

Module 10

Legal Frameworks and Responsibilities

Learner Workbook

I



Caseworker name:

Workbook completion noted by L&D field coach:

Signature:

Date:

Table of contents:

Purpose	3
Learning Outcomes.....	3
Resources	4
Readings	4
Workbook Completion and Activities	5
Introducing the Children's Court.....	6
Participants in The Children's Court	9
Children's Court Etiquette	13
Prior Alternative Action.....	15
Emergency Intervention	25
Evidence.....	31
Care Applications.....	35
Supporting the Care Application.....	41
Permanency Planning.....	46
Guardianship and Adoption.....	53
Children's Court Process.....	57
Being a Witness.....	63
Reports, Rescission/Variation and Appeals of Care Orders.....	67
Self care	73
Key Points for Practice.....	74
Where to go for further Learning Support.....	75
Extending Practice.....	77



PURPOSE

This module introduces you to care applications and provides a foundation for understanding:

- procedures at the Children's Court and District Court
- appeals and review of care orders
- documentation and other requirements for obtaining court orders.

Court procedures and legal jargon can be new to some people. You will have an opportunity to discuss this in more detail at the Legal Issues workshop and will build a deeper knowledge as you gain experience.

Please note: the content in this module has been developed with an ethical and non-biased approach, and every endeavour has been made to maintain the use of child focussed and respectful language wherever possible.



LEARNING OUTCOMES

- Explain FACS' role within the statutory framework and apply relevant elements of the NSW child protection legislation.
- Explain caseworkers' legal and ethical responsibilities within the child protection framework.
- Demonstrate an understanding of relevant court procedures and preparation of legal documents.
- Demonstrate an understanding of care proceedings.



RESOURCES

Readings

There are a number of readings and activities throughout this module. These readings have been designed to consolidate your learning and provide you with a sound research base for your casework practice. These readings can be found on the LMS for this module. Please note; this module also refers to readings from Module 10.

Courts that deal with children's matters.

Procedural fairness and the Model Litigant Policy

FACS Legal Services

Other people at Children's Court proceedings

Processes in the Children's Court.

Orders of the Children's Court.

This module also includes a glossary for terms that you may be unfamiliar with. It is available for download from the Learning Management System (LMS).

Using legislation

Understanding the legislation that supports child protection in NSW is essential for casework practice.

In the Introduction to Casework and KiDS workshop you were introduced to *The Children and Young Persons (Care and Protection) Act (NSW) 1998* (the Act) and discussed how this legislation guides our casework practice and mandates FACS' interventions and actions. This module will continue to build upon that foundation.

Initially, the legislation can feel overwhelming. As a new caseworker you are not expected to learn or remember all of the legislation relevant to casework. You will build this knowledge with time and practice.

You will use your copy of the Act regularly during this module, and in your casework. You are encouraged to maintain it and keep it up to date with any legislative changes and amendments by checking the current version of the Act on the NSW legislation website.

Intranet resources:

The FACS intranet site will assist your learning in this module.

The following documents and sites can be located on the intranet.

[iPractice](#)

[casework practice](#)

Genogram [template](#) and [instructions](#)

[Children and Young Persons \(Care and Protection\) Act 1998](#)

Other resources required

There are a number of activities throughout this module that will require you to access a range of resources. These include:

Supervision time with your manager caseworker.

One day observing the Children's Court (or your local court sitting as a Children's Court).

Consultation with your local Care Legal Support team (prior to commencing care proceedings) or your care litigation lawyer/external legal practitioner (when the matter is at court) to discuss document settling procedures and timeframe requirements.

Consultation with the court liaison officer for your CSC or district to discuss their role in supporting you in your local Children's Court.

Consultation with your casework specialist to discuss the casework application of legislation and court proceedings.

Workbook Completion and Activities:

Completion of this workbook is a mandatory learning activity, though not assessed by Learning and Development (L&D). The workbook contains a number of practical field based activities designed by L&D to enhance and consolidate your learning. These activities will assist you in linking theory to practice in a supported environment. Please note that while these field activities are highly recommended they are not assessable.

If there are some activities which you cannot complete due to local restrictions, please note these in your Workbook and let your L&D field coach know. Your field coach will review each Workbook to confirm its completion. Please note they will not be assessing content, rather reviewing that the learning activity was completed and the skills and knowledge are transferring to your workplace.

A checklist for your MCW and L&D field coach is attached to each module.

