



# PRACTICE DIRECTIONS

## Northern Territory Local Court

*These Practice Directions are issued pursuant to section 49(1) of the Local Court Act, section 53(1)(b) of the Youth Justice Act and section 31(3) of the Work Health Administration Act and will commence from 15 September 2020.*

15 September 2020  
Version 3.1

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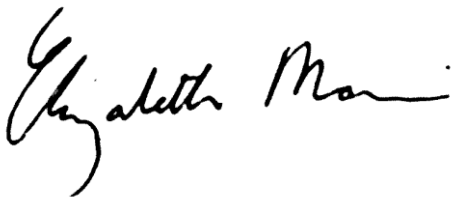
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## Preface *Version 2.0, 8 May 2020*

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The declaration of a pandemic in March 2020 has led to the assessment and adaption of many procedures in the Local Court of the Northern Territory. Our consolidated Practice Directions have now been reissued, taking into account practices and procedures to minimise risk of infection to the community, whilst still allowing access to and continuation of Court Services.

The ability of the Local Court to continue to function at a time of uncertainty is an important cornerstone of our society. There will be inevitable delay in relation to the conclusion of many of the matters before the Court. However by adapting to change, but maintaining due process of law, including by exploring options to ensure open justice, the Court can continue to play its role in providing stability and accountability in our community.



The Hon. Elizabeth Morris

Chief Judge of the Northern Territory of Australia Local Court

# Preface

Version 1.0, 30 September 2019

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The *Local Court Act 2016* (NT) confers the Chief Judge with the power to issue directions about the practice and procedure of the Court in any jurisdiction, and also the practice and procedure of the Court's registries and other offices.<sup>1</sup>

Over the years the Local Court, or Court of Summary Jurisdiction as it was known prior to 2016, has issued a number of practice directions to assist those appearing before it to comply with its procedural requirements. With the advent of technology becoming increasingly relevant in court proceedings, the format and accessibility of individual practice directions has been tested. Accordingly, the Court undertook to compile one comprehensive and consolidated set of Practice Directions.

The idea behind the consolidation is both to modernise and remove outdated or irrelevant practice directions, or those so entrenched in practice that they are no longer required; to increase accessibility by creating a single source document which arranges directions by subject area, which is easier to read and electronically search; to provide a more straight forward method to reference the practice directions; and to incorporate a complete set of forms.

The consolidation project has been undertaken by a committee consisting of the Principal Registrar Rebecca Plummer, and Judicial Registrars Leanne Gordon and Kris Norrington, in consultation with the Chief Judge of the Local Court. We are extremely grateful for the committee's hard work and dedication to the project.

With the publication of these consolidated Practice Directions, all former Directions are terminated in their operation. For clarity, as and when these Practice Directions are amended they shall be republished on the Local Court website in full and repeal the previous version.

Whilst this process has streamlined and enhanced the accessibility of the procedural and practical expectations of the Court, persons appearing before the Court must read these directions in conjunction with the Local Court suite of legislations and rules. Other useful information is also available at the Local Court website: [www.localcourt.nt.gov.au](http://www.localcourt.nt.gov.au), including an electronic version of this document which allows users to navigate through the hyperlinked chapters and form references.

The document's purpose is to assist the user's experience, so we welcome any feedback in order to improve future versions of the document.



The Hon Dr John Lowndes  
Chief Judge of the Northern Territory of Australia Local Court

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<sup>1</sup> *Local Court Act 2016* (NT), s49.

## **Part 1 GENERAL PRACTICE DIRECTIONS**

*These Practice Directions are issued pursuant to section 49(1) of the Local Court Act, section 53(1)(b) of the Youth Justice Act and section 31(3) of the Work Health Administration Act and will commence from 15 September 2020.*

## Practice Direction 1A Private Audio Recording of Proceedings

- 1A.1 The audio recording of Court proceedings produced by Epic Global is and will remain the authoritative audio record of proceedings.
- 1A.2 Court accredited representatives of news/media agencies are permitted to make a private audio recording of Court proceedings provided it is done unobtrusively and without interruption to the proceedings. For that purpose, a hand-held recorder may be taken into a courtroom and activated.
- 1A.3 The purpose of permitting such recording is to maintain accuracy in the reporting of Court proceedings. The audio content of the recording may not be broadcast, copied, downloaded or provided to any other person or organisation unless provision is to legal advisors for the purposes of obtaining legal advice in connection with the recording and publication of its content.
- 1A.4 The person who makes the private audio recording or the employer for whom the recording is made must retain possession of the recording and not edit or delete the recording for a minimum period of three months following the making of the recording or for such period as a Judge of the Court may order.
- 1A.5 This Practice Direction does not impinge on the right of a Judge to revise, subsequently, a judgment delivered extempore; or a Judge's right, in a particular case, to prohibit recording should the Judge consider prohibition necessary or desirable.

## Practice Direction 1 Access to Case Files and Exhibits

- 1.1 Section 28 of the *Local Court Act 2016 (the Act)* prescribes the documents, records and other information that constitute the case file for proceedings in the Local Court, Youth Justice Court and the Work Health Court.
- 1.2 Sections 29, 30 and 31 of *the Act* deals with access to case files, judgments and orders and exhibits.
- 1.3 The purpose of this Practice Direction is to regulate the process for access to case files and exhibits that is not otherwise provided for in *the Act*.

### Access to Case Files

- 1.4 Access to case files by either a party or other person must be sought by sending a completed Access to Case Files Form to [Operations.LocalCourt@nt.gov.au](mailto:Operations.LocalCourt@nt.gov.au), attention to the relevant registry, i.e. 'Access to Case File request ATTN: Alice Spring Registry'. The form can be found at [Schedule 1](#) and <https://localcourt.nt.gov.au/forms-fees#>
- 1.5 The Court, in exercising its discretion to grant access pursuant to section 29(2) of *the Act*, will have regard to all the circumstances including:
  - 1.5.1 the public interest in granting or refusing access;
  - 1.5.2 the reasons why access is requested;
  - 1.5.3 whether or not the document or documents sought to be inspected contain libellous material or information which the Court considers should remain confidential to the parties; and
  - 1.5.4 the stage at which the proceedings have reached.

### Access to Exhibits

- 1.6 Access to exhibits by either a party or other person must be sought through the same process that applies to access to case files.
- 1.7 Whether or not access to an exhibit will be given to a non-party is in the discretion of the presiding Local Court Judge.
- 1.8 In exercising this discretion the Local Court Judge will consider all of the circumstances including:
  - 1.8.1 the public interest in granting or refusing access;
  - 1.8.2 whether the exhibit is likely to offend public decency;
  - 1.8.3 whether the exhibit contains material which is not able to be disclosed by reason of law or a court order;
  - 1.8.4 whether the exhibit ought to remain confidential for any other reason; and
  - 1.8.5 whether the exhibit needs to be edited before it is released.



## **Practice Direction 2 Audio and Video Evidence**

- 2.1 The purpose of this Practice Direction is to prescribe the procedure to be followed when it is proposed to adduce audio or video evidence in the Local Court (Criminal and Civil Divisions), the Youth Justice Court and the Work Health Court.
- 2.2 Audio and video recordings for use in Court must be compatible with the Court's playing equipment. For this purpose, unless the Court otherwise orders, audio recordings must be on a USB Flash Drive or any other format as directed by the Court, accounting for changes in technology or availability of technology at any given time.
- 2.3 Any audio and video recording sought to be used in Court must be produced to the Court in sufficient time prior to its intended use to enable it to be tested on the Court's playing equipment.

## Practice Direction 3 Return of Exhibits

- 3.1 The purpose of this practice direction is to ensure the orderly return of exhibits tendered at a hearing in the Work Health Court, Youth Justice Court and the Local Court.
- 3.2 Where documents or property are produced and/or tendered by a party or a solicitor for a party then the Court shall return those documents or property to the solicitor or the party themselves if unrepresented.
- 3.3 Where the documents or property are produced under summons to the Court by a person not a party to the action, whether or not they are tendered, then those documents or property shall be returned to that person at the cost of the party who summonsed them.
- 3.4 Exhibits shall not be returned until the appeal period has passed and all appeal proceedings have been resolved.

### Criminal Proceedings

- 3.5 Where the owner of exhibits or property in connection with criminal proceedings is unable to be located, is non responsive, or is otherwise refusing to accept the receipt of the exhibits, the Court may on application of a police officer, claimant of the property or on its own initiative make any order it sees fit under section 130B *Local Court (Criminal Procedure) Act 1928*.

## Practice Direction 4 Restriction on Publication of Childrens' Names

- 4.1 The purpose of this Practice Direction is to ensure compliance with sections 97 and 301 of the *Care and Protection of Children Act 2007 (the Act)*.

### Procedure

- 4.2 All proceedings in the Family Matters jurisdiction of the Local Court shall be in closed Court and the names of parties will not be published on the court list; reference will only be made to the file number and the courtroom in which it is to be heard.
- 4.3 Parties are required to wait outside of the courtroom until called. Practitioners should assist the court officer to identify family members in relation to each matter to avoid confusion of unrepresented parties.
- 4.4 Representatives appearing in a matter in the Local Court (other than the Family Matters jurisdiction) or the Youth Justice Court that may possibly involve the identification of a child in need of protection should alert the Court prior to commencement of proceedings that section 301 of *the Act* may apply and the court may need to be closed. If it becomes apparent that the representative was wrong about the possibility of identification then it is within the discretion of the Local Court Judge to re-open the Court.
- 4.5 If it becomes apparent that section 301 of *the Act* may apply during a proceeding the representative should bring this to the attention of the Local Court Judge as soon as possible.

## Practice Direction 5 Evidence by Video Conferencing Facilities

- 5.1 The purpose of this Practice Direction is to ensure that matters are dealt with as efficiently and effectively as possible where it is proposed to adduce evidence by the use of videoconferencing facilities.
- 5.2 A party seeking to adduce evidence by the use of video conferencing facilities will be primarily responsible for servicing any costs and arrangements required.

### Civil Procedure

- 5.3 In the Civil jurisdiction, all applications for an order to adduce evidence by the use of video conferencing facilities are made to the Local Court Judge to whom a proceeding has been allocated for hearing (Hearing Judge).
- 5.4 A party must apply for an order to adduce evidence by video conferencing by filing an application in accordance with Form 25A and serve a copy of the application on each other party.
- 5.5 The application must state the name of the witness to be examined and the nature of the evidence to be given by the witness and, if applicable, the arrangements the party has made for the video conferencing link.
- 5.6 The application must be heard by the Hearing Judge or by a Judicial Registrar, if directed to do so by the Local Court Judge.
- 5.7 The Hearing Judge may make orders he or she considers appropriate, including orders in respect of the following matters:
- 5.7.1 the witness or witnesses who may give evidence by video conferencing facilities;
  - 5.7.2 the date, time and place of the video conferencing link; and/or
  - 5.7.3 whether the evidence in chief of an expert witness to be adduced by the video conferencing link is to be confined to that expert's statement.
- 5.8 A party who is given leave to adduce evidence by the use of video conferencing facilities shall:
- 5.8.1 arrange and pay for the booking of the necessary facilities at both ends of the video conferencing link and all other associated costs and expenses;
  - 5.8.2 contact the other facility and make the booking, and request that facility to contact the relevant registry as to whether those times are suitable to the Court; and
  - 5.8.3 make the booking of the Court facilities by completing the Video Conferencing Booking Form, including an undertaking to meet the costs and expenses of the video conferencing link. The form can be found at [Schedule 1](#) and <https://localcourt.nt.gov.au/forms-fees#>

### **Work Health Procedure**

- 5.9. A party seeking to adduce evidence by a communication link must apply for an order in accordance with rule 16.03 of the *Work Health Court Rules 1998*.

### **Care and Protection Procedure**

- 5.10. In appropriate cases, the Court may allow the appearance of parties or counsel via telephone link or video link, or other medium.
- 5.11. A party wishing to appear via a link must provide adequate notice and adequate information to the Court.
- 5.12. A party who is given leave to adduce evidence by the use of video conferencing facilities shall:
- 5.12.1. arrange and pay for the booking of the necessary facilities at both ends of the video conferencing link and all other associated costs and expenses;
  - 5.12.2. contact the other facility and make the booking, and request that facility to contact the relevant registry as to whether those times are suitable to the Court; and
  - 5.12.3. make the booking of the Court facilities by completing the Video Conferencing Booking Form, including an undertaking to meet the costs and expenses of the video conferencing link. The form can be found at [Schedule 1](#) and <https://localcourt.nt.gov.au/forms-fees#>

### **Criminal Procedure (including Youth Justice Court)**

- 5.13 A party who is given leave to adduce evidence by the use of video conferencing facilities shall:
- 5.13.1 arrange and pay for the booking of the necessary facilities at both ends of the video conferencing link and all other associated costs and expenses;
  - 5.13.2 contact the other facility and make the booking, and request that facility to contact the relevant registry as to whether those times are suitable to the Court; and
  - 5.13.3 make the booking of the Court facilities by completing the Video Conferencing Booking Form, including an undertaking to meet the costs and expenses of the video conferencing link. The form can be found at [Schedule 1](#) and <https://localcourt.nt.gov.au/forms-fees#>

## Practice Direction 6 Relisting Matters before the Local Court

### Procedure in Relation to Applications to Re-List

- 6.1 All applications to list a matter on a date other than as ordered by the Court must be made by completing the Request to Re-List Form in the relevant jurisdiction and lodging it with the court registry at the place at which the matter is being heard. The form for each jurisdiction can be found at [Schedule 1](#) and <https://localcourt.nt.gov.au/forms-fees#>
- 6.2 In the case of remote circuits which do not have a court registry, the application is to be made to the court registry at the place associated with the circuit, unless that circuit is sitting at the time the application is made. Where that circuit is sitting when the application is made, the application may be lodged with the court officer at that sitting.
- 6.3 The application to re-list is to be considered by a registrar or a judge who will determine whether the matter is to be re-listed, and if so specify the date on which the matter is to be re-listed.
- 6.4 If a judge has already been allocated to hear a matter any application to re-list must be referred to and determined by that judge, unless it is not practicable to do so, in which event a registrar may proceed to determine the application.
- 6.5 All other applications to re-list are to be determined by a registrar unless the registrar considers that the circumstances of either the application or the matter make it more appropriate for a judge to determine the application.
- 6.6 An application to re-list must be completed in full, otherwise it may not be considered and determined.
- 6.7 In addition to the application, if any further documentation is required to be completed pursuant to other legislation (such as a Request for Review of a Bail Decision under Regulation 5 of the Bail Regulations), that documentation must also be completed and accompany the application to re-list.
- 6.8 The court registry will notify the applicant of the determination made as soon as practicable after the determination is made.
- 6.9 It is the responsibility of the applicant to notify the opposing party of the outcome of the application, unless they are prohibited from doing so by law or court order. In such an event the applicant will advise the registry that they are unable to notify the other party and the registry will provide notice of the outcome of the application to the other party.
- 6.10 The Court next hearing a re-listed matter may require proof of reasonable notice of the date and time of the re-listed matter being given to the other party by the applicant.

## **Part 2 LOCAL COURT (CRIMINAL DIVISION) PRACTICE DIRECTIONS**

*The following Practice Directions are issued pursuant to section 49 (1) of the Local Court Act and will commence from 30 September 2019.*

## Practice Direction 7 Access to Reports

- 7.1 The purpose of this Practice Direction is to regulate the procedure in the Local Court (Criminal Division) for obtaining reports from Community Corrections and accessing those reports, including the following:
- 7.1.1 bail supervision assessment;
  - 7.1.2 community work order assessment;
  - 7.1.3 community based order assessment;
  - 7.1.4 family violence program assessment;
  - 7.1.5 community custody order;
  - 7.1.6 supervision by a probation and parole officer assessment;
  - 7.1.7 home detention order assessment;
  - 7.1.8 electronic monitoring assessment;
  - 7.1.9 commit assessment;
  - 7.1.10 pre-sentence report; and/or
  - 7.1.11 psychiatric or psychological report.
- 7.2 The above reports may be ordered by the Court by completing an Order for Pre-Sentence and Suitability Reports form. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#> . When ordering a report the Court is to specify the date that the report is required and may direct that the report be provided to the Court prior to the court date.
- 7.3 Parties to the proceedings need not seek approval for access and may gain access to a copy of the report as soon as it has been provided to the Court; though it is the responsibility of each party to gain access to the report by contacting the relevant court registry.
- 7.4 Reports may be provided by Community Corrections to the Court electronically by emailing the report to the relevant registrar.



## **Practice Direction 8 Applications for Breaches, Reviews, Variations or Setting Aside of Court Orders**

- 8.1 The following procedure is to be followed for applications for variation, review or breach of a court order under the relevant provisions of the *Sentencing Act 1995* and under section 121 of the *Youth Justice Act 2005*.
- 8.2 The application, supporting affidavit and any compliance report are to be lodged with the court registry.
- 8.3 Applications for breach of a court order should be dealt with as expeditiously as possible and, where practicable, by the Judge who made the order.
- 8.4 Where an application is lodged at a court house for the issue of a warrant for apprehension of the defendant or youth, the decision to issue a warrant is to be made by the criminal registrar.
- 8.5 Where the matter is to proceed by way of summons, registry staff will liaise with the relevant registrar/listings office for a date suitable to the Judge who made the order. Officers from Corrections or Territory Families are not to contact the listings office.

### **Setting Aside Conviction or Court Order**

- 8.6 Where a defendant or complainant wishes to set aside a conviction or Court order under section 63A of the Local Court (Criminal Procedure) Act 1928, the defendant or complainant shall complete and file an Application to Set Aside Conviction or Order form. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#>.

