth at the start of their evidence.

During the hearing - tips

- Listen to the magistrate.

- Be polite.
- Don't argue with a witness or the magistrate.

Department evidence

The Department will present its case first, which includes calling its witnesses.

The case manager who made the application and/or if they are no longer the manager, the current case manager is usually the first witness.

You should have received affidavits and expert reports (if available) from witnesses the Department is calling. If you haven't received these documents, you should tell the magistrate before the witness begins to give evidence.

If you have made notes on these documents, make sure you have them organised so you can easily find them if you need to refer to them when you are asking questions.

The Department's lawyer will ask each witness questions based on the information that is in the affidavits and/or reports they have filed. The answers given by a witness are known as "evidence".

Listen carefully to each witness.

It will help if you make notes of what each witness says. On one page you can write down the things they say that you agree with. On the other page write down the things you don't agree with and want to question them about.

Your questions to Department witnesses

When the Department's lawyer has finished asking questions of each witness you will be given a chance to ask the witness questions. This is called "cross-examination". Other parties and the child representative, if there is one, will also be able to ask questions.

- You should ask each witness questions about anything you disagree with from their evidence and from their affidavits and/or reports.
 - This gives them the chance to respond to your views, for example, on whether your child is in need of protection or what protection order should be made.

- If you have “proof” (evidence) that something is incorrect you should show them the proof so that they can respond and the magistrate can hear what they say. Such proof could include a letter about counselling sessions or parenting programs you have attended.
- If you don’t question the witness about something they have said that you disagree with, the court is likely to think you agree with their evidence.
- When you have finished asking the witness about your “proof” (evidence) you should tell the court you want to “tender” (give) the proof (for example, a letter about the counselling sessions or a parenting program) to the court as evidence.
- Avoid making statements rather than asking questions.
- You get a chance to give your story later when you present your case.

Some examples of questions you might ask when you disagree with the Department’s witness include:

- Where the Department witness has given evidence that police callouts because of family violence led to the protection application, and there hasn’t been a call out for a long time, you could ask a question such as “There haven’t been any police reports since [date] have there?” If the witness agrees this is correct this will show that the situation has improved over a period of time.
- Where the evidence of the Department witness is that you did not work well with the Department or support services in the beginning but this is no longer accurate and more recently you have been working with them and doing things like going to meetings, returning calls and doing what is asked of you, you could ask “I have not missed any meetings/ counselling with.... /contact visits since [date], have I?”

The magistrate may also ask the witnesses some questions.

Re-examination

After you have asked your questions the magistrate will ask the Department’s lawyer if they wish to “re-examine” (ask more questions of) the witness. The Department’s lawyer can ask the witness more questions if they think any of the evidence they gave when answering your questions was not clear or was confusing.

The rest of the Department’s case

The Department’s lawyer will then call the next witness and the same process will be followed until all the Department’s witnesses have given their evidence.

“You should ask each witness questions about anything you disagree with from their evidence and from their affidavits and/or reports.”

Your evidence

After the Department’s witnesses have finished giving their evidence each respondent presents their case, starting with the person named as the first respondent on the Department’s application.

When it is your turn it is important that you:

- check your notes and keep to the points you want to make
- do not get side-tracked by minor matters
- focus on the future and how things will be different from the past and safe for your child.

When it is your turn to present your case, the usual arrangement is for you to give evidence first, followed by each of your witnesses.

The process that is followed is similar to the process described for Department witnesses.

You will go to the witness stand and make an oath or affirmation to tell the truth.

You should tell your story and focus on the evidence that supports what you think should happen in the case. For example, your position may be that:

- You think your child is not in need of protection, because the things that led to the protection application happened when the child was in the other parent's care but now the child is safe with you.
- Your child is no longer in need of protection, because of all the work you have done and changes you have made to make sure that your child will be safe with you.
- You agree your child is in need of protection but you think there should be a different order, or an order is not necessary right now.

You should support what you say with proof (evidence) when you can and give this proof to the court while you are telling your story. For example, urinalysis results, certificates of completion of courses/ parenting programs.

Department and other respondents questioning of you – cross examination

After you have told your story the Department's lawyer and other parties will then be able to ask you questions. The magistrate may also ask you questions at any time.

The Department will usually go first.

You will be asked questions about the things the Department disagrees with from your evidence.

- Do your best to answer the questions.
- Try to stay calm and take time to understand the question and think about the answer.
- If you don't understand a question, ask that it be reworded or repeated before you try to answer it.
- When the Department's lawyer has finished asking you questions, the other parties may then ask you questions about things they disagree with, or want more details about, from your evidence.

The magistrate will then ask you if you want to say anything to make clear what you meant when you answered any of these questions (see under the heading *Re-examination* below).

When your evidence is finished you can go back to your seat at the bar table.

Your other witnesses

When you have finished your evidence you can then call (ask) your witnesses to give evidence.

- Keep your questions short.
- Ask one question at a time.
- Questions should begin with "what", "why" "who" and "when".
- Questions that suggest an answer are not usually allowed, for example, "You know I've changed don't you?"

The Department's lawyer and other parties, or their lawyers, may then ask the witness questions.

The magistrate may also ask your witness questions at any time.

Re-examination

The magistrate will then ask if you want to ask your witness any further questions to make clear or explain anything that they said when answering questions from the Department and the other parties.

The evidence of the other respondents and their witnesses

You should follow the same process as outlined earlier for the Department's witnesses in asking questions of the other respondents and the witnesses they may call to support their case.

Rules about evidence at court and how the case is conducted

The court may explore any of the information raised in your case in any way it thinks appropriate. For example, the court can hear evidence of what one person heard another person say. This is called "hearsay". The weight that the court gives this evidence will depend on whether it is backed up by

other evidence or whether there is other evidence that suggests it is wrong.

The court must try to make sure you and any other party understand what is happening in court. If you do not understand what is happening or don't understand what a question means you should tell the magistrate straight away.

Summary to the court

When all of the evidence has been given, the Department, the child representative if there is one, and each of the respondents will be given a chance to "sum up", which means giving a summary of their case and the evidence in support of it.

You should summarise all the points you and your witnesses have made which support your case, for example:

- why your child does not need protection, or
- if you agree your child does need protection, why a different order should be made to the one the Department is asking for, or
- if you agree your child does need protection, why no protection order should be made.

This is not the time to give the court new evidence that has not come out in the hearing.

The decision

The court will then make its decision. Sometimes the magistrate will give their decision at the end of the hearing. Often they will put the case off to another day to think about the evidence and write down their decision.

If I disagree with the decision can I appeal?

You can appeal. Time limits apply. If you think you might want to appeal you should get legal advice as soon as possible after you receive the decision.

Where can I get more information?

- Contact the Legal Aid WA Infoline on 1300 650 579 or go to any office to get copies of other infosheets.
- You can access an online copy of the *Children and Community Services Act 2004* (WA) at the Parliamentary Counsel's office website at: https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a9243.html.

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