INTRODUCING THE CHILDREN'S COURT

The role of the Children's Court

In the care jurisdiction in NSW, the Children's Court of New South Wales is the primary court that deals with the care and protection of children and young people (persons under the age of 18 years).

The role of the Children's Court is to make decisions that will best promote the safety, welfare and wellbeing of the child or young person concerned. The Court does this by first determining whether the child or young person is 'in need of care and protection' by considering all the evidence placed before the Court. It then has a role as the decision-maker; independent from FACS and all other parties, to accept or reject the Secretary's assessment of whether restoration of a child or young person to his or her parents is a realistic possibility and whether permanency planning for a child or young person has been adequately and appropriately addressed.

The Children's Court also has jurisdiction to deal with some children's criminal cases. It hears criminal charges against children and young people who were aged between 10 and 17 years at the time of committing the alleged offence.

Child-centred focus

The Children's Court is different from all other courts because it is a specialist court dealing only with issues involving the safety, welfare and well-being of children and young people. These are the utmost concern in any decision of the Court and are paramount over the interests of other parties, including the child or young person's parents.

Proceedings in the care jurisdiction of the Children's Court:

- use less formal procedures and protocols
- require participants to take a more collaborative and less 'adversarial' approach
- adopt the civil standard of proof (on the 'balance of probabilities') that is less onerous than the standard of proof required in criminal matters ('beyond reasonable doubt').

Legislation authorises the Children's Court in its role as an independent decision-making body. This role considers and balances all the information about a child or young person's circumstances and long term needs. For example, the Court has the power to make decisions regarding whether a child or young person is in need of care and protection. If the child or young person is in need of care and protection, the Court has the power to decide what orders will best promote the safety, welfare and wellbeing of the child or young person. This would include whether some person (including the Minister) should be granted parental responsibility for a period of time or until the child or young person turns 18 years.

As a caseworker, you support this child-centred focus by:

- providing enough information for the Court to decide the best way to provide for the child/young person's safety, welfare and wellbeing
- ensuring all the people who have an impact on the child or young person's welfare have an opportunity to participate in that decision making
- ensuring procedural fairness ('natural justice') is provided to the key people in the child or young person's life.



Access and read '**Courts that Deal with Children's Matter**' from the readings on the LMS to support learning for this topic

You may also wish to visit the Children's Court website at <http://www.childrenscourt.justice.nsw.gov.au/>

Where is the nearest Court registry to your office that can hear care and protection matters?
 What is the day when court cases relevant to your CSC are 'listed' to be heard there (care list date)?

Procedural fairness

Through the delegation of legislation, caseworkers have unique and potentially life changing authority. This authority can only legally be used when:

- you act in your role as a direct employee of FACS
- you comply with the Act.

Government agencies, particularly FACS, can have an imbalance of resources and authority compared to the children and families that we work with. This is why it is important that caseworkers ensure all parties have enough information to get a clear and balanced picture of the family. This includes:

- information about the risk of significant harm
- prior alternative actions taken and considered
- any strengths and supports that may mitigate this risk, and
- any strengths and supports that can be built upon.



Access and read '**Procedural fairness and the model litigant policy**' from the readings on the LMS to support learning for this topic.

What actions can you take to ensure that procedural fairness and child focus is maintained during your casework? How would the model litigant policy apply to your casework practice? You may choose to refer to aspects of the readings to guide your reflection.



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

[s.8\(a\)](#) The purpose of the Act is to ensure children and young people receive the care and protection necessary for their safety, welfare and wellbeing.

[s.23](#) sets out the circumstances for when a child or young person is considered at risk of significant harm.

[s.34](#) allows the Secretary to take a range of possible actions for children and young persons in need of care and protection. Actions range from providing or arranging support or other services, to seeking appropriate orders from the NSW Children's Court.

[ss.71\(1\)](#) The Children's Court can make care orders for a child or young person if it is satisfied that the child or young person is in need of care and protection.

PARTICIPANTS IN THE CHILDREN'S COURT

Participation in the Children's Court

Child participation principles

The Children's Court shares in the responsibility as a decision-maker under the Act to ensure that wherever a child is able to form his or her own views on a matter concerning their safety, welfare and well-being, he or she must be given an opportunity to express those views freely. Those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances.

The Children's Court, at its discretion, may obtain and consider the views of any siblings and must take into account the interests of any siblings in determining what orders (if any) to make in the proceedings.