## Practice Direction 9 Callover Procedure in Darwin

- 9.1 The purpose of this Practice Direction is to facilitate the more effective, expeditious and efficient conduct of matters listed in the Local Court 1 at Nichols Place, Darwin by transferring as soon as practicable lengthy matters from that court to another court.
- 9.2 The call over will be conducted each morning at 9.30am Monday to Friday by a judge (who will usually be the Judge assigned to the Court 1 list that day). This facility will be available to defendants, their legal representatives and prosecutors who wish to mention a matter prior to 10.00am.
- 9.3 The following procedures are to be followed at the callover:
- 9.3.1 The presiding Judge will deal with any applications for adjournment. If a matter is to be adjourned for a plea of guilty it is to be listed in the 9.30am callover list on the adjourned date. Otherwise, the matter is to be adjourned for a directions hearing in accordance with section 60A1 of the *Local Court (Criminal Procedure) Act 1928*.
- 9.3.2 If a defendant intends to plead guilty on the day of the callover the matter should be stood down until 10.00 am in the Court 1 list. The presiding Judge should inquire as to the likely length of the plea. If the plea is likely to be lengthy the matter should as soon as practicable be transferred to another court to achieve the purpose of the practice direction.
- 9.3.3 If a defendant intends to apply for bail the presiding Judge should inquire as to the likely length of the bail application. If the application is likely to be lengthy the matter should as soon as practicable be transferred to another court to achieve the purpose of the practice direction.

## **Practice Direction 10 Applications for Interim Orders under The Child Protection (Offender Reporting And Registration) Act 2004**

- 10.1 Section 76 of the *Child Protection (Offender Reporting and Registration) Act 2004 (the Act)* allows a police officer to apply to the Youth Justice Court (in the case of a young reportable offender) or the Local Court (in the case of an adult reportable offender) for an interim protection order. The application may be made to a Local Court Judge either in person or by telephone.
- 10.2 *The Act* and regulations do not provide for a procedure to apply in relation to such applications. The following procedure will apply.

### **Procedure**

- 10.3 When a police officer wishes to make an application under section 76, the officer shall complete an Application for Interim Child Protection (Offender Reporting and Registration) Order Form. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#> . The officer shall then call or attend upon:
- 10.3.1 a judge in the nearest courthouse (if during business hours), or
- 10.3.2 by phone upon a judge on call (if outside business hours).
- 10.4 The police officer shall produce to the Judge information in writing if possible or orally if necessary in relation to the grounds for the application.
- 10.5 The Judge shall record the information provided by the applicant.
- 10.6 If the Judge makes the interim order as requested that order shall be recorded using the Interim Child Protection (Offender Reporting and Registration) Order Form. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#> .
- 10.7 The order shall also be endorsed with a date and time for the application to be reviewed by the Court at the earliest possible date before the most convenient venue of the Court in relation to the location of the person subject to the order.
- 10.8 Upon making the order the police officer shall forward a copy of the order and any supporting information to the relevant registrar on the next business day to enable a file to be created.

## **Practice Direction 11 Persons in the Custody of the Court and Surrender Warrants**

- 11.1 When a defendant is properly before the Court they are in the custody of the Court. This is so whether they:
- 11.1.1 are brought to the court cells by the police or corrections authorities,
  - 11.1.2 answer their bail undertaking to appear,
  - 11.1.3 surrender themselves to the court when a warrant is outstanding, or
  - 11.1.4 answer a summons.
- 11.2 Persons in the custody of the Court are not to be permitted to leave the court complex until they are discharged or have satisfied the Court's requirements for release.
- 11.3 Unless ordered otherwise by the Court, a person in the custody of the Court must remain under the supervision of the Court and its officers and obey their directions.
- 11.4 Persons in the custody of the Local Court shall, upon being granted conditional orders of release, bail or amended bail conditions, be taken to and held in the cells or rooms reserved for the purpose to enable all conditions for their release to be satisfied.
- 11.5 The Court may (with or without request), make specific arrangements in relation to any individual defendant.

### **Procedure in Relation to Surrender of Persons on Warrant**

- 11.6 A person who wishes to surrender to the Court on an outstanding warrant must complete a Surrender on Warrant Form. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 11.7 The person will be informed by court staff that if he or she leaves or attempts to leave the Court before the matter has been dealt with, he or she will be liable to be arrested as any warrant will remain in force at that stage.
- 11.8 Court staff will notify the prosecution of a person who has surrendered him or herself to the Court by sending a copy of the completed form by email to the generic email of the relevant prosecutions office or by handing the completed form to the prosecution in circuit courts.
- 11.9 No application may be made to set aside an outstanding warrant in such a case until the defendant appears before the Court for further disposition in relation to custody or bail.

## Practice Direction 12 Prisoners at Risk of Harm

- 12.1 The purpose of this Practice Direction is to regulate the practice and procedure in relation to persons who may be at risk of harm if remanded into custody or sentenced or committed to a term of imprisonment.
- 12.2 For the purposes of this Practice Direction a person may be at risk of harm if he or she is:
- 12.2.1 at risk of self-harm; or
  - 12.2.2 at risk of harm from a medical or physical condition; or
  - 12.2.3 at risk of harm from another prisoner or prisoners.

### At Risk of Self- Harm

- 12.3 A person is considered to be at risk of self-harm if he or she is:
- 12.3.1 suicidal or suspected of being suicidal;
  - 12.3.2 mentally ill or mentally disturbed (as defined under the *Mental Health and Related Services Act 1998*) or appears to be mentally ill or mentally disturbed;
  - 12.3.3 emotionally disturbed; or
  - 12.3.4 suffering from any other mental condition that the Court considers poses a significant risk to the person's mental health or medical/mental health advice indicates that 24 hour observation and "at risk" status are required.

### At Risk of Harm from a Medical or Physical Condition

- 12.4 A person is considered to be at risk of harm from a medical or physical condition if he or she is:
- 12.4.1 suffering from serious health problems or post-operative trauma;
  - 12.4.2 suffering, or likely to suffer, from severe alcohol or drug withdrawal symptoms; or
  - 12.4.3 suffering from any other condition that the Court or medical advice considers poses a significant risk to the person's physical health such that 24 hour observation and "at risk" status are required.

### At Risk of Harm from Another Prisoner or Prisoners

- 12.5 A person is considered to be at risk of harm from another prisoner or prisoners if he or she is at a significant risk to their physical health from that prisoner or prisoners.

## Procedure

- 12.6 Where there is information available to a prosecutor or counsel for a defendant indicating that a person may be at risk of harm of self-harm, at risk of harm from a medical or physical condition or at risk of harm from another prisoner or prisoners if that person is remanded into custody or sentenced or committed to a term of imprisonment, that information should be disclosed to the Court as soon as possible.
- 12.7 Where such information is disclosed to the Court, it may order that:
- 12.7.1 the defendant may be at risk in one or more of the respects referred to in 12.2; and
  - 12.7.2 all persons responsible for the custody of the defendant be advised that the defendant may be at risk in one or more of those respects and be provided with the information available to the Court in relation to the defendant's "at risk" status, including relevant medical or psychological reports.
- 12.8 Where the Court makes an order under 12.7, the presiding Judge must sign an order using the Prisoner at Risk Form and place it on the court file. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#> .
- 12.9 Where the Court makes an order under 12.7:
- 12.9.1 the Registrar or their delegates shall notify all persons responsible for the defendant's custody of the "at risk" status of the defendant and relevant information to be communicated to by telephone, email or any combination thereof;
  - 12.9.2 court officers shall endorse the remand warrant or warrant of commitment to prison with the words at "risk of self-harm", or "at risk of harm from a medical or physical condition" or "at risk of harm from another prisoner or prisoners" – whichever is applicable; and
  - 12.9.3 the officers responsible for the defendant's custody shall ensure that the defendant is not left unsupervised whilst in the custody of the Court.

## **Practice Direction 13 Procedures During and Following Preliminary Examination (Committal)**

- 13.1 The purpose of this Practice Direction is to establish procedures for the timely and efficient conduct of preliminary examinations in both the Local Court and the Youth Justice Court, and the transition to the Supreme Court call over system regulated by Supreme Court Practice Direction 3 of 2016.

### **Matters capable of being dealt with summarily under Part IV Division 2 of the *Local Court (Criminal Procedure) Act 1928***

- 13.2 The Court will seek to determine at the earliest opportunity whether a matter is capable of being dealt with summarily. Parties should be prepared to address the Court on the first mention where possible. Where necessary, the matter will be adjourned for fourteen days for determination by the Local Court Judge as to whether the matters will be dealt with on indictment or summarily.
- 13.3 If on the adjourned date the Court does not determine to deal with the matter summarily, the matter is to proceed in accordance with 13.5 of this Practice Direction.
- 13.4 If on the adjourned date the Court does determine to deal with the matter summarily, the matter proceeds in the usual summary manner.

### **Strictly indictable matters not capable of being dealt with summarily**

- 13.5 On first date in the Local Court or the Youth Justice Court, an order will be made for the filing and service of a committal brief in accordance with section 105C and section 105D of the *Local Court (Criminal Procedure) Act 1928*.
- 13.6 The order will depend on the nature of the brief and will be either a brief service order or an extended brief service order.

### **Brief Service Order**

- 13.7 Where the Prosecution does not seek an extended brief service order or the Court is not satisfied that such an order should be made, the Court will order service of the brief in no less than six weeks. In such a case, the matter will be adjourned to the preliminary examination list on a date no less than fourteen days after the date for service of the brief.

### **Extended Brief Service Order**

- 13.8 An extended brief service order will generally only be made when the Prosecution intends to rely on evidence of drug analysis, DNA or fingerprints or where the Court is informed that other evidence is required that justifies the making of an extended brief service order. Such evidence may include medical evidence, telephone intercepts or listening device transcripts, translations, computer analysis evidence, business record affidavits and/or evidence from overseas.

- 13.9 If the Prosecution seeks an extended brief service order, it must inform the defendant and the Court of the categories of evidence that cannot be obtained within six weeks and the date the evidence is expected to be obtained.
- 13.10 The Court may make an extended brief service order if it is satisfied that the brief is to include evidence that cannot be obtained within six weeks.
- 13.11 An extended brief service order will include that:
- 13.11.1 the brief, excluding the evidence referred to above, be served in no less than six weeks
  - 13.11.2 the brief, including the evidence referred to above, be served in no less than twelve weeks or at such other time as is considered by the court to be reasonable and necessary for the prosecution to obtain that evidence
- 13.12 An extended brief service order will not override the necessity under the *Sexual Offences (Evidence and Procedure) Act 1938* for a preliminary investigation for a sexual offence to be commenced within three months of the first mention in court.
- 13.13 Where an extended brief service order is made, the court will adjourn the matter to the preliminary examination list on a date no less than fourteen days after the latest date for service in the extended brief service order.
- 13.14 The Prosecution is to ensure that the officer in charge of the matter is notified not more than 72 hours after any order for the service of the brief is made of the need to prepare a brief for service on a defendant.

### **Preliminary Examination List**

- 13.15 On the first mention in the preliminary examination list, the Prosecution is to confirm that the brief has been served.
- 13.16 On the first mention in the preliminary examination list, if the defendant indicates a plea of guilty to an indictable matter, the plea may be entered and the defendant committed for sentence to the Supreme Court following the procedure set out in Part III, Division 3 of the *Local Court Act 2016*.
- 13.17 If the matter is to proceed to a preliminary hearing, the defendant is to file a Notice in Relation to Witnesses Form at the first preliminary examination mention. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 13.18 If the defendant indicates in the Notice that he or she wishes the matter to proceed directly to preliminary examination without any application for leave to cross-examine any witness, the matter will be adjourned for not less than fourteen days for a “hand up” committal in the preliminary examination list.
- 13.19 If it is indicated in the Notice that an application for leave to cross-examine a witness is to be made, the matter will be adjourned for not less than fourteen days in the preliminary examination list.



- 13.20 If a matter is adjourned under 13.19, at the adjourned date, the Prosecution is to complete and file the Response section in the Notice in Relation to Witnesses.. If all, or part of the application for leave is opposed by the Prosecution, the application for leave will be determined by the Court on that day. If leave is granted and the length of the preliminary examination ascertained, a date for preliminary examination will be set before the presiding Judge. If leave is not granted for the cross-examination of witnesses, the preliminary examination will proceed as a “hand up” committal on this date.

### **Joint Preliminary Examinations**

- 13.21 If either party proposes to make an application to separate a joint preliminary examination of an adult and youth defendant, notice must be given prior to the first mention in the preliminary examination list. Such applications are to be heard by the presiding Judge on the first mention in the preliminary examination list. If the application is granted, each matter will be adjourned for not less than two weeks to the preliminary examination list and the youth justice hearing list respectively.
- 13.22 On the adjourned date, the matter will proceed as a preliminary examination unless the defendant has given Notice following the procedure set out in 13.19 that he or she wishes to make application for leave to cross-examine a witness. That application will be expected to be heard on the adjourned date in the preliminary examination list or the youth justice hearing list.

### **Circuit Courts**

- 13.23 Where matters requiring a preliminary examination are listed in a circuit court, the presiding Judge may give directions as to service of the committal brief and for the listing of applications to disjoin adult and youth defendants or for leave to cross examine witnesses that are consistent with these directions but modified to take into account the frequency of sitting of that circuit.

### **Preliminary Examination Hearings**

- 13.24 Subject to the interests of justice, committal proceedings are to be completed as expeditiously as possible to enable the transfer, if appropriate, of the cases to the Supreme Court.

### **Adjournments**

- 13.25 No variations of the above procedural timetable will be granted unless compelling circumstances exist in the interest of justice.

### **Procedure Following Committal**

- 13.26 The Local Court or Youth Justice Court will commit the defendant to stand trial in the Supreme Court and ordinarily direct the defendant to appear at the first scheduled criminal call-over in the Supreme Court after 28 days from the date of the committal. This is subject to the discretion of the committing Judge.

- 13.27 In accordance with section 112 of the *Local Court (Criminal Procedure) Act 1928*, the committing Judge will either grant the defendant bail or remand the defendant in custody. If the defendant is represented and the Director of Public Prosecutions consents, the committing Judge may excuse the defendant from attendance at the criminal call-over.
- 13.28 If the defendant is excused from attendance at the criminal call-over, the committing Judge will cause a record of the direction to be made in writing. This record is to form part of the documents required to be transmitted to the Supreme Court upon committal for trial pursuant to section 116 of the *Local Court (Criminal Procedure) Act 1928*.

## Practice Direction 14 Transmission of Summary Offence

- 14.1 Section 390 of the *Criminal Code 1983* (the Code) provides that where an indictment has been presented against a person and the person has been charged with a summary offence and that person wishes to have the charge of the summary offence heard and determined by the Supreme Court under section 389 of the Code, the person may apply to the a registrar of the Local Court to transmit the charge to a registrar of the Supreme Court.

### The Prescribed Form

- 14.2 All applications to transmit a summary charge to the Supreme Court must be made by completing an Application to Transmit Summary Charge to the Supreme Court Form and lodging it with a registrar of the Local Court. The form can be found at [Schedule 2](https://localcourt.nt.gov.au/forms-fees#) and <https://localcourt.nt.gov.au/forms-fees#>
- 14.3 In accordance with section 390(4) of the Code the Registrar of the Local Court must transmit the charge to a registrar of the Supreme Court if satisfied:
- 14.3.1 The application has been duly completed; and
  - 14.3.2 The Local Court has not started hearing sentencing submissions in relation to the charge.

## Practice Direction 15 Custody Audio Visual Link Mentions

- 15.1 The purpose of this Practice Direction is to extend the use of the video-link facilities to a greater number of cases in the Local Court and the Youth Justice Court.

### Procedure

- 15.2 All defendants in custody will appear in person on the first occasion in court, unless arrangements are made by the defendant's legal representative through the registry for a video-link appearance.
- 15.3 If a defendant is remanded in custody, the Local Court Judge should specifically consider whether the next appearance is to be via video-link and record the order made in this regard.
- 15.4 If an order is made for the defendant to appear by video-link, this order can only be varied by a judge following the procedure set out in 15.5.

### Applications to Vary Court Order

- 15.5 Applications for a defendant to appear in person must be made by 3.00pm on the day prior to the mention by emailing a completed Application for Personal Appearance Form to the relevant registry. Registry will bring the application to the attention of a judge in Chambers. The form can be found at [Schedule 2](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 15.6 A decision whether a defendant is to appear in person will be made as soon as practicable and the registry will advise the lawyer of the outcome via email. The registry will also be responsible for notifying corrections and issuing any Notice of Call Up.
- 15.7 Arrangements to appear via video-link instead of in person (as previously ordered by a Local Court Judge) can be made by the legal representative contacting the registry.

### Allocated Times for Video-Link

- 15.8 Mentions via video-link will occur as a block at set times. The video-link list will take place at the times and in locations as set out, or as otherwise directed by the Chief Judge.

### General Matters

- 15.9 Where an interpreter is required to assist a defendant, the decision as to whether the interpreter should be based with the defendant at the correctional centre or detention centre or with the lawyer in court, is to be made by the legal practitioner.

## Practice Direction 16 Directions Hearings

- 16.1 This practice direction provides a procedure for the conduct of directions hearings pursuant to Division 2A of the *Local Court (Criminal Procedure) Act 1928 (the Act)*. The procedures are in furtherance of the objects of the Division to provide for fair, efficient, expeditious and economical case management procedures in the criminal jurisdiction.
- 16.2 This Practice Direction applies to all places in which the Local Court sits. It does not derogate from the requirements of all parties in relation to disclosure and procedure pursuant to *the Act*.
- 16.3 Prior to or at a Directions Hearing the parties shall file a jointly signed Directions Hearing Information Form. The form can be found at Schedule 2 and <https://localcourt.nt.gov.au/forms-fees#>.
- 16.4 If insufficient information is available for the parties to complete the form, the Directions Hearing shall be adjourned for sufficient time to enable completion. Further orders may be made by the Court to enable the progress of the matter.
- 16.5 The form should be completed with due care and consideration by the practitioner with carriage of the matter where possible.
- 16.6 No hearing date shall be allocated until the filing of the completed information form.
- 16.7 The Court may proceed without the completed form only if satisfied there is good reason to do so.

