

Children & Young Persons (CYP)

August 08

Steps for proceedings under the Children, Young Persons and their Families Act 1989

Step 1: Application for Declaration and/or other CYPF Act Order (filed by CYFS)

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Declarations and/or other CYPF Act order(s) (Care and Protection orders)	up to 8 hours	For <ul style="list-style-type: none">• Taking instructions, attending client• Identifying legal and factual issues• Preparing application for legal aid• Preparing application for interim/final declaration (orders), including:<ul style="list-style-type: none">○ Affidavit(s) in support○ Information sheets for the Court(See Granting Notes for impact of s120 of CYPF Act on parenting order(s) issued under Care of Children Act)• Serving of documents• Considering need for Counsel for Child• Considering need for s178 report from medical or mental health specialist• Attending CYPF List or Judges List hearing• Reporting to client• Reporting to and invoicing LSA

Documentation Requirements

- Application for Family Legal Aid (*LSA Form 6*) [s12 Legal Services Act 2000].
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- Attendance at Family Group Conferences (FGC)
- S120 CYPF Act
- Additional factors
- Interpreter

Children & Young Persons (CYP)

August 08

Steps for proceedings under the Children, Young Persons and their Families Act 1989

Step 2: Pre-hearing Matters

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Pre-hearing matters	up to 10 hours	For <ul style="list-style-type: none"> • Taking further instructions • Preparing amendment to legal aid grant (if expecting to exceed the guideline hours) • Undertaking negotiations • Attending Registrar's List/Chambers hearings • Liaising with relevant parties – CYFS, Counsel for Child, witnesses, experts • Considering specialist reports – s178 report (medical and mental health specialist) • Undertaking discovery • Preparing interlocutory application(s), pre-trial conference memorandum • Reporting to client • Reporting to and invoicing LSA
Mediation Conference (Judge-led)	up to 1.5 times anticipated conference time (hrs) Actual hours	For <ul style="list-style-type: none"> • Reviewing file • Preparing for hearing – briefing client, submissions • Reporting to client For attending mediation conference
Interlocutory hearing(s)	up to 1.5 times anticipated hearing time (hrs) Actual hours	For preparing submissions for interlocutory hearing(s) For attending interlocutory hearing(s)

Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- Additional factors
- Interpreter

Children & Young Persons (CYP)

August 08

Steps for proceedings under the Children, Young Persons and their Families Act 1989

Step 3: Hearing

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Preparation for hearing	up to 1.5 times anticipated hearing time (hrs)	For <ul style="list-style-type: none">• Reviewing file• Preparing amendment to legal aid grant (if expecting to exceed the guideline hours)• Preparing for hearing – cross examination, briefing witnesses, submissions• Undertaking research, if necessary• Reporting to client• Reporting to and invoicing LSA (If the anticipated hearing time exceeds 2 days, attach a copy of the court fixture notice to the tax invoice)
Hearing	Actual hours	For attending hearing
Review of judgement	up to 2 hours	For <ul style="list-style-type: none">• Receiving and considering judgement• Advising client on implementation of judgement

Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- Interpreter

Children & Young Persons (CYP)

August 08

Steps for proceedings under the Children, Young Persons and their Families Act 1989

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Step 4: Court Review of a Case/Plan as a result of Court Order or Direction		
Review hearing	up to 3 hours	For <ul style="list-style-type: none">• Reviewing care and protection plan, taking instructions• Preparing amendment to legal aid grant (if expecting to exceed the guideline hours)• Consulting with CYFS• Attending review hearing• Reporting to client• Reporting to and invoicing LSA

Documentation Requirements

- Family Legal Aid Amendment to Grant (*LSA Form 9*) [s24 Legal Services Act 2000] – if the time required for the step is expected to exceed the guideline hours stated.
- Family Legal Aid Tax Invoice (*LSA Form 10*) – including a report on progress with the proceedings.

Granting Notes

Granting Notes, which should be read in conjunction with the application of this step to a grant, are set out on pages 5-7 for:

- CYPF Review
- Interpreter

Granting Notes**Attendance at Family Group Conferences – Proceedings Step 1**

Prior approval is required for any attendance, including preparation, by Counsel at a Family Group Conference (FGC). This requirement is aimed at recognising the special purpose and attendance arrangements surrounding FGCs.

Approval to attend may be sought by completing the Family Legal Aid Amendment to Grant (LSA Form 9)

As a guide, legal aid will only be granted for lawyers to attend Family Group Conferences (FGC's) when:

- Attendance of counsel is for the purpose of providing legal services; and
- There are special circumstances, such as:
 - The legally aided parent has a disability;
 - There are serious power and control issues in the family dynamics; or
 - There are significant domestic violence issues affecting the legally aided person.

