

Representing yourself at a final hearing for a protection and care matter 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) at the Children's Court of WA to decide if your child is in need of protection and if so, what if any protection order should be made. The Legal Aid WA information sheet "Preparing for a final hearing in a protection and care matter in the Children's Court of WA" may also help.

You should get legal advice before appearing in a final order hearing.

In most cases the Department of Communities - Child Protection and Family Support ("the Department") is the "applicant" and the parents are the "respondents". Proposed "special guardians" are also respondents.

Before 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 of your paperwork with you. It needs to be 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).
- Bring a pen (and a spare) and paper to write notes.
- Make sure you have parking for the day or can get transport home organised along with child care arrangements for any children you have at home because you might have to be at court all day. There is no child care available at the court.

At court

- Legal Aid WA provides a duty lawyer service (Children's Court Protection Services) at the Children's Court in Perth. The duty lawyer **cannot** represent you at a final order hearing but they may be able to give you advice or information before your case is heard in 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.

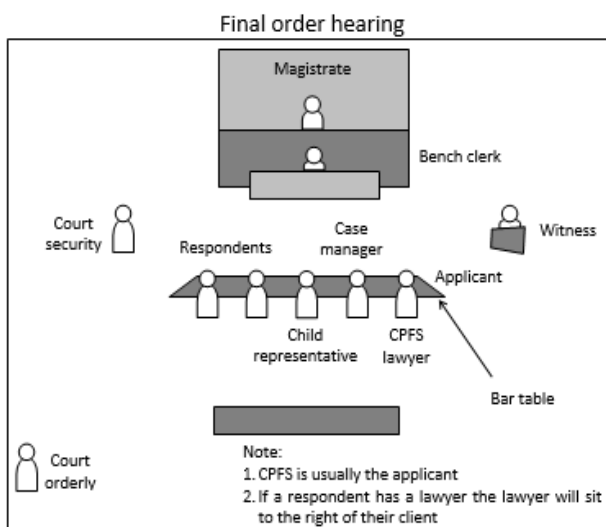
- Try not to talk or whisper while you are waiting in the courtroom or during the hearing.
- Do not eat or chew gum in court.
- Try not to talk or whisper while you are waiting in the courtroom or during the hearing.
- You should call the magistrate or judge “Your Honour”.

What happens at the final hearing?

Who is who and where to sit

- The Department is called the “applicant” (unless you have applied to revoke a protection order in which case you are the applicant). Parents and any other parties are the “respondents”. If a lawyer has been appointed by the court for the child they are the “child representative”.
- 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.

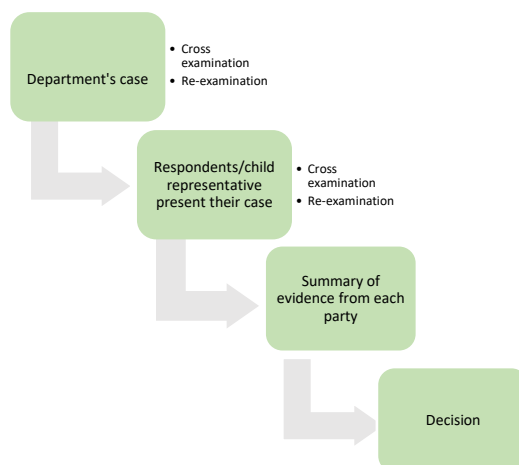


The beginning

- The magistrate or judge will help you with all aspects of court procedure and the rules of evidence.
- If you listen carefully you should be able to follow what is going on.
- 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. For example, you can tell the court:
 - You think a different protection order to the one the Department wants is in your child’s best interests.
 - You think no protection order should be made.
- If you have not received, or 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 can delay the start of the hearing to give you the time you need.

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 affirmation to tell the truth at the start of their evidence.

During the hearing - tips

- Listen to the magistrate or judge.
- Be polite.
- Don't argue with a witness, the magistrate or judge.

Department evidence

The Department will present its case first and call its witnesses.

- The case manager who made the application and/or if they are no longer the manager, the case 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 if you have been working with them and doing things like going to meetings, returning calls, 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 was not clear or confusing following the witnesses answers to your questions.

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.

Your evidence

After the Department’s witnesses have finished giving their evidence the respondents give their evidence 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 the usual arrangement is for you to give evidence first followed by each of your witnesses.

The process that is followed is the same as what has been 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 with proof where you have it and focus on the evidence that supports what you think should happen. For example:

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

You should support what you say with proof (evidence) when you can and give this proof to the court as evidence, for example, urinalysis results, certificates of completion of courses/ parenting programs.

If there are reports and letters (for example, from counsellors) that you want to use as evidence at the trial you should ask the Department **before** the hearing date if the Department will agree to you using them as evidence 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.

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 think about the answer if you are not sure.
- 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 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 wish to make clear or explain anything following the questions from the Department's lawyer or the other parties/their lawyers (see under the heading **Re-examination** on page 4).

When your evidence is finished you can go back to 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 questions to make clear or explain anything that they said when being questioned by the Department and the other parties (re-examination).

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 these witnesses.

Rules about evidence at court and how the case is conducted

The court may explore any matter from 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 does not support it.

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.

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” or summarise their case and the evidence in support of their case.

You should summarise all the points you and your witnesses have made which support:

- why your child is not in need of protection, or
- if you agree your child is in need of protection, why a different order should be made to the one the Department seeks, or why no protection order would be in your child’s best interests.

This is not the time to tell 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.

What if I change my mind about opposing the case on the day of the final hearing?

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.

Even if you 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 on a protection order (supervision). For a protection order (time limited) it includes information about things like where your child is to live, contact, what you need to do and the time frame for your child to return to your care. If you disagree with some of the contents or think there should be more detail in the proposal you should try to negotiate with the Department for the changes you want before the protection order is made.

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 information sheets.
- You can read 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

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

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Goldfields Regional Office

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Midwest & Gascoyne Regional Office

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West Kimberley Regional Office

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