## **Part 3 LOCAL COURT (CIVIL DIVISION) AND WORK HEALTH COURT PRACTICE DIRECTIONS**

*The following Practice Directions are issued pursuant to section 49 (1) of the Local Court Act and section 31(3) of the Work Health Administration Act and will commence from 30 September 2019.*

## Practice Direction 17 Listings and Adjournments

- 17.1 The Local and Work Health Courts have a responsibility to manage matters and listings in an efficient manner to promote opportunities for negotiated outcomes along with the opportunity for judicial determination in a timely manner.
- 17.2 This Practice Direction seeks to establish the procedure for listing a matter for Hearing, the considerations if an application is made to adjourn a listed Hearing and the process for vacating Hearing dates where a matter has settled by consent.

### Listing a Matter for Hearing

- 17.3 Matters will not be fixed for Hearing unless the parties attend a pre-hearing conference pursuant to Rule 32.06 of the *Local Court (Civil Jurisdiction) Rules 1998* or Rule 7.11 of the *Work Health Court Rules 1999* and satisfy the Court that the matter is ready for Hearing. The parties must provide the Court with a duly completed Case Management Statement, as required by Rules 32.05 and 7.09 respectively.
- 17.4 Parties must ascertain and communicate to the Court the availability of witnesses and legal representatives (including counsel) and the estimated length of the Hearing before Hearing dates are allocated.
- 17.5 Matters are fixed for Hearing on the basis that the Hearing will proceed on the day or days fixed.
- 17.6 In the Work Health Court, matters will be allocated a first listing date and a second listing date and parties should ensure matters are ready to proceed on both the first and second listing dates.

### Adjourning a Hearing

- 17.7 An application to adjourn Hearing dates will not be granted unless there are good reasons to justify the adjournment. Unavailability of counsel is not generally a sufficient reason for an adjournment to be granted as availability of counsel should have been known at the time of listing.
- 17.8 The consent of the other party to an adjournment does not guarantee an adjournment will be granted.
- 17.9 An application for an adjournment must be made at the earliest possible opportunity. The application is to be made in writing to the Judge to whom the matter has been allocated for hearing (the Hearing Judge) or to the Managing Work Health Court Judge, in the event that the matter has not been allocated to a judge, or the Hearing Judge is not available to consider the adjournment application.
- 17.10 The application must set out the reasons for the adjournment and be signed by the person or legal representative seeking the adjournment. The application must be accompanied by

Practice Direction 17 Listings and Adjournments

any documents that support the reasons for seeking an adjournment. The adjournment application must be provided to the other party.

- 17.11 The decision to grant an adjournment is at the sole discretion of the allocated Judge (or in their absence another judicial officer) and can be made in Chambers or may require parties to attend a further Directions Conference to consider the application. The closer the application for adjournment is made to the listed Hearing dates, the more compelling and exceptional the circumstances will be required for the adjournment to be granted.
- 17.12 If an adjournment is granted, the matter will be re-listed for hearing as soon as possible before the Hearing Judge, or if at the time the adjournment is granted the matter has not been allocated to a judge, to an available judge or the Judicial Registrar for further case management.
- 17.13 The Court may grant an adjournment upon such conditions as it thinks fit, including the making of a costs order.

**Vacating Hearing Dates**

- 17.14 In the event a matter listed for Hearing settles and the trial dates are no longer required, parties should communicate confirmation of the settlement to the Court in a timely manner to enable the vacating and reallocation of Hearing dates, where possible. In the event a matter listed for Hearing resolves and the trial dates are no longer required, parties should communicate confirmation of the settlement to the Court. Notice should be given, in writing, to the Civil Registry at the relevant Court ([DLC.CivilRegistry@nt.gov.au](mailto:DLC.CivilRegistry@nt.gov.au) and [DLC.Listings@nt.gov.au](mailto:DLC.Listings@nt.gov.au) Darwin or [ASLC.CivilRegistry@nt.gov.au](mailto:ASLC.CivilRegistry@nt.gov.au) Alice Springs).
- 17.15 When notice of resolution is received, it will be brought to the Hearing Judge's attention and the Judge will determine, in Chambers, whether the matter should be called on for Mention or the Hearing dates vacated. This is at the sole discretion of the allocated Hearing Judge and parties should be prepared to appear before the Court, if required.
- 17.16 If a determination is made that dates are to be vacated the Hearing Judge or the Judicial Registrar will issue orders vacating the Hearing dates. If, in the Work Health Court, there is a second listed Hearing on the relevant dates, orders will also issue confirming the previously second listed Hearing is now first listed.
- 17.17 In matters where Hearing dates are vacated and a Notice of Discontinuance has yet to be filed, the matter will be listed for Internal Review before the Hearing Judge or Judicial Registrar, eight weeks from the date of the vacating orders.



**Practice Direction 18      Section 102aa Motor Vehicles Act 1949 –  
Application for Driving Licence**

- 18.1 Section 102AA of the *Motor Vehicles Act 1949* provides that following the completion of disqualification periods imposed for drink driving offences under section 21 and 29AAA of the *Traffic Act 1987*, in certain circumstances specified in that section, a person must obtain the approval of the Local Court in order to apply for a licence.
- 18.2 An application to the Registrar of Motor Vehicles under section 102AA is made using the Application for Leave to Apply for a Licence to Drive Form. The form can be found at Schedule 3 and <https://localcourt.nt.gov.au/forms-fees#>.
- 18.3 The application is to be accompanied by an Affidavit Supporting Application for Leave to Apply for a Licence to Drive. The form can be found at Schedule 3 and <https://localcourt.nt.gov.au/forms-fees#>. The affidavit shall include the following matters:
- 18.3.1 the offence, date of sentence, the sentence and period of disqualification imposed;
  - 18.3.2 the circumstances of the offending;
  - 18.3.3 any prior or subsequent offences committed by the applicant which relate to the consumption of alcohol;
  - 18.3.4 any courses, programs and/or treatment that have been undertaken by the applicant; and
  - 18.3.5 any medical or other evidence relevant to an assessment of the applicant's fitness to hold a licence.
- 18.4 A sealed copy of the application and affidavit must be served on the Registrar of Motor Vehicles and the Commissioner of the Northern Territory Police Force no later than 14 days before the hearing of the application.

## Practice Direction 19 Case Flow Management

- 19.1 The purpose of this Practice Direction is to establish a case management process for matters in the Local Court and the Work Health Court that have been listed for Hearing by the Judicial Registrar and have been allocated to a judge for hearing (Hearing Judge). The objective of case management is to ensure the fair, effective, complete, prompt and economical determination of a matter.
- 19.2 The parties and their legal representatives are expected to have full knowledge of the proceedings and options for settlement, and be prepared to enter negotiations to settle the proceedings.
- 19.3 During the case management process, the parties and their legal representatives must be able to indicate to the Hearing Judge:
- 19.3.1 the issues of fact and law, and if required by the Hearing Judge in a Work Health Court matter, are to file a joint memorandum of issues (as provided for in Rule 7.11 of the *Work Health Court Rules 1999*);
  - 19.3.2 any amendments to the pleadings that are necessary for determining the real questions at issue between the parties;
  - 19.3.3 any changes in the content of the case management statement provided to the Judicial Registrar prior to the fixing of the matter for hearing;
  - 19.3.4 any matters connected with the case management statement that may be of interest or concern to the Hearing Judge;
  - 19.3.5 any procedural steps that need to be taken before the hearing of the matter;
  - 19.3.6 any other matter that might affect the readiness of the matter to proceed to hearing on the fixed date;
  - 19.3.7 details of medical or expert reports to be relied on, the number of witnesses, both expert and non-expert, and the estimated length of the hearing of the matter;
  - 19.3.8 arrangements for communication links;
  - 19.3.9 any proposed summonses to witnesses or for production of documents to be served either within or outside of the Northern Territory;
  - 19.3.10 whether counsel has been briefed or an advice on evidence has been obtained; and
  - 19.3.11 any other information required to be provided to the Court by the Hearing Judge.
- 19.4 The manner in which the Hearing Judge is to case manage a file is within his or her discretion. The Judge may make whatever directions or orders he or she considers appropriate.

- 19.5 Parties and their legal representatives should be aware of the Practice Direction about application for adjournment of Hearings in the Work Health Court and the circumstances under which adjournments will be granted.
- 19.6 Parties who are legally represented are required to provide to the Hearing Judge and the other party a list of authorities on which they intend to rely at the hearing no later than five working days before the hearing or within such other time directed by the Hearing Judge.

**Restrictions on Medical Evidence post listing for Hearing**

- 19.7 Once a matter has been allocated Hearing dates in the Work Health Court parties shall not engage any new medical experts for the provision of Independent Medical Examinations without leave of the Court.
- 19.8 Parties do not require leave of the Court to obtain any further opinion, addendum or supplementary report from a medical professional or expert who has previously provided medical evidence which the party intends to rely upon.
- 19.9 In considering whether leave may be granted for the engagement of a new medical expert, or other report writer, consideration shall be given to:
- 19.9.1 The length of time prior to the commencement of the Hearing;
  - 19.9.2 The evidence currently available to the parties;
  - 19.9.3 The availability of any experts previously engaged to provide evidence of a like nature;
  - 19.9.4 The degree of any prejudice to the other party should leave be granted;
  - 19.9.5 Whether a new medical issue has arisen since the Hearing dates have been allocated.

## Practice Direction 20 Appearances and Ceasing to Act

- 20.1 This Practice Direction provides the procedure to be adopted for parties to appoint or change a legal practitioner or for a legal practitioner to cease to act. The appointment and changing of legal practitioners is governed by Part 40 of the *Local Court (Civil Jurisdiction) Rules 1998* and Part 24 of the *Work Health Court Rules 1999*.

### Appointment of a Legal Practitioner

- 20.2 Pursuant to Rule 40.02(1) of the *Local Court (Civil Jurisdiction) Rules 1998* and Rule 24.02(1) of the *Work Health Court Rules 1999* a party appointing a legal practitioner to act on their behalf, must file a Notice of Appointment of a Legal Practitioner Form without delay. The form can be found at [Schedule 3](#) and <https://localcourt.nt.gov.au/forms-fees#>.

### Change in Legal Practitioner

- 20.3 Pursuant to Rule 40.01(1) of the *Local Court (Civil Jurisdiction) Rules 1998* and Rule 24.01 of the *Work Health Court Rules 1999* a party changing the legal practitioner acting on their behalf, must file a Notice of Change of a Legal Practitioner without delay. The form can be found at [Schedule 3](#) and <https://localcourt.nt.gov.au/forms-fees#>.

### Ceasing to Act as Legal Practitioner

- 20.4 Pursuant to Rule 40.03(1) of the *Local Court (Civil Jurisdiction) Rules 1998* and Rule 24.03 (1) of the *Work Health Court Rules 1999* when a legal practitioner ceases to act for a party they must file a Notice of Ceasing to Act without delay. The form can be found at [Schedule 3](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 20.5 Pursuant to Rule 40.03(3) of the *Local Court (Civil Jurisdiction) Rules 1998* and Rule 24.03(3) of the *Work Health Court Rules 1999* the leave of the Court is required when a legal practitioner wishes to file a notice to cease to act later than 56 days before the hearing of a proceeding.
- 20.6 An application for leave is to be made by interlocutory application supported by an affidavit containing:
- 20.6.1 A statement of the circumstances that have arisen that would support leave to cease acting;
  - 20.6.2 Evidence of the practitioner having notified the client of their intention to cease acting;
  - 20.6.3 Evidence of the practitioner having notified the client of the Hearing date and any directions regarding same;
  - 20.6.4 The client's last known address, telephone number, postal address and email address;

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Practice Direction 20 Appearances and Ceasing to Act

- 20.6.5 A draft Notice of Ceasing to Act; and
- 20.6.6 A statement as to any other matter as directed by the Court.
- 20.7 Where the current address of the party for whom the legal practitioner acts is known, that party must be served with a copy of the application and affidavit.
- 20.8 The application will be listed before the allocated hearing Judge within 72 hours or, if no Local Court Judge has been allocated the Hearing or the Hearing Judge is not available, before another judicial officer.

## Practice Direction 21 Criminal Property Forfeiture Act

- 21.1 The purpose of this practice direction is to regulate the procedures for applications for orders under *Criminal Property Forfeiture Act 2002 (the Act)*.

### Section 40 Interim Orders

- 21.2 An application pursuant to section 40 should be by way of Form 4 of the *Criminal Property Forfeiture Regulations 2003*. That application should be accompanied by a sworn declaration or affidavit by the officer concerned setting out the facts upon which they wish to rely.
- 21.3 The civil registry will keep a copy of the application, supporting documentation and the interim order in a register kept at the court.
- 21.4 Upon the applicant then making an application under section 41 & 43 of *the Act* the application and supporting documentation along with the interim order will be transferred to the court file.
- 21.5 If the application is made by phone to a judge, the following procedure applies:
- 21.5.1 The applicant should electronically send to the Judge a copy of the application, any supporting documentation and draft order to the court.
  - 21.5.2 The applicant will make an affirmation as to the truth of the facts relied upon. If the order is made the applicant shall complete their copy of the application in the same manner as the Judge.
  - 21.5.3 If the applicant is unable to fax or email a copy of the application to the Judge the information shall be provided to the court over the phone and the applicant and the court shall complete the Form 4 with the same words each endorsing their own copies. The applicant shall then provide the court with the original affirmed declaration as soon as possible.

### Section 43 Applications

- 21.6 An application pursuant to section 43 should be by way of Form 7E of the *Local Court (Civil Jurisdiction) Rules 1998* if the application is to be ex parte and Form 7F if the application is to be inter parte.
- 21.7 The application should be made as soon as possible as the interim restraining order will lapse within 72 hours or before the application can be heard by the Court.
- 21.8 The application should be accompanied by an affidavit stating all matters relied upon including the facts which establish that there are reasonable grounds to believe that the property is crime derived or crime used and the connection between the property and any respondent to the application.

- 21.9 If the application is inter parte the application should be served with a copy of the original application for interim order and any supporting affidavits. After service, Part 7 Division 2 of the *Local Court (Civil Jurisdiction) Rules 1998* shall apply.
- 21.10 Should the application for restraining order be ex parte then the first mention will be before a judge. At that first mention a restraining order can be made.
- 21.11 Once the restraining order is issued then it is up to the applicant to serve any interested parties with a copy of the order.

### **Section 59 Notice of Objection**

- 21.12 Any person can file a *Notice of Objection* to an order made under section 43 of *the Act*. Once served with a restraining order, a person has 28 days to lodge an objection.
- 21.13 The form of objection should be in the form of an interlocutory application with an affidavit in support setting out the facts to establish grounds as set out in sections 63, 64, 65 or 66 of *the Act*. Rule 25 *Local Court (Civil Jurisdiction) 1998* shall apply to these applications.
- 21.14 The interlocutory application must be served on the Territory and any other interested party and will be listed in the usual manner unless expressly urgent.
- 21.15 At the first return date of the interlocutory application, the Court can either hear the application or refer the matter to a Judicial Registrar for further case management.

### **Section 95 Application for Forfeiture**

- 21.16 The application for forfeiture shall be by way of interlocutory application in the same file as the application for restraining order. It cannot be included in the originating application because of the restrictions placed on the court by the legislation.
- 21.17 The application for forfeiture can only be filed once the 28 days for objection has run. The application will be listed on the next available date and will be heard on the papers.
- 21.18 If an objection has been filed then an application for forfeiture can be filed but will not be dealt with until after the objection hearing has been dealt with. In these circumstances the applicant should file the application for forfeiture to be heard at the same time as the objection hearing.

## Practice Direction 22 Proceeds of Crime Act

- 22.1 The purpose of this practice direction is to regulate the procedures in relation to the exercise of the Court's jurisdiction under the *Proceeds of Crimes Act 2002 (Cth)* (*the Act*) to hear and determine applications for a restraining order and forfeiture in relation to matters where there has been a conviction in respect of a Commonwealth offence.

### Section 17 Applications – Restraining Orders

- 22.2 An application for a restraining order pursuant to section 17 of *the Act* shall be in the form of an originating application (Form 7E) with a supporting affidavit from an “authorised officer” as defined in section 338 of *the Act*.
- 22.3 Any person who the Director of Public Prosecutions believes may have an interest in the property shall be notified by the Director of Public Prosecutions of the application. The notice shall be by way of serving a copy of the application and supporting affidavit upon that person prior to the return date of that application.
- 22.4 The application once filed will be listed together with the prosecution of the criminal matter in the Local Court so that if a conviction is obtained the prosecution can then apply for the restraining order at the time of the conviction.

### Section 48 Applications – Forfeiture Orders

- 22.5 Six months after a conviction is obtained an application for forfeiture can be made.
- 22.6 An application can take two forms:
- 22.6.1 If there has been a previous application for restraining order then the application for forfeiture should be an interlocutory application (Form 25A) within that original proceeding.
- 22.6.2 If there is no restraining order then the application should be by way of Originating Application (Form 7E) with supporting affidavit.

### Service of Applications – Restraining Orders and Forfeiture Orders

- 22.7 Sections 26 and 61 of *the Act* require the Director of Public Prosecutions to give notice to the owner of the property and any other interested parties of the application. Written notice of the application accompanied by a copy of the application and any affidavits in support must be given prior to the hearing of the application.

### Objections – Restraining Orders and Forfeiture Orders

- 22.8 A person with an interest in the property can appear at the Hearing of the application for restraining order or forfeiture.



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Practice Direction 22 Proceeds of Crime Act

- 22.9 A person who wishes to appear should file a Notice of Intention to Appear (Form 7D) with a supporting affidavit as to the ownership of the property and any evidence to establish that the property is not the proceeds of crime or an instrument of crime.
- 22.10 Where an appearance is filed in relation to an application for restraining order then the objection to the order can be dealt with immediately upon conviction or be referred by the Local Court Judge to the Judicial Registrar for case management if required.
- 22.11 If an application for forfeiture is made by way of Originating Application then an interested party can file an appearance with the Court and the matter will be set down for a prehearing conference before a registrar for case management prior to the matter being set down for hearing.