If the Agency considers that legal aid for this purpose is justified, the following guideline hours would be granted.

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Family Group Conference (FGC)	up to 3 hours	For preparation and attendance at FGC. NB: Guideline hours are subject to prior approval

Section 120 CYPF Act – Proceedings Step 1

Orders made, either interim or final, following proceedings under the CYPF Act have the effect of suspending particular proceedings under the Care of Children Act 2004 - see s.120 below:

CYPF Act, section 120

120. Restriction on making of guardianship and parenting orders under Care of Children Act 2004
- (1) If a child or young person is subject to an order made under section 78, section 101 or section 110 of this Act, none of the following may be made under the Care of Children Act 2004:
- (a) an order in respect of the guardianship of that child or young person; and
 - (b) an order about the role of providing day-to-day care for that child or young person; and
 - (c) an order for contact with that child or young person.
- (1A) Subsection (1) is subject to subsection (2) and section 117(2).

Granting Notes**Section 120 CYPF Act – Proceedings Step 1 continued**

- (2) Nothing in subsection (1) affects the power of a Court having jurisdiction under section 31 of the Care of Children Act 2004 to make an order under that section in respect of any child or young person who is subject to an order made under section 78 or section 101.

This will have a particular impact upon granting decisions:

- If an application by CYFS is imminent and its outcome is likely to endure for some time, it will not be practical to seek orders under the Care of Children Act 2004.
- Alternatively, if arrangements under the CYPF Act are likely to be short term, or are coming to the end of a longer term arrangement, then orders under the Care of Children Act 2004 may be helpful - conventional day-to-day care and contact orders might be needed to fill the gap after orders under the CYPF Act are discharged.

Consideration of Additional Factors - Proceedings Step 1, 2

Guideline hours have been allocated to each activity within the steps for a proceedings on the basis that they are a reasonable estimate of the time required to perform that activity, in at least 80% of matters.

However, the circumstances surrounding a matter may make it necessary to consider guideline hours for 'additional factors'. The 'additional factors' may arise from a variety of circumstances, for example:

- Some of the parties might not be represented, resulting in the lawyer having to explain the proceedings to, and prepare documentation for, person(s) other than the legally aided person, or perhaps having to deal with a difficult litigant in person.
- The proceeding may involve several children, perhaps with different parents. This may require different applications and reports reflecting the different circumstances.
- A party who suffers from an intellectual disability or mental illness, language or reading difficulties – but not necessitating a separate interpreter - requiring more time in taking instructions or prolonging proceedings. An additional allowance for the use of interpreters is available if required.
- There are contested allegations of sexual abuse or violence.

There is no complete 'checklist' of circumstances - each matter should be considered on a case by case basis.

The guideline hours for 'additional factors' in the proceedings step(s) are:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Additional factors	up to 3 hours	For additional factors which are likely to impact the preparation and filing of the orders

Granting Notes**Consideration of Additional Factors - Proceedings Step 1, 2 continued**

The guideline hours for 'additional factors' may be applied to the grant, providing:

- the guideline hours for the activity(s) forming part of the maximum grant in this step have been exceeded; and
- the 'additional factors' can be clearly identified and justified.

Use of Interpreters - Proceedings Steps 1, 2, 3, 4

It may be necessary for a provider to engage an interpreter to assist in communicating with the legally aided person.

Guideline hours are available, through a 'loading on hours granted', to recognise the time incurred in informing, briefing and seeking instructions from the legally aided person through an interpreter.

The guideline hours for the 'use of interpreters' in the proceedings step(s) are:

Activity	Guideline Hours	Tasks normally covered by Guideline Hours
Interpreter	30% loading on hours granted	For the additional time necessary to inform, brief and seek instructions from the client when an interpreter is engaged.

The 'loading on hours granted' may be applied to the grant at the proceedings step(s), providing:

- the 'loading on hours granted' has been applied to the activity(s) relating to the 'preparation' of a matter – as opposed to hearings;
- the guideline hours for the activity(s) relating to the 'preparation' of a matter, have been exceeded; and
- the fees for the interpreter will be claimed as a special disbursement.

CYPF Act Review – Proceedings Step 4

Under the Care of Children Act a final order does not require periodic review - except for interim orders under the Care of Children Act which have a review date set.

In contrast, an order under CYPF Act must be reviewed:

- Every 6 months if the child is less than 7 years old; or
- Each year if the child is 7 years or older.

In addition, every order made under this Act will expire 6 months after the young person in respect of whom the order is made attains the age of 17 years (unless it has already expired).