## Practice Direction 23 Powers of Judicial Registrar

- 23.1 The *Local Court Act 2015* sections 69 and 70 sets out the functions and powers of a judicial registrar in the Local Court. Section 23 (2)(a) of the *Work Health Administration Act 2011* provides that a judicial registrar may exercise such powers of the Court as are determined by the Chief Judge.
- 23.2 The Judicial Registrar of the Local and Work Health Court may exercise all powers of the Court except the following powers:
- 23.2.1 To hear and determine a matter.
  - 23.2.2 To hear and determine an application for summary judgment.
  - 23.2.3 To make an assessment of compensation under Part 21 of the *Work Health Court Rules 1999*.

## Part 4 CHILDREN'S COURT PRACTICE DIRECTIONS

*The following Practice Directions are issued pursuant to section 49 (1) of the Local Court Act 2015 and section 53(1)(b) of the Youth Justice Act 2005 and will commence from 15 September 2020.*

Note that the follow practice directions also apply in the Children's Court:

<u>Practice Direction 8</u>	<u>Applications for Breaches, Reviews, Variations or Setting Aside</u> .....	16
<u>Practice Direction 9</u>	<u>Callover Procedure in Darwin</u> .....	17
<u>Practice Direction 10</u>	<u>Applications -Child Protection (Offender Reporting And Registration)</u> ..	18
<u>Practice Direction 11</u>	<u>Persons in the Custody of the Court and Surrender Warrants</u> .....	19
<u>Practice Direction 12</u>	<u>Prisoners at Risk of Harm</u> .....	20
<u>Practice Direction 13</u>	<u>Procedures During &amp; Following Preliminary Examination (Committal)</u> ..	22
<u>Practice Direction 14</u>	<u>Transmission of Summary Offence</u> .....	26
<u>Practice Direction 15</u>	<u>Custody Audio Visual Link Mentions</u> .....	27

## Practice Direction 24 Family Responsibility Orders

### Application

- 24.1 An application for an inquiry pursuant to section 140G of the *Youth Justice Act 2005* shall be in the form of Form 15A of Schedule 2 of the *Youth Justice Regulations 2006*.
- 24.2 An application shall be supported by an affidavit of the authorised officer of the appropriate agency or a police officer.
- 24.3 An application must be filed with the Court and once endorsed with a date and time for the first mention date, must be served on the parents of the youth subject to the inquiry or any other person with parental responsibility for the youth, unless they are unable to be served.
- 24.4 At the first mention date, the Court may make directions for the case management of the inquiry including:
- 24.4.1 Who is to be served with a summons to attend an inquiry;
  - 24.4.2 What reports are required at the inquiry;
  - 24.4.3 What affidavit evidence is required by the Court;
  - 24.4.4 What assessments are required for presentation at the inquiry.
- 24.5 Any summons to require a person's attendance at an inquiry shall use the Summons to Appear at Inquiry Form and shall be served personally. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 24.6 After the completion of the inquiry, should the Court decide if a family responsibility order is necessary, the order shall be in the form of Form 15B of Schedule 2 of the *Youth Justice Regulations 2006*.

### Application for Variation or Revocation of Order

- 24.7 Any application to vary or revoke a family responsibility order shall be made using an Application for Revocation or Variation of Family Responsibility Order Form. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 24.8 An application for variation or revocation of an order must be served on all parties to the original application and upon other interested parties as the Court may direct.
- 24.9 The application must be supported by an affidavit setting out the facts relied upon for the revocation/variation.

## Practice Direction 25 Referrals for Pre-Sentence Conferences

- 25.1 The purpose of this practice direction is to regulate the procedure to be followed when the Youth Court orders a pre-sentencing conference pursuant to section 84 of the Youth Justice Act.

### Court Referral Process

- 25.2 Where the Court has found a youth guilty of an offence, either on the application of the youth or on the Court's initiative, the proceedings may be adjourned and the youth ordered to participate in either a victim offender conference or a family group conference.
- 25.3 Where the referral is for a family group conference the Court will state in the referral the persons who are required to attend the conference. Generally those participants may be the youth and his or her responsible adult(s), a police officer as nominated by the Commissioner of Police and an officer of Community Corrections where a pre-sentence report or supervision assessment has also been ordered. Where appropriate in relation to the youth's needs, an officer from the Department of Education should also attend so as to address educational needs and develop an appropriate plan. Where the family is, or is proposed to be, supported by a non-government agency, an officer of that agency should also attend.
- 25.4 In the case of a victim offender conference the participants are to be the victim, a support person if requested, the youth and his or her responsible adult. Any other proposed participants should be nominated to the Court when the referral is requested.
- 25.5 The referral should then be made and proceedings adjourned for a period of up to six weeks and listed for sentencing on the adjourned date.
- 25.6 The referral, together with the agreed facts, names of participants and contact details, criminal history and any tendered documents shall be forwarded by the Court to the nominated convenor of the conference.

### Referrals to Pre-Sentencing Conference Providers

- 25.7 The referral shall occur using the YJC Referral Form. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 25.8 Once appointed via referral, a conference convenor may invite suitable participants to support the pre-sentence conference and its potential outcomes for the youth and victims involved.
- 25.9 The Court may also from time to time appoint an alternative convenor for a pre-sentence conference if satisfied that the convenor has the proper experience and expertise to conduct a pre-sentence conference.

- 25.10 Victims nominated by the Court to attend the pre-sentence conference, will initially be contacted by Victims of Crime NT to determine their willingness to participate, and to address any individual needs and concerns they may have.
- 25.11 Once Victims of Crime NT has provided the list of victims who agree to participate, the convenor will contact and assess the victims and all other parties nominated by the Court, to determine their suitability to take part in the pre-sentence conference.
- 25.12 Where victims or other persons nominated by the Court do not attend the pre-sentence conference, the Report should include an explanation.

#### **Pre-Sentence Conference Reports**

- 25.13 The convenor must explain to the participants at the conference that he or she is required to report to the Court as to the outcome of the conference. The convenor must also explain that the recommendations from the conference are not binding on the Court in any way and that the Court retains a sentencing discretion under the *Youth Justice Act 2005*.
- 25.14 The report from the convenor shall include a summary of the conference, including the details of any apology given or other relevant factors as the convenor considers relevant. The conference report shall also include any outcomes that were agreed between the participants that may be appropriate to be undertaken by the youth to demonstrate that:
- 25.14.1 the youth accepts responsibility for the behaviour;
  - 25.14.2 the youth has taken steps to make amends with the victims of the offence; and/or
  - 25.14.3 the youth will be assisted to be re-integrated into the community.
- 25.15 The report should be provided to the sentencing court at least 2 days prior to the adjourned date referred to above.

## Practice Direction 26 Youth Justice Proceedings

- 26.1 The purpose of this Practice Direction is to establish procedures for the conduct of proceedings in the Youth Justice Court consistent with the General Principles set out in section 4 of the *Youth Justice Act 2005 (the Act)*

### Appearances

- 26.2 A youth charged with an offence must only appear before an appointed Local Court Youth Judge unless no Local Court Youth Judge is available to deal with the matter.
- 26.3 In Darwin, Katherine and Alice Springs a youth who is in custody is not to appear in the main bail and arrest court. If a youth is brought in custody to court on a day that is not a designated Youth Justice Court day, then a Local Court Youth Judge is to be consulted by the relevant Registrar to determine which available court room is to be used for the appearance.
- 26.4 In other centres and circuit courts where only one court room is available, appropriate arrangements are to be made to separate youth matters from the general list, including, where appropriate, closing the court for a youth matter.
- 26.5 As a general rule, a youth on bail or summons should sit at the bar table next to their counsel. It is preferable that youths in custody be seated either in the dock or at the side of the court with a court guard where no dock exists.
- 26.6 When sentencing proceedings are undertaken, the youth should be seated at the bar table in order to ensure direct engagement with the Local Court Youth Judge in sentencing, unless they are in custody.

### Re-Assessment for Diversion

- 26.7 In order for the court to assess an application for re-assessment for diversion pursuant to section 64 of *the Act*, a statement of the facts alleged is to be provided to the Court.
- 26.8 Where the court does refer a youth for re-assessment for diversion, the matter should normally be adjourned for one month for the assessment to be made and the youth excused from that attendance provided they have been accepted to undertake diversion. The matter can then be re-listed in three months with the youth excused, provided the youth has successfully completed diversion. The excusing of the youth from further attendance is consistent with the aim of diversion which is to keep young persons out of the criminal justice system.
- 26.9 The referral of a youth for re-assessment for diversion shall occur using the YJC Referral Form. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#>
- 26.10 It is anticipated that once diversion has been successfully completed, charges before the court are then withdrawn.

### **Form of Language in Court**

- 26.11 In order to ensure full participation in the proceedings, a youth should usually be referred to by his or her first name or the name he or she commonly uses, or "Miss" "Ms" or "Mr" if preferred by an older youth.
- 26.12 Charges should be read to a youth using a form of language, according to his or her age, maturity and level of use of the English language, that the youth is likely to understand and therefore be able to fully acknowledge the requisite elements of the offence.
- 26.13 All parties should use a form of language in court that a youth is likely to understand to fully engage the youth in the proceeding consistent with the requirement under section 123 of *the Act*.

### **Applications**

- 26.14 *The Act* provides for various applications to be made with respect to sentencing orders in force for a youth, for example breach applications (section 121) and review or reconsideration of sentences (sections 141 and 142). Any application with respect to an existing sentencing order, whether for revocation, review or reconsideration must be made in writing and be supported by affidavit evidence and is to be filed with the court registry.
- 26.15 The registry will arrange for the application to be listed before the Local Court Youth Judge who made the sentencing order unless that judge is not available to take the application within a reasonable timeframe, taking into account the nature of the application.



## Practice Direction 27 Applications for Reconsideration and Review

- 27.1 The purpose of this Practice Direction is to regulate the procedures in relation to the reconsideration and review of sentences in the Youth Justice Court pursuant to sections 141 and 142 of the *Youth Justice Act 2005 (the Act)*.
- 27.2 Sections 141 and 142 of *the Act* provide for a reconsideration of a sentence or a review of a sentence. Pursuant to the *Youth Justice Regulations 2006*, Form 16 (Reconsideration) and Form 17 (Review) are the relevant application forms.

### Process

- 27.3 If a youth or a person on behalf of a youth make an application for reconsideration or the Commissioner of Correctional Services or a prosecutor make application for a review of an order the following process shall apply.
- 27.4 The relevant form<sup>2</sup> shall be lodged with the Court, accompanied by an affidavit or affidavits of evidence supporting the application.
- 27.5 The court registry will provide a date, place and time for the hearing of the application, which generally will be not less than seven days after lodgement, unless in urgent circumstances.
- 27.6 If the application is made personally by the youth, the Court shall inform all parties of the time and date of the application and provide a copy of the application and supporting affidavit.
- 27.7 If the application is made by the Commissioner or the Prosecution they shall inform all other parties of the time and date of the application and must serve each other party with the application and supporting affidavit.
- 27.8 If bail is to be sought pending the hearing and determination of an application, this should be stated in the application together with the grounds on which the bail application is to be made and the terms of the bail proposal.
- 27.9 All documents required to be served must be served on the other parties no later than three clear days prior to the hearing.
- 27.10 If the application is urgent, this should be indicated, including the reasons for urgency, and leave may be granted for shortening of the above time frames and requirements.

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<sup>2</sup> The relevant form for a reconsideration of sentence is Form 16 of the *Youth Justice Regulations*. Form 17 of those Regulations is the relevant form for a review of sentence.

## Practice Direction 28 Care and Protection of Children

- 28.1. The object of this Practice Direction is to provide for clear practice and procedure to ensure the fair, effective, expeditious and efficient conduct of proceedings under the *Care and Protection of Children Act 2007 (the Act)* in the Family Matters Division of the Local Court.

### Applications to the Court

- 28.2. An application must be in writing using the Care and Protection Application Form, found at [Schedule 4](#) to this Practice Direction and <https://localcourt.nt.gov.au/forms-fees#>, and must:
- 28.2.1. state the orders that are sought;
  - 28.2.2. state the statutory provision under which each order might be made;
  - 28.2.3. state the grounds of the application;
  - 28.2.4. include particulars of the factual allegations or circumstances relied on to make out the grounds of the application; and
  - 28.2.5. be signed by the applicant, an authorised delegate or on the applicant's behalf by the applicant's legal representative.
- 28.3. All statements and particulars in an application must be in plain language and expressed clearly, precisely and succinctly.
- 28.4. If multiple or alternative orders are sought, for each such order, the grounds and supporting statements and particulars relevant to each order must be precisely stated.
- 28.5. Where a party makes application in relation to more than one child and each child has the same parents and the subject matter of the application is the same or substantially the same, as far as possible the party may file:
- 28.5.1. A single application form that contains the required information about each child;  
or
  - 28.5.2. A single affidavit that sets out supporting information relevant to each child.
- 28.6. The Court may give different directions and make different orders in relation to some or all of the children or direct separate hearings if the Court considers it necessary in the interests of the child.
- 28.7. An application for an extension of an existing protection order is to be listed no earlier than 15 working days from the date of filing and must be served on the parties or their legal representative at least 10 days before the listed court date.

### **Interlocutory applications**

- 28.8. An interlocutory application must be in writing using the Interlocutory Application Form and accompanied by an affidavit containing evidence that sufficiently sets out the basis on which the application is made. The form can be found at [Schedule 4](#) to this Practice Direction and <https://localcourt.nt.gov.au/forms-fees#> .
- 28.9. Nothing prevents an interlocutory application from being joined with an application for a final order of the Court.
- 28.10. The applicant must serve a copy of the application (and accompanying documents) on the other parties as soon as practicable after it is filed in the Court, but not later than two working days before the next date for hearing in the proceedings.
- 28.11. The Court may, on conditions the Court considers appropriate, dispense with a requirement of this Practice Direction if:
- 28.11.1. the urgency of the case so requires;
  - 28.11.2. it is done with the consent of the parties; or
  - 28.11.3. if for any other reason the Court considers it appropriate to do so.

### **Material Supporting an Application**

- 28.12. Applications must be filed with a supporting affidavit containing evidence that sufficiently sets out the basis on which the application is made and, as soon as practicable, a copy of the child's birth certificate and any existing child care plan.
- 28.13. Unless otherwise directed by the Court, any supporting materials or reports that are intended to be relied upon shall be annexed to an affidavit, unless otherwise directed by the Court.
- 28.14. Material filed at any stage of the proceedings must be served on the other parties at least two working days before the next listed date.
- 28.15. Unless otherwise directed by the Court, a copy of any subsequent child care plan, interim child care plan or any reports made pursuant to s74(5), shall be filed and served within 14 days of their making or review.
- 28.16. When an application seeking a protection order is filed concerning a child for whom there has been a previous care and protection order, or for the extension or variation of an existing protection order, the material in support of the application must include:
- 28.16.1. the reports made pursuant to s74(5) of *the Act* for the review of the care plan conducted during the operation of the previous order; and
  - 28.16.2. a copy of the most recent care plan implemented, or sought to be implemented, during the operation of the previous order; and

- 28.16.3. a document reporting the extent to which each party has complied with requirements or undertakings applicable to the party under the previous order.

### **Response to an Application**

- 28.17. Unless otherwise directed by the Court, a party opposing any part of an application served on them, must file and serve a response within 4 weeks.
- 28.18. The response to the application must be in writing using the Response form and must:
- 28.18.1. state clearly the orders sought in the application that are opposed, any orders that are not opposed and any alternative orders that are proposed;
  - 28.18.2. briefly outline which allegations contained in the application and supporting affidavit are disputed and the basis for that dispute;
  - 28.18.3. outline if the party agrees there are protection concerns and broadly which concerns are accepted;
  - 28.18.4. if seeking reunification, outline any proposal to address any accepted protection concerns; and
  - 28.18.5. be signed by a respondent or a respondent's legal representative on instructions.
- 28.19. The form can be found at [Schedule 4](https://localcourt.nt.gov.au/forms-fees#) to this Practice Direction and <https://localcourt.nt.gov.au/forms-fees#> .
- 28.20. In the event that a matter is listed for hearing, the court may order that a respondent file a detailed affidavit supported by material that provides evidence of the respondent's version of events or of any matter relevant to the determination of the application.
- 28.21. Material filed in support of a response at any stage of the proceedings, must be served on the other parties at least 2 working days before the next listed court date.

### **Affidavits of Service**

- 28.22. All affidavits of service are to be filed within 7 days of service.

### **Case Conferences**

- 28.23. A Case Conference means a conference between the parties including their legal representatives to determine the issues in contest.
- 28.24. The Court may at any stage of the proceedings order a conference between the parties for the purpose of determining and/or resolving matters in dispute and may give directions as to any material to be filed and served before the conference.
- 28.25. Evidence of anything said or done at a conference is inadmissible in the proceeding, except with the consent of all parties.

- 28.26. Defended applications will be listed for a case conference and so far as practicable, each conference is to be held within 4 weeks of the filing of all of the responses.
- 28.27. Following a case conference, if there are still matters which are not resolved, the parties are to:
- 28.27.1. agree on a statement of factual and legal issues that remain in dispute;
  - 28.27.2. identify each fact or issue relied on to support a finding that a child is in need of protection;
  - 28.27.3. specify any directions considered necessary if the child is found in need of protection;
  - 28.27.4. unless otherwise agreed the statement will be drafted by the applicant; and
  - 28.27.5. the statement is to be signed by the parties and filed at least 2 working days before the next listed court date.

#### **Mediation Conference**

- 28.28. At any stage in the proceedings, the Court may order that the parties attend a mediation conference before a registrar or judicial registrar under Rule 32.07(2)(a) & (b) of the *Local Court (Civil Jurisdiction) Rules 1998*.

#### **Statement of the Views and Wishes of the Child**

- 28.29. Where a legal representative has been appointed for a child, the representative is to file and serve a statement of the child's views and wishes as soon as practicable after their appointment.
- 28.30. The statement of the child's views and wishes shall include a statement confirming whether the legal representative is acting on instructions from the child or acting in the best interests of the child, and the basis for deciding this capacity.
- 28.31. If the application is contested and is directed to a case conference, the statement of views and wishes is to be filed and served at least two working days before the date fixed for the conference.

#### **Case Management Inquiry**

- 28.32. When a matter is listed for hearing, the Court shall order that the parties attend a case management inquiry which will, if practicable, be presided over by the Judge who is to hear the matter.
- 28.33. At least seven days before the case management inquiry all parties shall file and serve on the other parties a case outline which contains:
- 28.33.1. a list of all the affidavits and other documents including reports to be relied upon by the party at the hearing;

- 28.33.2. a schedule of all documents produced upon summons upon which a party proposes to rely at the hearing, including cross examination;
  - 28.33.3. the statement of issues in dispute as agreed from the case conference;
  - 28.33.4. confirmation of the witnesses required for cross examination.
- 28.34. At a case management inquiry, the Court may make such further directions as the Court considers appropriate.
- 28.35. 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 proceedings be listed for final determination on the material that has been filed in the proceedings only.

### **Hearing**

- 28.36. At least 2 working days before the hearing, the applicant shall prepare and distribute hearing books to the Court and all parties, which will contain copies of all applications, affidavits, reports and any other material to be relied upon by a party as identified in the filed case outlines.
- 28.37. The hearing will be conducted, as far as practicable on the basis that:
- 28.37.1. each party's case is substantially contained in the documentary material filed in accordance with this practice direction, and incorporated in the hearing book; and
  - 28.37.2. examination-in-chief of witnesses avoids undue repetition of matters contained in the filed material and is limited to necessary and reasonable explanation, correction or supplementation of the filed material and to eliciting responses to or comments on another party's case.

### **Return of Child under Section 109 of *the Act***

- 28.38. For the purposes of section 109(3)(a) of *the Act*, the prescribed form can be found at [Schedule 4](#) to this Practice Direction and <https://localcourt.nt.gov.au/forms-fees#> .

### **Warrants**

- 28.39. An application for a warrant for access to a child is to be made using the Warrant for Access to a Child form together with an affidavit in support of the application. The form can be found at [Schedule 4](#) to this Practice Direction and <https://localcourt.nt.gov.au/forms-fees#> .
- 28.40. If an application for a warrant for access to a child is successful, the Court shall issue the Warrant for Access to a Child Order. The form can be found at [Schedule 4](#) to this Practice Direction and <https://localcourt.nt.gov.au/forms-fees#> .

### Electronic Filing

- 28.41. Pursuant to Rule 3.10(2) of the *Local Court (Civil Jurisdiction) Rules 1998* and section 104 of *the Act*, documents may be filed electronically in the Court registry in which the proceedings are or are intended to be listed.
- 28.42. Electronic filing of documents will be via email to the relevant, or nearest permanent, Court registry as set out below:
- Darwin Childrens Court: [Darwin.ChildrensCourt@nt.gov.au](mailto:Darwin.ChildrensCourt@nt.gov.au);
  - Alice Springs Local Court: [ASLC.CivilRegistry@nt.gov.au](mailto:ASLC.CivilRegistry@nt.gov.au) ; or
  - Katherine Local Court: [Katherine.LocalCourt@nt.gov.au](mailto:Katherine.LocalCourt@nt.gov.au).
- 28.43. When filing a document electronically, each document will be in PDF format not exceeding 10MB, not less than A4 size and be capable of being printed in a clear and readable format (minimum of 200 DPI). If the proceedings have been given a court file number, that number must be clearly marked on the cover page of each document.
- 28.44. If accepted and received within the prescribed filing hours, a document will be taken to have been filed at the time it is received in the relevant Local Court email inbox.
- 28.45. The Court's prescribed filing hours are from 8.00 am until 4.00 pm weekdays (excluding public holidays). Any document received after 4.00 pm will be taken to have been filed the next business day.
- 28.46. In the event that the applicant wishes to have the matter (other than Applications for Temporary Protection Orders) listed at short notice, the applicant shall submit a covering letter with the application outlining the reasons for urgency.
- 28.47. Once a document has been accepted by the registry for electronic filing the Registrar will date and seal the document (and where necessary allocate a date and time for mention) before returning a copy of the sealed document/s by way of 'reply all' to the email address used by the filing party.
- 28.48. Acceptance of electronic documents will be at the discretion of the Registrar who may, by email, decline to accept a document for electronic filing should it fail to meet the requirements of this Practice Direction or any other requirements under the Rules.
- 28.49. Should a Registrar decline to accept a document electronically, the Registrar will notify the relevant party of the refusal via email and that party will be required to physically file sufficient copies of the document/s (including the original) for all relevant court files plus an additional copy for sealing and return.
- 28.50. A party having filed a document electronically pursuant to this Practice Direction will be responsible for the service of the document.
- 28.51. Parties are to allow for a 24 hour court registry turnaround from electronic filing to return of sealed copy.

- 28.52. Parties wishing to file electronically are responsible for ensuring the document/s have been successfully transmitted to the Court for filing. If a document sent for electronic filing is not returned by the Court within 24 hours, the relevant party is responsible for contacting the Court to confirm receipt of the document/s for filing.
- 28.53. Nothing in this part prevents a party from filing hard copy documents in person at the relevant Local Court registry.



## Practice Direction 29 Family Law Pilot

- 29.1 The Local Court of the Northern Territory is undertaking a pilot (the Pilot) within the Family Matters Division of the Local Court at Darwin (and Katherine on a cases by case basis). The pilot will trial the Local Court making parenting orders under Part VII of the *Family Law Act 1975 (Cth)* (the FLA) in matters that meet the criteria outlined in this Practice Direction.
- 29.2 The Pilot commenced on 4 March 2019 and will conclude on 30 June 2020.
- 29.3 The object of this Practice Direction is to provide clear practice and procedure for Family Law Pilot matters to ensure the fair, effective, expeditious and efficient conduct of matters referred into the Family Law Pilot.

### Applicable Rules

- 29.4 In accordance with Regulation 39CA(2) of the *Family Law Regulations 1984 (Cth)* the *Local Court (Civil Jurisdiction) Rules 1998* (the Rules) shall apply.

### Suitability of Matters to Enter the Family Law Pilot

- 29.5 Matters may be referred into the Pilot at the Courts discretion, if matters meet all of the following five criteria:
- 29.5.1 There are existing proceedings in the Family Matters Division of the Local Court under *the Act*; or there is a current protection order or a permanent care order in place; or Territory Families are considering filing an application under *the Act*.
- 29.5.2 An order made under the Part VII of the FLA may be considered to be in the best interests of the child/ren to the matter;
- 29.5.3 The parties to the matter are either within the Darwin region or are within the Katherine region and willing to access proceedings through the Darwin Children's Court;
- 29.5.4 Section 69N(5) of the FLA has been satisfied by all participating parties to the proceedings consenting to the Local Court exercising family law jurisdiction; and any other party not participating has either failed to appear in court after service of a copy of the application and being given a reasonable opportunity to appear; or cannot be found after reasonable attempts have been made to find the person and the court is satisfied in all of the circumstances that service on that party can be dispensed with.
- 29.5.5 The Court considers that the matter is suitable for the Pilot after having regard to: the complexity of the matter; the geographical location of the parties and how that may impact a party's ability to participate in the proceedings; the likelihood that the matter will resolve by consent; and any other matter the Court deems appropriate.

- 29.6 A party under Direction 29.5.4 is not required to file a Response if they appear in court (whether in person or via electronic communication) and satisfy the Court that they consent to the Local Court exercising family law jurisdiction under section 69N(5) of the FLA.

#### **Referral of Court Proceedings into the Family Law Pilot**

- 29.7 A matter may enter into the Family Law Pilot by:
- 29.7.1 Referral by a judge during the course of any proceedings being heard in the Family Matters Division of the Local Court;
  - 29.7.2 Referral by the FLP Judicial Registrar following the filing of a Family Law Pilot - Application to Relist seeking for the matter to be referred into the Pilot; or
  - 29.7.3 By approval of the FLP Judicial Registrar, following the filing of a FLP Consent Form.

#### **Referral by a Judge into the Family Law Pilot**

- 29.8 At any stage in a court proceeding under the *Care and Protection of Children Act 2002 (the Act)*, a party may file a Family Law Pilot - Interlocutory Application Form seeking an order that proceedings be referred into the Family Law Pilot. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#>.
- 29.9 An Interlocutory Application to refer proceedings into the Pilot must state the orders that are sought and be supported either by affidavit or oral submissions outlining the following:
- 29.9.1 the reasons why the proceedings are suitable for the Pilot;
  - 29.9.2 the parenting orders sought under Part VII of the FLA;
  - 29.9.3 the informed consent of any or all parties to the Local Court exercising family law jurisdiction under section 69N(5) of the FLA; and
  - 29.9.4 the steps taken to serve each party to the proceedings with notice of the interlocutory application.
- 29.10 The Court may order that proceedings be referred into the Family Law Pilot following the hearing of an Interlocutory Application filed by a party seeking an order that proceedings be referred; or on the Court's own initiative.
- 29.11 The Court must not refer a matter to the Pilot unless satisfied it meets the criteria in 29.5.

#### **Referral by a FLP Judicial Registrar when a child is subject to a Protection Order**

- 29.12 Where a child is subject to a protection order, a party to the order may file a Family Law Pilot - Application to Relist form seeking that the matter be referred into the Family Law Pilot and seeking parenting orders be made under Part VII of the FLA. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#>.

- 29.13 The Family law Pilot - Application to Relist must state the orders that are sought and be supported either by affidavit or oral submissions outlining the following:
- 29.13.1 the reasons why the proceedings are suitable for the Pilot;
  - 29.13.2 the parenting orders sought under Part VII of the FLA;
  - 29.13.3 the informed consent of any or all parties to the Local Court exercising family law jurisdiction under section 69N(5) of the FLA; and
  - 29.13.4 the steps taken to serve each party to the proceedings with notice of the Application to Relist.
- 29.14 Upon the filing of an Application to Relist, the FLP Judicial Registrar must, as soon as is practicable, fix a date, time and place for a hearing of the Application and must give all parties notice of the hearing by sending the parties a Notice of Hearing of Application to Relist form. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#> .
- 29.15 The hearing of the Application to Relist shall occur by way of submissions only, with no cross-examination to be permitted. Any evidence to be relied upon shall be filed in affidavit form.
- 29.16 The FLP Judicial Registrar must not refer a matter to the Pilot it meets the criteria in 29.5.

#### **Entry into the Family Law Pilot when Child is not subject to a Protection Order**

- 29.17 Where a child is not subject to a Protection Order and there are no court proceedings on foot or where a child is subject to a Temporary Protection Order, a person who is entitled to be a party to proceedings under sections 125(1) and 125(2)(a)-(c) of *the Act*, may file a Consent to enter the Family Law Pilot Form with the Court seeking the FLP Judicial Registrar arrange a FLP Mediation Conference. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#> .
- 29.18 A Consent to enter the Family Law Pilot form must:
- 29.18.1 state the orders that are sought;
  - 29.18.2 be signed by no less than two (2) persons who are entitled to be a party to proceedings under sections 125(1) and 125(2)(a)-(c) of *the Act*, confirming the informed consent of those persons to the Local Court exercising family law jurisdiction under section 69N(5) of the FLA; and
  - 29.18.3 provide evidence of what steps have been taken to notify each interested party of the request to enter the Family Law Pilot.

#### **Affidavits**

- 29.19 Any affidavit shall be filed using the Family Law Pilot – Affidavit form. The form can be found at [Schedule 4](#) and <https://localcourt.nt.gov.au/forms-fees#> .

### **Case Management of Family Law Pilot Matters**

- 29.20 The FLP Judicial Registrar will case manage all proceedings within the Family Law Pilot.
- 29.21 When a matter is referred in to the Family Law Pilot, the FLP Judicial Registrar must, as soon as is practicable, fix a date, time and place for a Case Management Inquiry and must give all parties notice of the Case Management Inquiry.
- 29.22 When a Consent to Enter the Family Law Pilot Form is filed with the court, the FLP Judicial Registrar will assess the matter in Chambers to determine if the matter is suitable for a FLP Mediation Conference. If the matter is suitable and the CEO of Territory Families consents to a FLP Mediation Conference occurring, the FLP Judicial Registrar must, as soon as is practicable, fix a date, time and place for a voluntary FLP Mediation Conference to occur and must give all parties notice.

### **Powers of the FLP Judicial Registrar**

- 29.23 Except as otherwise assigned by the Chief Judge under section 22 of the *Local Court Act 2015*, the FLP Judicial Registrar may exercise all powers of the Court except the power to hear and determine an application under sections 103, 111, 121, 136 or 137A of *the Act*.

### **Case Management Inquiry**

- 29.24 At a Case Management Inquiry the FLP Judicial Registrar may:
- 29.24.1 Direct that the parties attend a Conciliation Conference at a date and time to be fixed by the court;
  - 29.24.2 Direct that the parties attend an FLP Mediation Conference;
  - 29.24.3 Refer the matter to a FLP Judge to consider making an order (including in Chambers) that a child be represented by an Independent Children's Lawyer pursuant to section 68L of the FLA;
  - 29.24.4 Refer the matter to a FLP Judge to consider making an order (including in Chambers) that a Family Law Report be prepared under section 62G of the FLA;
  - 29.24.5 Refer the matter to a FLP Judge to consider making an order (including in Chambers) that a party undertake drug screen testing and direct who shall pay for the cost of such testing;
  - 29.24.6 Adjourn the matter to a further Case Management Inquiry at a date and time to be fixed by the court; or
  - 29.24.7 Order that the matter be referred out of the Family Law Pilot and back before a Judge of the Family Matters Division of the Local Court.

### **Scheduling of a Voluntary FLP Mediation Conference**

- 29.25 Should a matter be referred into the Family Law Pilot under Direction 29.22, The FLP Judicial Registrar will as far as is practicable, assist the parties to arrange the FLP

mediation conference through facilitating the referral of the parties to an appropriate Family Dispute Resolution service.

### **Court Ordered FLP Mediation Conference**

- 29.26 When ordering that the parties attend a FLP Mediation Conference under Rule 32.07 of the Rules or under section 13C(1)(b) of the FLA, the FLP Judicial Registrar will as far as is practicable, assist the parties to arrange the FLP mediation conference through facilitating the referral of the parties to an appropriate Family Dispute Resolution service.

### **The Making of Family Law Orders**

- 29.27 Pursuant to section 69ZK of the FLA, the Court shall not make a family law order unless any existing order under *the Act* has first been revoked.
- 29.28 In the event that the Court makes an order pursuant to section 69J of the FLA, the Court shall make an order for the removal of the CEO of Territory Families as a party to the proceedings, immediately prior to the making of such order. In the event that the CEO of Territory Families objects to being removed as a party to the proceedings, after hearing submissions, the Court may order that the CEO of Territory Families remain as a party to the family law orders for a period of time that the Court deems appropriate.
- 29.29 When making an order pursuant to section 69J of the FLA and where the CEO of Territory Families is to be removed as a party to the proceedings, the Court shall consider whether it is appropriate to make a further order under section 64D of the FLA to provide that the family law orders made are not subject to a subsequent Parenting Plan.
- 29.30 In the event that the Court makes an order pursuant to section 69J of the FLA, the Court should avoid making any written reference to the fact that a child has previously been subject to an order under *the Act* and should make no reference to any involvement of the CEO of Territory Families.

### **Court Procedure**

- 29.31 All proceedings conducted within the Pilot are to occur in a closed court and the public listing of such proceedings shall be suppressed from the public.
- 29.32 In the event that a party files an Application for Consent Orders under the FLA following a successful voluntary FLP Mediation Conference scheduled under Direction 29.25, any subsequent court event shall occur in a closed court and the public listing of such proceedings shall be suppressed from the public.

### **Telephone and Video Links**

- 29.33 In appropriate cases, the Court may allow the appearance of parties or counsel via telephone link or video link, or other medium.
- 29.34 A party wishing to appear via a link must provide adequate notice and adequate information to the Court to enable establishment of the link.

## **Part 5**

# **SPECIALIST JURISDICTIONS PRACTICE DIRECTIONS**

## Practice Direction 30 Domestic Violence Practice Direction

- 30.1 This Practice Direction is issued pursuant to s 49(1) of the *Local Court Act 2016* and section 126(1) of the *Domestic and Family Violence Act 2007* to ensure the fair, expeditious and efficient conduct of domestic violence matters.

### Approved Forms

- 30.2 Section 126(1) of the *Domestic and Family Violence Act 2007* (*the Act*) provides for the approval of forms by the Chief Judge of the Local Court.
- 30.3 The following table outlines the approved forms, the template of the relevant document is found at [Schedule 5](#) and <https://localcourt.nt.gov.au/forms-fees#>

Form name	Relevant Sections
Application for Domestic Violence Order	28, 29 & 30
Application to Vary or Revoke Domestic Violence Order	49 & 103V
Police Application for Urgent Variation	66
Application for Registration/Variation/Revocation or External Order	93 & 98
Affidavit	34(3)(b), 39(2)(b), 57(3)(b) & 62(2)(b) & Part 22 <i>Local Court (Civil Jurisdiction) Rules 1998</i>
Notice of Hearing	31
Statutory Declaration of Service	Part 6 <i>Local Court (Civil Jurisdiction) Rules 1998</i>
Summons to Defendant to Show Cause	37, 44, 59, 71 & 79
Application to Review Police Order	72
Domestic Violence Undertaking	44(4) of the <i>Local Court Act 2015</i>
Notice of Registration/Variation/Cancellation of External Order	95 & 100
Summons to a Person to Appear or to Appear and Produce Documents	Part 23 <i>Local Court (Civil Jurisdiction) Rules 1998</i>
Notice to Landlord	23(4)
Service Information Form	

### Affidavits

- 30.4 When an Applicant files an Application for a Domestic Violence Order, an Application to Vary or Revoke a Domestic Violence Order, or an Application for Variation or Revocation of External Order under section 98 of *the Act*, the application shall be accompanied by an affidavit (initial affidavit) in support of the application.

- 30.5 A party shall not, without leave of the Court, file an initial affidavit that exceeds 10 pages, with a maximum of an additional 10 pages of annexures. However, any court orders, judgments or parenting plans annexed to an affidavit shall not count towards the annexure limitation.
- 30.6 Pursuant to sections 34(3)(b), 39(2)(b), 57(3)(b) and 62(2)(b) of *the Act*, the Court may order parties to file further affidavits, with such further affidavits having no size limitation, unless otherwise ordered by the Court.

#### **Service Information Form**

- 30.7 When an applicant (other than a police officer) files an Application for a Domestic Violence Order or an application to Vary or Revoke a Domestic Violence Order, the applicant shall provide the Court with sufficient information to locate and identify the defendant by filing a Service Information Form.

#### **Review of Police Domestic Violence Orders under Part 2.9**

- 30.8 When a party to a police issued domestic violence order requests a review of that order, the police officer to whom that request is made shall:
- 30.8.1 provide the applicant with a copy of Application to Review a Police Order, to complete and if necessary, assist that person to complete the form;
  - 30.8.2 arrange for the applicant to sign an affidavit outlining what information they wish to put before the Judge;
  - 30.8.3 provide the completed forms to the Court;
  - 30.8.4 assist the applicant in his/her application to the Court, including arranging appropriate interpreters if necessary; and
  - 30.8.5 explain the result of the review to the applicant and the reasons given by the Court.
- 30.9 An Application to Review a Police Order shall be made to the nearest Local Court within business hours of that registry. If the Court registry is not open, subject to 30.10 the application may be to the on-call Judge.
- 30.10 A Judge should only be contacted out of hours if the police officer is satisfied that there is a real threat of imminent actual violence or intimidation on the protected person and in all the circumstances, it is necessary to contact a Judge out of hours.

#### **Applications by a Police Officer for an Urgent Variation under section 66**

- 30.11 When a police officer makes application pursuant to section 66 for a variation of a Local Court DVO or a Police DVO, the officer shall use a Police Application for Urgent Variation Order Form.



- 30.12 The application shall be made to the nearest Local Court within business hours of that registry. If the Court registry is not open, then, subject to direction 30.13, the application may be to the on-call Judge.
- 30.13 A Judge should only be contacted out of hours if the police officer is satisfied that there is a real threat of imminent actual violence or intimidation on the protected person and in all the circumstances, it is necessary to contact a Judge out of hours.

#### **Replacement Tenancy Agreement**

- 30.14 If a party files an application seeking an order under s23(2), to either create a new tenancy agreement or to terminate a tenancy agreement, the applicant shall notify the landlord of the application prior to the hearing of the application.
- 30.15 Notice to the landlord in accordance with 30.14 shall occur by serving on the landlord with a copy of the Notice to Landlord, no less than two business days prior to the hearing of the application.

#### **Domestic Violence Undertaking**

- 30.16 At any stage in proceedings under the *Domestic and Family Violence Act 2007*, a party may make an undertaking to the Court by filing a completed Domestic Violence Undertaking Form.
- 30.17 The proceedings are not ended when a defendant makes an Undertaking to the Court unless the applicant also withdraws the application and the Court dismisses the application.

#### **Access to Court Files**

- 30.18 Practice Direction 1 of 2019 governs access to court files.
- 30.19 If a document names a child as a protected person, witness or who is otherwise mentioned as reasonably likely to be involved in the proceedings, the registry shall ensure that the child's name and details are obscured from any inspection of that document in accordance with section 123 of the *Domestic and Family Violence Act 2007*.

## **Practice Direction 30A-1 Specialist Domestic and Family Violence List – Alice Springs**

30A-1.1 The following Practice Direction is issued in accordance with section 35(3) of the *Local Court Act 2015* and will apply from 15 September 2020.

### **Part A – Introduction and Purpose**

30A-1.2 The Specialist Domestic and Family Violence List (SDFVL) operates as part of the Criminal Division in the Local Court in Alice Springs and exercises civil jurisdiction under the *Domestic and Family Violence Act 2007* (DFV Act). It operates as a specialist domestic and family violence list for defendants in criminal proceedings who have elected to plead guilty to a domestic violence offence and for DFV Act defendants who consent to the making of a rehabilitation order as part of a court DVO. The specialist list operates in accordance with applicable legislation including the *Bail Act 1982* and the *Sentencing Act 1995*.

30A-1.3 The purpose of the SDFVL is to:

30A-1.3.1 Encourage offenders to take responsibility for their offending behaviour;

30A-1.3.2 Provide a pathway for suitable offenders to access services which will address their offending behaviour and help them to stop using violence;

30A-1.3.3 Provide the opportunity for victims to engage with services which will enhance their safety, in particular during court proceedings and while offenders are undergoing rehabilitation programs; and

30A-1.3.4 Resolve domestic violence offence proceedings fairly and expeditiously in accordance with the objectives in s 60AB of the *Local Court (Criminal Procedure) Act 1928*.

30A-1.4 The provision of a Men's Offender Assessment Referral Service (MOARS) worker and a Women's Safety Worker (WSW) are key features of the operation of the SDFVL in order to assist the court in achieving these aims.

30A-1.5 This practice direction provides a framework for the management of matters referred to the SDFVL. The forms required for the SDFVL can be found at Schedule 5 at <https://localcourt.nt.gov.au/publications/approved-forms-appendix-practice-directions#>

## **Part B – Domestic Violence Offence Proceedings**

### **Domestic Violence Offences**

30A-1.6 In this practice direction, ‘domestic violence offence’ and ‘domestic violence offence proceeding’ have the meanings given in s 21G of the *Evidence Act 1939*.

30A-1.7 This practice direction applies only to domestic and family violence offences that are to proceed summarily in accordance with the *Local Court (Criminal Procedure) Act 1928*.

### **Referral to the SDFVL**

30A-1.8 A defendant to a domestic violence offence proceeding who:

30A-1.8.1 indicates an intention to enter a plea of guilty; and

30A-1.8.2 indicates an intention to consent to a DVO under the DFV Act which includes an order requiring the defendant to undergo a rehabilitation program in accordance with s 24 of that Act,

may apply for their case to be referred to the SDFVL.

30A-1.9 Applications for referral to the SDFVL may be made at a mention of a matter before the Court or in writing using an application to relist form. In all cases an application must be accompanied by a completed SDFVL referral form.

30A-1.10 Domestic violence offence proceedings where there is an indication of a plea of guilty but the facts are in dispute will not be considered for acceptance to the SDFVL until the factual dispute is resolved.

30A-1.11 A domestic violence offence proceeding in which an application for referral to the SDFVL has been received will be mentioned at the next available SDFVL day, usually the next Wednesday.

30A-1.12 Where there is a separate but related file in relation to a private application for a DVO or confirmation of a Police DVO, the DVO file will be mentioned in the SDFVL at the same time as the domestic violence offence proceeding.

### **First mention in the SDFVL**

30A-1.13 At the first mention in the SDFVL the Court will consider all relevant circumstances including:

30A-1.13.1 Capacity of the SDFVL to manage the matter, noting that places on the SDFVL may be capped;

30A-1.13.2 Availability of suitable rehabilitation programs;

30A-1.13.3 Confirmation by the defendant of indication of plea of guilty and their consent to assessment for and to undertake a rehabilitation program, and preparation of the risk assessment report; and

30A-1.13.4 Whether it is likely to be appropriate for a defendant to be on bail until they are sentenced in order to facilitate their attendance at a rehabilitation program;

and will determine whether to request a risk assessment report and, if appropriate, a bail supervision suitability report in order to determine whether the defendant is suitable for the SDFVL.

30A-1.14 If the Court determines that the defendant is suitable for an assessment for inclusion in the SDFVL the matter will be adjourned for 14 days, or such other time as is appropriate, to allow appropriate reports to be prepared.

30A-1.15 During the adjournment a risk assessment report will be prepared by a program facilitator (for example the MOARS worker) and provided to the DV Registrar. All risk ratings and reports must be placed in a sealed envelope on the relevant file.

30A-1.16 The risk assessment report will include a risk ranking and may also include suggestions as to the suitability of an ancillary program. Where an ancillary program is suggested, further assessment or advice from a relevant provider may be requested.

30A-1.17 A defendant will not be considered for acceptance on the SDFVL unless they are suitable to participate in a rehabilitation program, even if they are suitable to participate in an ancillary program.

30A-1.18 The DV Registrar will liaise with the Women's Safety Worker or other appropriate service provider to give all adult protected persons, or potential protected persons, an opportunity to undertake risk assessment and safety planning. A protected person's participation is entirely voluntary. A risk assessment report relating to a protected person may be provided to the Court with the consent of the protected person and may be considered on the making of a DVO.

## **Second mention in the SDFVL**

30A-1.19 After receipt of the risk assessment report the Court will make a decision as to whether the defendant is suitable to participate in the SDFVL. In making that decision the Court will hear the parties (which in relation to the making of a DVO includes a protected person) and may have regard to:

30A-1.19.1 The charges to which the defendant proposes to plead guilty;

30A-1.19.2 The risk assessment report and whether the defendant is suitable to undertake a rehabilitation program;

30A-1.19.3 Whether the defendant is suitable for bail until they are sentenced based on factors to be considered under s 24 of the *Bail Act 1982* including any bail supervision suitability report which has been provided;

30A-1.19.4 The defendant's criminal history and any other material which might be considered on a bail application, such as previous failures to comply with bail conditions or court orders;

30A-1.19.5 Whether it is appropriate to make a DVO under the DFV Act and the terms of any such DVO;

30A-1.19.6 Matters relevant to the safety of a protected person or potential protected person having regard to the paramountcy of the safety and protection of a protected person under s 24(1A) of the DFV Act when making an order for a rehabilitation program including wishes of the protected person and any risk assessment done;

30A-1.19.7 The defendant's continued consent to attend at a rehabilitation program;

30A-1.19.8 Whether there is a place available on a rehabilitation program; and

30A-1.19.9 Any other relevant circumstance.

30A-1.20 If a defendant is not accepted for participation in the SDFVL the matter will be dealt with in accordance with usual procedures. If required by the circumstances of the case the sentencing hearing may be conducted by a judge who was not sitting in the SDFVL when the risk assessment report was considered.

30A-1.21 If the defendant is found suitable for participation in the SDFVL and elects to continue the following procedure will apply:

30A-1.21.1 If they have not already done so, the defendant will enter a plea of guilty to the charge(s);

30A-1.21.2 A court DVO will be made;

30A-1.21.3 The court DVO will include an order under s 24 of the DFV Act requiring the defendant to take part in a rehabilitation program;

30A-1.21.4 The offender will be granted bail pending sentencing on conditions determined by the Court taking into account the need for consistency between bail conditions, DVO conditions and any other relevant orders in order to facilitate attendance at the rehabilitation program; and

30A-1.21.5 A review mention timetable will be set.

### **Review Mentions**

30A-1.22 Review mentions are conducted pursuant to Part 2.11A of the DFV Act. Offenders (who will also be defendants under the DFV Act) are to attend review mentions and should expect to engage directly with the court.

30A-1.23 A victim may attend a review mention if they wish and may use a vulnerable witness room or other court facility if arranged with the DV Registrar.

30A-1.24 Prior to a review mention a program facilitator will provide a participation notice under s 85D(3)(c) of the DFV Act.

30A-1.25 If the Court receives a non-compliance notice from a program facilitator under s 84E(3) of the DFV Act the Court must hold a review mention.

### **Failure to Comply**

30A-1.26 The court may compel the attendance of a defendant in accordance with s 85F of the DFV Act, or under any other power held by the court.

30A-1.27 The Court may revoke a rehabilitation order in the circumstances set out in s 85G of the DFV Act.

30A-1.28 Where a rehabilitation order is revoked the proceeding will no longer be suitable for participation in the SDFVL and arrangements will be made to proceed to sentence. The Court will consider whether the offender should remain on bail.

### **Satisfactory Completion of a Rehabilitation Order**

30A-1.29 The requirements for satisfactory completion of a rehabilitation order are set out in s 85B of the DFV Act. The Court may find that an offender has satisfactorily completed a rehabilitation program notwithstanding a failure to comply with a requirement where a finding that they did not complete the program would be unjust.

30A-1.30 Upon completion of a rehabilitation program an offender will be sentenced in accordance with the *Sentencing Act 1995*.

### **Part C – DVO Proceedings where there is no related criminal file**

30A-1.31 A defendant to a court DVO proceeding may be ordered to participate in a rehabilitation program as set out in s 24 of the DFV Act.

30A-1.32 An applicant, protected person or a defendant in a DVO proceeding who seeks to have

an order for participation in a rehabilitation program included in a court DVO may apply to have the proceeding considered in the SDFVL.

30A-1.33 Applications may be made at a mention of a matter before the Court or in writing using an application to relist form. In all cases an application must be accompanied by a completed SDFVL referral form.

30A-1.34 A proceeding in which an application for referral to the SDFVL has been received will be mentioned at the next available SDFVL day, usually the next Wednesday.

30A-1.35 At the first mention in the SDFVL the Court will consider all relevant circumstances including:

30A-1.35.1 Whether the defendant indicates that they will consent to the making of an order under s 24 of the DFV Act;

30A-1.35.2 Capacity of the SDFVL to manage the proceeding, noting that places on the SDFVL may be capped; and

30A-1.35.3 Availability of suitable rehabilitation programs;

and will determine whether to request an assessment of the defendant's suitability for the SDFVL.

30A-1.36 If the Court determines that the defendant is potentially suitable for an assessment for inclusion on the SDFVL the proceeding will be adjourned for 14 days, or such other time as is appropriate, to allow a risk assessment report to be prepared. Consent by the defendant to the preparation of the risk assessment report is a condition for participation in the SDFVL.

30A-1.37 During the adjournment a risk assessment report will be prepared by a program facilitator for a rehabilitation program (for example the MOARS worker) and provided to the DV Registrar.

30A-1.38 The DV Registrar will liaise with the Women's Safety Worker or other appropriate service provider to give all adult protected persons, or potential protected persons, an opportunity to undertake risk assessment and safety planning. A protected person's participation is entirely voluntary. A risk assessment report relating to a protected person may be provided to the Court with the consent of the protected person and may be considered on the making of a DVO.

30A-1.39 At the next appropriate mention of the matter after receipt of the risk assessment report the Court will consider whether to make an order under s 24 of the DFV.

30A-1.40 When making a court DVO including an order under s 24 the Court may set a review

timetable in accordance with s 85E(1) of the DFV Act.

## **Part D - Definitions**

30A-1.41 In this practice direction:

30A-1.41.1 ‘ancillary program’ means a program, referred to in s 24(1B) of the DFV Act, which is not a rehabilitation program but which may address a factor which has contributed to offending and may include alcohol or other drug programs, anger management programs, parenting programs, or any other suitable counselling or treatment.

30A-1.41.2 ‘court DVO’ has the meaning in the DFV Act (and includes a s 41 Police DVO which is confirmed by a court).

30A-1.41.3 ‘defendant’ has the meaning in the *Local Court (Criminal Procedure) Act 1928* and in the DFV Act as the context demands.

30A-1.41.4 ‘offender’ has the meaning in the *Sentencing Act 1995*.

30A-1.41.5 ‘rehabilitation program’ means a rehabilitation program as defined in the DFV Act.

30A-1.41.6 ‘risk assessment report’ means a report to the Court prepared by a program facilitator summarising their findings as to the suitability of a defendant/offender to attend a rehabilitation program.



## **Practice Direction 30A-2 Contested Criminal Proceedings involving Domestic and Family Violence – Alice Springs**

30A-2.1 The following Practice Direction is issued in accordance with section 35(3) of the *Local Court Act 2015* and will apply from 15 September 2020.

30A-2.2 The purpose of this practice direction is to ensure that proceedings involving domestic and family violence in the Criminal Division of the Local Court at Alice Springs are resolved as fairly and expeditiously as possible in accordance with the objectives set out in S60AB of the *Local Court (Criminal Procedure) Act 1928*.<sup>3</sup>

30A-2.3 In this practice direction, ‘domestic violence offence’ and ‘domestic violence offence proceeding’ have the meanings given in s 21G of the *Evidence Act 1939*.

30A-2.4 This practice direction applies to domestic violence offence proceedings in the Local Court at Alice Springs to which Division 2A of the *Local Court (Criminal Procedure) Act 1928* applies.

30A-2.5 At the first mention of a domestic violence offence proceeding a defendant will be asked to indicate whether they will be contesting the charge(s). Where a defendant is unable to indicate whether the charge(s) is contested on the first mention the matter may be adjourned for up to 14 days.

30A-2.6 Where a defendant indicates that a charge(s) is contested, or on a second mention remains unable to indicate whether or not the charge(s) is contested, the matter will be scheduled as follows:

30A-2.6.1 A directions hearing approximately 4 weeks after the first mention;

30A-2.6.2 A prospective hearing date will be reserved within 8 – 10 weeks (or as close to that time as the court diary permits); and

30A-2.6.3 A case management inquiry mention will be scheduled approximately two weeks before the hearing date.

30A-2.7 Where a complaint or information includes a charge(s) which is a domestic violence offence and another charge(s) which is not a domestic violence offence but should be heard at the same time, the presiding judge may determine the extent to which this practice direction will apply.

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<sup>3</sup> See s 35(2) of the *Local Court Act* for legislation regulating the conduct of criminal proceedings generally.

30A-2.8 It is expected that prosecution and defence will have fully complied with their respective obligations in Subdivision 2 of Division 2A of the *Local Court (Criminal Procedure) Act 1928* by the time appointed for the directions hearing.

30A-2.9 In addition to the matters required by s 60AJ of the *Local Court (Criminal Procedure) Act 1928* to be indicated by the prosecution at the directions hearing the prosecution should:

30A-2.9.1 Indicate whether they have made inquiries and are aware of any circumstances which make it likely that a witness may object to giving evidence under s 18 of the *Evidence (National Uniform Legislation) Act 2011* at the hearing and if so whether that witness has been directed to a service which may provide him/her with independent legal advice prior to the hearing;<sup>4</sup>

30A-2.9.2 Indicate whether any vulnerable witness(es) as defined by s 21AB of the *Evidence Act 1939* will require use of vulnerable witness rooms or other particular court facilities for the hearing;

30A-2.9.3 Indicate whether the prosecution will be relying upon a recorded statement as defined in s 21G of the *Evidence Act 1939* and if so what if any special arrangements will be made for the playing of that statement during the hearing, including the length of the statement;

30A-2.9.4 Whether a copy of the recorded statement has been served upon the defendant (audio only) or the defendant's legal practitioner as applicable;

30A-2.9.5 Indicate whether any witness will be using interpreter services at the hearing, including as to any recorded statement;

30A-2.9.6 Indicate whether any other special arrangements are required for witnesses, for example audio-visual links; and

30A-2.9.7 Provide advice as to any other circumstance of which they are aware which may affect the conduct or duration of the hearing.

30A-2.10 The information required to be provided at the directions hearing must be included on the domestic violence proceeding directions hearing form which can be found at Schedule 5 at <https://localcourt.nt.gov.au/publications/approved-forms-appendix-practicedirections#>

30A-2.11 Where a vulnerable witness is to give evidence at a hearing and a defendant is not

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<sup>4</sup> It is the Court's obligation to satisfy itself that a witness is aware of the effect of s 18 of the ENULA as it might apply to that person at the hearing.

represented by a legal practitioner the Court will inquire as to whether the defendant is aware of the requirements of s 21QA of the *Evidence Act 1939* and will if necessary set a date to determine whether the defendant will be granted leave to cross-examine the witness. If leave is not granted the Court will proceed in accordance with s 21QB of the *Evidence Act 1939* including making any necessary procedural orders to give effect to the requirements of that section.

30A-2.12 The hearing date will be confirmed or varied as required at the directions hearing.

30A-2.13 At the case management inquiry:

30A-2.13.1 Prosecution will indicate:

- a. Whether all witnesses are available (e.g. summons' served or as appropriate) and that the matter is ready to proceed as scheduled;
- b. Arrangements for witnesses are confirmed as indicated at the directions hearing and any changes advised; and

30A-2.13.2 Defence will indicate whether the matter is ready to proceed.

## Practice Direction 31 Treatment Orders

- 31.1 Section 36(2) of the *Volatile Substance Abuse Prevention Act 2005 (the Act)* provides that an application for a treatment order must be in the form approved by the Chief Judge. Similarly, section 37(2) of *the Act* provides that an application for an order in connection with a treatment order (for example an order to vary, extend or revoke a treatment order) must be in the form approved by the Chief Judge.
- 31.2 The purpose of this Practice Direction is to approve and prescribe the form which is to be completed and filed in the Local Court when a treatment order or an order in connection with a treatment order is sought by the Chief Health Officer (or a delegate).

### The Approved and Prescribed Form of Application

- 31.3 An application for a treatment order or an order in connection with a treatment order is to be made by use of an Application for Treatment Order form. The form can be found at Schedule 5 and <https://localcourt.nt.gov.au/forms-fees#> .

## Practice Direction 32 Adoption of Children

### Adoption Hearing Aide-memoire

- 32.1. Following the fixing of the proceedings for a pre-hearing conference in accordance with rule 6(2)(a) of the *Local Court (Adoption of Children) Rules 1994* (the Rules), the applicant shall prepare a draft of an aide-memoire and provide the draft copy of the aide-memoire to all parties and to the Court no less than 24 hours prior to the pre-hearing conference.
- 32.2. The draft of the aide-memoire to be prepared in accordance with direction 31.1, may be provided to the Court and all parties via email.
- 32.3. The aide-memoire shall be in accordance with the Adoption Hearing Aide-Memoire Form. The form can be found at [Schedule 5](#) and <https://localcourt.nt.gov.au/forms-fees#> . The aide-memoire shall address:
  - 32.3.1. the matters of which the Court must be satisfied to make an order for adoption, by stating whether the requirements are met and referring to the relevant paragraphs within the Rule 6(3) affidavit that provide evidence of compliance; and
  - 32.3.2. provide an outline of the particulars required to complete the Form 5 - Memorandum of Order.
- 32.4. Following the fixing of the proceedings for hearing of the application in accordance with Rule 8A(3)(b)(ii), and no less than three days prior to the hearing, the applicant shall file and serve the aide-memoire.
- 32.5. The applicant shall serve a sealed copy of the aide-memoire on:
  - 32.5.1. the Solicitor for the Northern Territory for and on behalf of the Minister; and
  - 32.5.2. each person who wishes to be a party to the proceedings and whose name and address for service has been advised to the applicant in accordance with section 39(3) of the *Adoption of Children Act 1994*.

## Practice Direction 33 Mental Health Diversion List

- 33.1 The Mental Health Diversion List (MHDL) commenced as a specialist mental health list as part of the Criminal Division of the Local Court at Darwin in 2016. It is not a separate and distinct court created by legislation, but created as a specialist list based on various provisions of the *Bail Act 1982*, the *Mental Health and Related Services Act 1998 (the Act)* and the *Sentencing Act 1995*.
- 33.2 The purpose of the MHDL is to provide a process for diverting offenders with a mental illness/disturbance or cognitive impairment from the mainstream criminal justice system into a specialist list which had the following aims:
- 33.2.1 to assist those people to address their mental health or cognitive impairment needs related to their criminal behaviour;
  - 33.2.2 to improve their mental health and general well-being;
  - 33.2.3 to improve the safety of the community and reduce recidivism; and
  - 33.2.4 to reduce the use of criminal justice punishment for criminal behaviour related to mental health issues and cognitive impairment.
- 33.3 A key feature of the MHDL is the allocation of court clinicians from Forensic Mental Health Services to assist the court in achieving these aims.
- 33.4 The purpose of this practice direction is to formally acknowledge the continuing existence of the MHDL and to replace earlier guidelines with a framework for the management of matters referred to the MHDL. All forms referred to in this Practice Direction can be found at Schedule 5 and <https://localcourt.nt.gov.au/forms-fees#> .

### Referral to the MHDL

- 33.5 The MHDL is conducted in the Local Court at Nichols Place in Darwin on Thursdays or on such other specific days and time that may be advised from time to time.
- 33.6 An offender is eligible to be referred to the MHDL if he or she appears to have a mental illness or mental disturbance (within the meaning of *the Act*), a cognitive impairment, acquired brain injury or an autism spectrum disorder - whether the offender intends to plead guilty or not guilty to a summary matter or an indictable matter that is capable for being heard summarily – even if the matter must proceed by way of a preliminary examination.
- 33.7 An offender may be referred to the MHDL at any stage of proceedings in the Local Court.
- 33.8 Having regard to the appearance and behaviour of the offender when brought before the Court and any information given to the Court during the proceedings, the Court may on its own motion or on application by the offender, his or her legal representative or the prosecutor refer the offender to the MHDL immediately if the MHDL is being conducted that day or to the next sitting day of the MHDL.

- 33.9 The offender may be referred to the MHDL whether or not the offender consents to the referral; however, depending on the circumstances, the offender may be removed from the list if he or she does not consent to being assessed by a court clinician or fails to authorise a court clinician to obtain such information as is necessary to carry out the assessment.
- 33.10 At the time of referral the Court may do one of more of the following:
- 33.10.1 In accordance with the *Bail Act 1982* grant the offender bail to appear in the MDHL upon such conditions as it considers appropriate or remand the offender in custody. If the offender is granted bail, the offender is to appear in the MHDL on a date that is not less than seven days from the date of referral. If the offender is refused bail, the offender is to be remanded in custody to appear in the MHDL immediately (if the list is being conducted that day) or on the next sitting day of the MHDL.
  - 33.10.2 Request a pre-assessment advice pursuant to section 74 of *the Act* regarding the availability of resources to assess whether the offender is in need of treatment under *the Act* by completing a Section 74 Pre-assessment Advice Order Form.
  - 33.10.3 Request a preliminary report from a court clinician concerning any matter that is relevant to the mental health or functioning of the offender (including whether the offender is at risk of self-harm) and as to whether a certificate under section 77 of *the Act* is warranted by completing a Preliminary Request for Section 77 Certificate Form.

**Actions the Court may take Following Referral to the MHDL**

- 33.11 Request a pre-assessment advice under s74 of *the Act* if not already requested.
- 33.12 After receiving written advice from the Chief Health Officer under either section 74(3)(b) or section 73 (c) of *the Act*, order an assessment and report under section 74A (1) or (2) of *the Act* by completing an Section 74A Assessment Order Form and adjourn the proceedings for the purposes of obtaining that report.
- 33.13 After receiving a report under section 74A of *the Act* make an admission order under section 75 by completing a Section 75 Admission Order Form and adjourn the proceedings for the purposes of obtaining that report.
- 33.14 Request a preliminary report from a court clinician in the terms of 33.10.3.
- 33.15 Request a certificate from the Chief Health Officer under section 77 of *the Act* after receiving a preliminary report from a court clinician stating that a certificate is warranted; but decline to request a certificate if the preliminary report indicates that a certificate is not warranted – unless the Court is satisfied that there is sufficient cause to request a certificate.
- 33.16 Notwithstanding the previous paragraph, request a certificate from the Chief Health Officer under section 77 of *the Act* without first obtaining a preliminary report from a court clinician, if in the opinion of the Court the circumstances of the case clearly warrant a request for a section 77 certificate. The Court shall request a section 77 certificate by completing the Request for a Section 77 Certificate form.

- 33.17 At the time of requesting a section 77 certificate, direct that the report upon which the certificate is based be made available to the Court at the same time the certificate is provided to the Court.
- 33.18 Hear and determine an application for bail or review a decision in relation to court bail in accordance with section 34 of the *Bail Act 1982*, notwithstanding the offender may have previously been refused bail prior to or at the time of referral to the MHDL.<sup>5</sup>
- 33.19 Order a bail assessment/supervision report to be prepared in conjunction with a court clinician for the purposes of the bail application or bail review by completing the Order for Pre-Sentence and Suitability Reports Form.
- 33.20 Upon receipt of such a report grant bail upon such conditions as it considers appropriate or refuse bail and remand the offender in custody.
- 33.21 Conduct a hearing under section 77 of *the Act* to determine whether charges being dealt with summarily should be dismissed;
- 33.22 Case manage in the MHDL an indictable matter that must proceed by way of a preliminary examination and conduct the preliminary examination provided that there are mental/cognitive impairment issues that may raise a fitness to plead issue or mental impairment defence in the Supreme Court;
- 33.23 Give a sentence indication pursuant to section 60 AT (2) of the Local Court (Criminal Procedure) Act 1928 provided mental health issues or a cognitive impairment are relied upon as a mitigating factor;
- 33.24 Hear and determine a plea of guilty and pass sentence in relation to either a summary matter or an indictable matter that is capable of being with summarily provided mental health issues or a cognitive impairment are relied upon as a mitigating factor;
- 33.25 For the purposes of determining the appropriate sentence for an offender order a supervision assessment under section 103 of the *Sentencing Act 1995* and direct that such assessment be conducted in conjunction with the court clinician by completing the Order for Pre-Sentence and Suitability Reports Form.
- 33.26 Order any other assessment under the *Sentencing Act 1995* including a full pre-sentence report, psychiatric report or psychological report for the purposes of sentencing by completing the Order for Pre-Sentence and Suitability Reports Form.
- 33.27 Order an assessment of, and if appropriate a treatment plan for, an offender under section 78 of *the Act* by completing the Section 78 Voluntary Treatment Plan Order Form.
- 33.28 Adjourn the proceedings and grant bail to an offender on the condition that the offender enter into an agreement under section 78A of *the Act* to participate in a voluntary treatment plan.

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<sup>5</sup> The transfer of the matter to the MHDL is considered to be a change of circumstances warranting a review of bail for the purposes of the *Bail Act*.



- 33.29 Following a finding of guilt, order an assessment under section 79 of the *Sentencing Act 1995* to determine suitability for an approved treatment facility order. The assessment shall be ordered by completing the Order for Pre-Sentence and Suitability Reports Form.
- 33.30 To the extent that the performance of any of the above functions requires an assessment of the offender, the offender must consent to such assessment by a court clinician and/or probation and parole officer and authorise the release to such persons of all such information as is necessary to enable the assessment to be conducted.
- 33.31 When ordering a report in the MHDL the Court must specify the date that the report is required (the court date) if the report cannot be made available on the day that the matter is dealt with. Reports may not be accessed by any party to the proceedings prior to the presiding Judge making an order either in Chambers or in Court that the report be published and made available to the parties.

#### **Removal of Offender from the MHDL**

- 33.32 The Court may at any time remove an offender from the MHDL if the offender does not require care or treatment under *the Act* and:
- 33.32.1 the offender intends to plead not guilty to charges by way of a summary hearing rather than seek to have the charges dismissed pursuant to section 77 of *the Act*; or
- 33.32.2 the offender intends to plead guilty to charges without seeking to rely upon mental health issues or a cognitive impairment as a mitigating factor; or
- 33.32.3 in relation to a matter that must proceed by way of a preliminary examination there are no mental health issues or a cognitive impairment that may give rise to a fitness to plead issue or a mental impairment defence in the Supreme Court; or
- 33.32.4 the offender fails to comply with 33.30 and the offender's failure to give the requisite consent is not due to a mental illness or mental disturbance or cognitive impairment and no useful purpose would be served by the offending remaining in the MHDL.
- 33.33 If an offender is removed from the MHDL in accordance with 33.32 the offender is not precluded from being referred back to the MHDL upon sufficient cause being demonstrated.

#### **Conduct of Matters in the MHDL**

- 33.34 Matters referred to the MHDL are to be conducted with such expedition as the requirements of the *Local Court (Criminal Procedure) Act 1928*, *the Act* and a proper consideration of the matter permits.

#### **Consent to Summary Jurisdiction in the MHDL**

- 33.35 The fact that an indictable offence that is capable of being heard and determined summarily is referred to the MHDL does not, for the purposes of section 121A of the *Local Court (Criminal Procedure) Act 1928*, signify that:
- 33.35.1 the defendant consents to the charge being disposed of summarily; and

33.35.2 the prosecutor consents to the charge being disposed of summarily; and

33.35.3 the Court is of the opinion that the charge should be heard and determined summarily.

## Practice Direction 34 Katherine Sitting Times

- 34.1 Over time, the number of matters and the sitting hours have increased within the Katherine Court. Whilst larger courts and legal practices can share workload and resources, the nature and isolation of the Katherine Court inhibit the ability to do so. The workload of the judiciary, the administrative staff and the legal practitioners now poses an issue for health and well-being.
- 34.2 This Practice Direction regulates the hours of the Court and procedures for dealing with lengthy lists, as well as procedures for managing youth justice and family matters listings.

### Sitting Hours

- 34.3 The sitting hours of the Court will be from 10.00am to 4.30pm. The Court will adjourn at or before 1.00pm and not sit again until 2.00pm.
- 34.4 A judge may adjourn a part heard matter to commence no earlier than 9.00am.

### List Management

- 34.5 Should a party be aware that a non-contested matter may be lengthy, that is, of an hour or more duration, they shall notify the Registrar and/or the Judge as early as possible, and inquiries will be made as to whether a judge may be available at another location to hear the matter by audio visual link.
- 34.6 Should parties have witnesses or defendants that require interpreters, they shall inform the Court as soon as they are aware of any time restraints on the interpreter service.

### Youth Justice and Family Matters

- 34.7 In compliance with the relevant Acts for separation of adult and child proceedings, all youth justice matters and care and protection applications will be heard in the Hearing Room and except where urgency dictates, shall only be listed on designated Youth Justice Court or Care and Protection days.
- 34.8 There are two exceptions to the above rule:
- 34.8.1 Where the youth is now an adult and has adult case files as well;
- 34.8.2 Where the security of the public or the youth may be risk because of the lack of a custodial dock.
- 34.9 In determining whether to hear a youth court matter in Court Room One the sitting Judge will hear advice from the custodial service.
- 34.10 On designated Youth Justice or Care and Protection days no other matters are to be listed or adjourned, apart from overnight remands from the police watch house, except when two Judges are sitting.

## Practice Direction 35 De Facto Relationships

- 35.1 The purpose of this practice direction is to regulate the procedures for commencing proceedings under the *De Facto Relationships Act 1991*.
- 35.2 Proceedings for orders, declarations, and other relief under Part 2 of the *De Facto Relationships Act 1991* are to be commenced by filing an inter parte Originating Application.
- 35.3 The Originating Application shall be accompanied by an affidavit supporting the application to be served with the Originating Application.
- 35.4 The application will then be dealt with pursuant to Division 2 of Part 7 of the *Local Court (Civil Jurisdiction) Rules 1998*.

## Practice Direction 36 Application for Disease Test Order

- 36.1 Any application to be made pursuant to section 147FH of the *Police Administration Act 1978* should be commenced using a Form 7F as an Originating Application Between Parties When Early Hearing is Required and rule 7.15 of the *Local Court (Civil Jurisdiction) Rules 1998* shall apply to the listing of the application.
- 36.2 An affidavit in support should be filed at the time of filing the application.

## Practice Direction 37 Personal Violence Restraining Orders

- 37.1 The purpose of this Practice Direction is to prescribe forms to be used in proceedings commenced under the Personal Violence Restraining Order Act 2016.

### Affidavits

- 37.2 When an Applicant files an Application for a Personal Violence Restraining Order or an Application to Vary or Revoke a Personal Violence Restraining Order, the application shall be accompanied by an affidavit in support of the application. The Affidavit form can be found at [Schedule 5](#) and <https://localcourt.nt.gov.au/forms-fees#>.

### Referral to Mediation

- 37.3 The Court may refer a matter to mediation under section 14(1), by completing a referral to Community Justice Centre form. The form can be found at [Schedule 5](#) and <https://localcourt.nt.gov.au/forms-fees#>.

## **Part 6 COVID 19 PRACTICE DIRECTIONS**

## Practice Direction 38 Electronic Filing

38.1 The Northern Territory Local Court is introducing measures to limit unnecessary personal interactions during the COVID-19 pandemic.

38.2 This Practice Direction provides for electronic filing in all Local Court Jurisdictions.

### Electronic Filing

38.3 Any document which is to be filed or lodged with the Local Court can be filed or lodged by email to the relevant registry.

38.4 The email addresses for the purpose of this Practice Direction are:

Darwin Local Court (Civil Registry) – [DLC.CivilRegistry@nt.gov.au](mailto:DLC.CivilRegistry@nt.gov.au)

Darwin Local Court (Criminal Registry) - [DLC.CriminalRegistry@nt.gov.au](mailto:DLC.CriminalRegistry@nt.gov.au)

Darwin Local Court (Domestic and Personal Violence matters) - [DLC.DV@nt.gov.au](mailto:DLC.DV@nt.gov.au)

Darwin Childrens Court – [Darwin.ChildrensCourt@nt.gov.au](mailto:Darwin.ChildrensCourt@nt.gov.au)

Alice Springs Local Court (Civil Registry) - [ASLC.CivilRegistry@nt.gov.au](mailto:ASLC.CivilRegistry@nt.gov.au)

Alice Springs Local Court (Criminal Registry) - [ASLC.CriminalRegistry@nt.gov.au](mailto:ASLC.CriminalRegistry@nt.gov.au)

Alice Springs Local Court (Domestic and Personal Violence matters) - [ASLC.DV@nt.gov.au](mailto:ASLC.DV@nt.gov.au)

Katherine Local Court – [Katherine.LocalCourt@nt.gov.au](mailto:Katherine.LocalCourt@nt.gov.au)

38.5 Documents being lodged electronically must:

38.5.1 be attached as a single document; and

38.5.2 be labelled with the name or adequate description of the document being filed; and

38.5.3 not be emailed with documents relating to different court files; and

38.5.4 be a text searchable PDF, JPEG or TIFF document with no viewing, printing or copying restrictions; and

38.5.5 be paginated and not more than 25 megabytes in size; and

38.5.6 have 300 dots per inch resolution with a black and white setting; and

38.5.7 not contain a virus or malware.

38.6 If the document contains a hyperlink to an external source, the content of the source is not part of the document.



- 38.7 If the document is an affidavit which contains annexures, each annexure must have a bookmark applied to the annexure certificate before it is uploaded.
- 38.8 If a document does not comply with this Practice Direction for any reason, a Registrar may:
- 38.8.1 notify the user filing the document and request that the user file the document in a different, or specified, format or manner (including directions for the filing of hard copies); or
  - 38.8.2 approve the filing of the document.
- 38.9 Any email sent to the Court for the purposes of filing electronically must contain the following:
- 38.9.1 confirmation that the document is emailed for the purpose of electronic filing; and
  - 38.9.2 the court file number (unless the documents being filed are an originating process and a court file number has not yet been allocated); and
  - 38.9.3 the name of the document/s being filed; and
  - 38.9.4 detail of the party seeking to file the document, including preferred phone and email contact details.
- 38.10 Multiple documents for filing may be attached to a single email, provided that each document to be filed is individually identified and listed separately in the body of the email.
- 38.11 Documents filed electronically will be taken to be filed at the date and time shown on the email received by the Court Registry, however documents received outside Registry hours (8.00 am – 4.00 pm ACST) or on weekends or public holidays will be taken to be received at 8.00 am on the next business day.
- 38.12 It is the responsibility of the court user to ensure the successful transmission of any documents being filed electronically.
- 38.13 When filing electronically, only 1 copy of each document should be filed and if a document has been received and accepted by the Registry, it is unnecessary for any paper copies to be provided to the Registry.
- 38.14 Nothing in this Practice Direction alters parties' obligations for service and the form of service as prescribed by the *Local Court (Civil Jurisdiction) Rules 1998* and *Work Health Court Rules 1999*.
- 38.15 Upon the commencement of this Practice Direction electronic filing will be mandatory for legal practitioners.
- 38.16 Given the potential risk to staff and the community, in the event a self-represented party wishes to file any material directly with the Court, prior approval and confirmation of the

arrangements for same is required. Such requests should be submitted via email or telephone to the relevant registry on the email address set out at paragraph 4.

- 38.17 All payments for filings are to be via credit card over the phone to the relevant registry, or via cheque.
- 38.18 If a document is too large to be filed electronically by email, for example a large brief of evidence being filed pursuant to s105D of the Local Court (Criminal Procedure) Act, the relevant registry should be contacted for arrangements to be made for filing by a USB device.

## Practice Direction 39 Special measures for Domestic Violence and Personal Violence Restraining Orders Matters

- 39.1 The Northern Territory Local Court is introducing special measures to ensure that parties to domestic violence and personal violence restraining orders matters are able to safely initiate proceedings and effectively participate in proceedings during the COVID-19 pandemic.

### Applications

- 39.2 In the event that an applicant is unable to print an application for signing or is unable to physically file or electronically file an application signed by the applicant, a legal practitioner may subject to 39.3, sign the application on behalf of the Applicant.
- 39.3 In the event that a legal practitioner is instructed to sign an application on behalf of an Applicant in accordance with 39.2, the legal practitioner must clearly write “*signed by a legal practitioner on behalf of the Applicant*” next to the legal practitioner’s signature.

### Evidence in support of Applications

- 39.4 Practice directions 30.4 and 37.2 are suspended until such time as this practice direction is revoked.
- 39.5 Subject to 39.7, when an Applicant files an application for a domestic violence order, an application to vary or revoke a domestic violence order, or an application for variation or revocation of external order under section 98 of the *Domestic and Family Violence Act 2007*, the application shall be accompanied by an affidavit, or if an affidavit is not practicable, a statutory declaration in support of the application.
- 39.6 Subject to 39.7, when an Applicant files an application for a personal violence restraining order or an application to vary or revoke a personal violence restraining order, the application shall be accompanied by an affidavit, or if an affidavit is not practicable, a statutory declaration in support of the application.
- 39.7 In the event that an Applicant is unable to print an affidavit or statutory declaration for signing or is unable to file an affidavit or statutory declaration signed by the Applicant, a legal practitioner may, subject to 39.8, lodge an affidavit or statutory declaration in support of the Application.
- 39.8 In the event that a legal practitioner is instructed to lodge an affidavit in support of an application in accordance with 39.7, the legal practitioner’s affidavit must:
- 39.8.1 State why the Applicant was unable to sign or lodge their own affidavit or statutory declaration;
- 39.8.2 Annexe a copy of the Applicant’s unsigned affidavit or statutory declaration; and

## Part 6 COVID 19 PRACTICE DIRECTIONS

### Practice Direction 39 Special measures for Domestic Violence and Personal Violence Restraining Orders Matters

39.8.3 Attest as to whether the Applicant's unsigned affidavit or statutory declaration was read to the applicant over the telephone and whether the applicant confirmed that the contents were true and correct to the best of their knowledge, information and belief.

39.9 A legal practitioner filing an affidavit in accordance with 39.7 should arrange for the applicant to be available by telephone at the time of the court event, to provide brief clarification or to give evidence if required.

39.10 Nothing in this practice direction affects the discretion a judicial officer has in determining the appropriate weight to be given to any affidavit or statutory declaration filed in accordance with 39.7.

#### **Court appearances**

39.11 In accordance with practice direction 38, parties to proceedings and legal practitioners should avoid attending court in person.

#### **Service**

39.12 In domestic violence and personal violence restraining orders matters, legal practitioners representing defendants should:

39.12.1 obtain instructions from their client regarding whether they are authorised to accept service of any orders made on behalf of their client under section 25(1)(a)(iii) of the *Interpretation Act 1978*; and/or

39.12.2 provide the Court with an email address or postal address at which any orders made can be sent to their client by way of service; and/or

39.12.3 arrange for their clients to be available by telephone or audio visual link at the court event.

## Practice Direction 40 Electronic Witnessing & Signatures

- 40.1 This practice direction provides clarity as to how affidavits and other documents can be witnessed and signed during the COVID-19 pandemic.

### Witnessing Documents

- 40.2 Any references in the *Oaths, Affidavits and Declarations Act 2010* to actions being undertaken in the 'presence' of a witness includes an audio visual presence.
- 40.3 Audio visual presence includes, but is not limited to a phone conversation or video communication application (such as skype, webex, zoom).
- 40.4 Witnessing of documents should be as contemporaneous as technology allows.
- 40.5 The deponent must send the document being sworn to the witness immediately, or if not practicable, then the earliest opportunity that circumstances allow.
- 40.6 Acceptance of a witnessed document is at the final discretion of the Court and a person making an oath may be required to remake or affirm the oath previously given if required by the Court.

### Signing Documents

- 40.7 Any requirement to sign a document for court purposes includes an electronic signature unless contrary to a legislative requirement.

### Audio Recorded Declarations

- 40.8 The *Oaths, Affidavits and Declarations Act 2010* allows for statutory declarations to be made as audio or audio visual recordings.
- 40.9 A person wishing to rely on a recorded statutory declaration must comply with section 20 of the *Oaths, Affidavits and Declarations Act 2010* and;
- 40.9.1 provide a copy of the recording to the Court by email or USB;
  - 40.9.2 provide a copy of the recording to any other party by way of service in accordance with any Local Court Rules; and
  - 40.9.3 be transcribed and filed if directed by the Court.

## Schedule 1 Local Court (General) Forms

Note: Practice Directions 1 to 6 (inclusive) of 2019 and Table 1

**Table 1 – Local Court General Forms**

Practice Direction	Form name	Relevant Sections
1.4	<a href="#">Access to Case Files Form</a>	s29 <i>Local Court Act 2015</i>
5.8	<a href="#">Video Conferencing Booking Form</a>	25.07 <i>Local Court (Civil Jurisdiction) Rules 1998</i>
6.2	<a href="#">Request to Re-list (Domestic Violence and Personal Violence Restraining Orders)</a>	
6.2	<a href="#">Request to Re-list (Local Court and Work Health Court)</a>	
6.2	<a href="#">Request to Re-list (Criminal and Youth Justice)</a>	
6.2	<a href="#">Request to Re-list (Family Matters Division)</a>	

To access the forms, click on their hyperlinked titles, alternatively all forms are reproduced in the *Approved Forms (Appendix to Local Court Practice Directions)* and can be downloaded by visiting the Local Court's website at <https://localcourt.nt.gov.au/forms-fees#>

## Schedule 2 Criminal Division of the Local Court Forms

Note: Practice Directions 7 to 16 (inclusive) of 2019 and Table 2

**Table 2 – Criminal Division Forms**

Practice Direction	Form name	Relevant Sections if any
7.2	<a href="#">Order for Pre-Sentence and Suitability Reports</a>	
8.6	<a href="#">Application to Set Aside Conviction or Order</a>	s63A <i>Local Court (Criminal Procedure) Act 1928</i>
10.3	<a href="#">Application For Interim Child Protection (Offender Reporting And Registration) Order</a>	s76 <i>Child Protection (Offender Reporting and Registration) Act 2004</i>
10.6	<a href="#">Interim Child Protection (Offender Reporting And Registration) Order</a>	s76 <i>Child Protection (Offender Reporting and Registration) Act 2004</i>
11.6	<a href="#">Surrender On Warrant</a>	
12.8	<a href="#">Prisoner at Risk Order</a>	
13.17	<a href="#">Notice In Relation To Witnesses</a>	
14.2	<a href="#">Application To Transmit Summary Charge To The Supreme Court</a>	s390 <i>Criminal Code 1983</i>
15.5	<a href="#">Application for Personal Appearance</a>	
16.3	<a href="#">Directions Hearing Information</a>	

To access the forms, click on their hyperlinked titles, alternatively all forms are reproduced in the *Approved Forms (Appendix to Local Court Practice Directions)* and can be downloaded by visiting the Local Court's website at <https://localcourt.nt.gov.au/forms-fees#>

## Schedule 3 Local Court (Civil Division) and Work Health Court Forms

Note: Practice Direction 15 to 23 of 2019 and Table 3

**Table 3 - Local Court (Civil Division) and Work Health Court Forms**

Practice Direction	Form name	Relevant Sections
18.2	<a href="#">Application For Leave To Apply For A Licence To Drive</a>	s102AA <i>Motor Vehicles Act 1949</i>
18.3	<a href="#">Affidavit supporting Application For Leave To Apply For A Licence To Drive</a>	
20.2	<a href="#">Notice of Appointment of a Legal Practitioner</a>	r40.02(1) <i>Local Court (Civil Jurisdiction) Rules 1998</i>  r24.02(1) <i>Work Health Court Rules 1999</i>
20.3	<a href="#">Notice of Change of a Legal Practitioner</a>	r40.01(1) <i>Local Court (Civil Jurisdiction) Rules 1998</i>  r24.01(1) <i>Work Health Court Rules 1999</i>
20.4	<a href="#">Notice of Ceasing to Act</a>	r40.03(1) <i>Local Court (Civil Jurisdiction) Rules 1998</i>  r24.03(1) <i>Work Health Court Rules 1999</i>

To access the forms, click on their hyperlinked titles, alternatively all forms are reproduced in the *Approved Forms (Appendix to Local Court Practice Directions)* and can be downloaded by visiting the Local Court's website at <https://localcourt.nt.gov.au/forms-fees#>



## Schedule 4 Children's Court Forms

Note: Practice Direction 15 to 29 of 2019 and Table 4

**Table 4 – Youth Justice Court Forms**

Practice Direction	Form name	Relevant Sections
24.5	<a href="#">Summons to Appear at Inquiry</a>	s140G <i>Youth Justice Act 2005</i>
24.7	<a href="#">Application For Revocation Or Variation Of Family Responsibility Order</a>	s140K <i>Youth Justice Act 2005</i>
25.7 & 26.9	<a href="#">Order for Assessment or Diversion</a>	ss51, 64, 67, 68, 84 <i>Youth Justice Act 2005</i>
28.2	<a href="#">Care and Protection Application</a>	ss104, 112, 122 & 137B <i>Care and Protection of Children Act 2007</i>
28.8	<a href="#">Interlocutory Application</a>	
28.19	<a href="#">Response</a>	
28.38	<a href="#">Notice of Return of Child</a>	s109 <i>Care and Protection of Children Act 2007</i>
28.39	<a href="#">Application for Warrant</a>	s63 <i>Care and Protection of Children Act 2007</i>
28.40	<a href="#">Warrant for Access to Child</a>	s63 <i>Care and Protection of Children Act 2007</i>
29.8	<a href="#">Family Law Pilot – Interlocutory Application</a>	
29.12	<a href="#">Family Law Pilot –Application to Re-List</a>	
29.14	<a href="#">Family Law Pilot – Notice of Hearing of Application to Re-List</a>	
29.17	<a href="#">Consent to Enter the Family Law Pilot</a>	
29.19	<a href="#">Family Law Pilot – Affidavit</a>	

To access the forms, click on their hyperlinked titles, alternatively all forms are reproduced in the *Approved Forms (Appendix to Local Court Practice Directions)* and can be downloaded by visiting the Local Court's website at <https://localcourt.nt.gov.au/forms-fees#>

## Schedule 5 Specialist Jurisdictions Forms

Note: Practice Direction 30 to 36 of 2019 and Table 5

**Table 5 – Specialist Jurisdiction Forms**

Domestic Violence Forms		
Practice Direction	Form name	Relevant Sections
30	<a href="#">Application for Domestic Violence Order</a>	28, 29 & 30
30	<a href="#">Application to Vary or Revoke a Domestic Violence Order</a>	49 & 103V
30	<a href="#">Police Application for Urgent Variation</a>	66
30	<a href="#">Application for Registration/Variation/Revocation of External Order</a>	93 & 98
30	<a href="#">Affidavit</a>	34(3)(b), 39(2)(b), 57(3)(b) & 62(2)(b) & Part 22 <i>Local Court (Civil Jurisdiction) Rules 1998</i>
30	<a href="#">Notice of Hearing</a>	31
30	<a href="#">Statutory Declaration of Service</a>	Part 6 <i>Local Court (Civil Jurisdiction) Rules 1998</i>
30	<a href="#">Summons to Defendant to Show Cause</a>	37, 44, 59, 71 & 79
30	<a href="#">Application to Review Police Order</a>	72
30	<a href="#">Domestic Violence Undertaking</a>	44(4) of the <i>Local Court Act 2016</i>
30	<a href="#">Notice of Registration/Variation/Cancellation of External Order</a>	95 & 100
30	<a href="#">Summons to a Person to Appear or to Appear and Produce Documents</a>	Part 23 <i>Local Court (Civil Jurisdiction) Rules 1998</i>
30	<a href="#">Notice to Landlord</a>	23(4)
30	<a href="#">Service Information Form</a>	
Specialist Jurisdiction Forms		
31.3	Application for Treatment Order	s36 <i>Volatile Substance Abuse Prevention Act 2005</i>
32.3	<a href="#">Adoption Hearing Aide-Memoire</a>	
33.10.2	Section 74 Pre-assessment Advice Order	s.74 <i>Mental Health and Related Services Act 1998</i>

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33.10.3	Preliminary Request for Section 77 Certificate	<i>s.77 Mental Health and Related Services Act 1998</i>
33.12	Section 74A Assessment Order	<i>s.74A Mental Health and Related Services Act 1998</i>
33.13	Section 75 Admission Order	<i>s.75 Mental Health and Related Services Act 1998</i>
33.16 & 17	Request for a Section 77 Certificate	<i>s.77(2) Mental Health and Related Services Act 1998</i>
33.19	Order for Pre-Sentence and Suitability Reports	<i>ss35, 45, 103 &amp; 105 Sentencing Act 1995</i>
33.27	Section 78 Voluntary Treatment Plan Order	<i>s.78 Mental Health and Related Services Act 1998</i>
37.2	<a href="#">Affidavit (PVRO)</a>	<i>Part 22 Local Court (Civil Jurisdiction) Rules 1998</i>
37.3	<a href="#">Referral to Community Justice Centre</a>	<i>s.14(1) Personal Violence Restraining Order Act 2016</i>

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