FACS have the responsibility to ensure that:

- the child subject of a care application is notified of the making (filing) of the application in a language and manner that the child can understand having regard to his or her development and the circumstances
- once a legal representative has been appointed for the child or young person, that legal representative is provided with the contact details for the child or young person (usually the authorised carer's contact details) so that they can make arrangements to meet with the child or young person if necessary.

A closed court

The Children's Court is a 'closed court'. This means that the general public is excluded. Only people directly involved (and their legal representatives) in the proceedings have the right to be in the Court room when the proceedings are being dealt with. The Children's Court has the authority to exclude any person, including the media, if it decides this is in the best interests of the child or young person.

Why do you think proceedings in the Children's Court are conducted in a 'closed court'?

Who participates in or attends care proceedings?

A 'party' to any court proceedings is any person or agency who may appear and participate in the court case. In care proceedings, the usual parties are the:

Secretary of FACS

person with parental responsibility or parents of the child or young person

child or young person involved in the care proceedings (if appropriate for their age).

The Secretary does not personally attend care proceedings. The responsibility is usually given to the manager casework, caseworkers, and court liaison officers who attend care proceedings on behalf of the Secretary. The Secretary is legally represented by a legal representative, either a Legal Officer from within FACS or from the approved panel of external legal practitioners that FACS engages.

The people with parental responsibility or parents of a child or young person may represent themselves at care proceedings. More often, they will be represented by a legal representative either arranged privately or approved and funded by the NSW Legal Aid Commission.

Any person who is not a party but who has a genuine concern for the safety, welfare and wellbeing of the child or young person may file a formal application with the Court to be joined as a party to the proceedings. If leave is granted to the application, they may appear, participate and be legally represented in the proceedings.

If orders sought have a significant impact on a person who is not a party (such as a family member, relative carer or a person to be allocated parental responsibility), this person should be given an opportunity to be heard on the matter of significant impact. They can attend Court, with or without legal representation, to advise the Court of their views of the orders sought before final orders are made.

Other interested parties (such as support persons, family members and students) can sit in the back of the Court room to observe the proceedings but only with leave of the Court.



Access and read '**FACS Legal Services Branch**' from the readings on the LMS to support learning for this topic.

Caseworkers

Caseworkers should attend the Children's Court when they are allocated the case, or they have case management responsibility for the child or young person. Where this is not possible, another caseworker or manager who is familiar with the case must attend. Where there is a Court Liaison Officer (CLO), they may attend court on behalf of the caseworker and manager casework for short court processes such as mentions during the course of the proceedings. In some complex matters it may be appropriate for the manager casework to attend court with the caseworker for mentions. The caseworker and manager casework should attend in person for alternative Dispute Resolution Conferences (DRCs) and hearings in order to directly instruct the legal representative for FACS.

Where a Non Government Organisation (NGO) has case management for the child or young person, the caseworker needs to ensure up to date information from the NGO about the child

or young person and the placement is included in court documents and may include an affidavit prepared by the NGO.

The Children's Court may not know that an NGO has case management and the manager casework should invite the NGO to a DRC.

Prior to the DRC, a meeting should be arranged for the FACS manager casework and caseworker to discuss with the NGO:

the issues to resolve at the DRC
 FACS and the NGO's position on the issues
 the final position FACS will take in respect of the issues, identifying where they may disagree but why FACS is taking the position it is as the agency with delegated responsibility to ensure the safety and well-being of the child or young person.

Children and young persons

Children and young persons are not required to give evidence during proceedings, or attend court unless specifically requested to do so by the Children's Court. Given the lengthy waiting times, highly stressful circumstances often experienced at court, and the sensitive nature of what is discussed at Court, it is not usually appropriate for young children to attend. Instead, they are represented by a legal representative appointed to act on their behalf by the NSW Legal Aid Commission. Independent Legal Representatives (ILR) are appointed for children aged under 12 years of age (usually one ILR will act for all siblings under 12) and a Direct Legal Representative is appointed to act for each child over the age of 12 years.

Caseworkers need to ensure that legal representatives for children and young people are provided with the child or young person's contact details as soon/soon after they are appointed to act for the child or young person, so that they can make arrangements to contact and meet with the child or young person if necessary.

The Children's Court is *not considered an appropriate venue* for planned contact visits and should not be used as an opportunity for contact to occur.

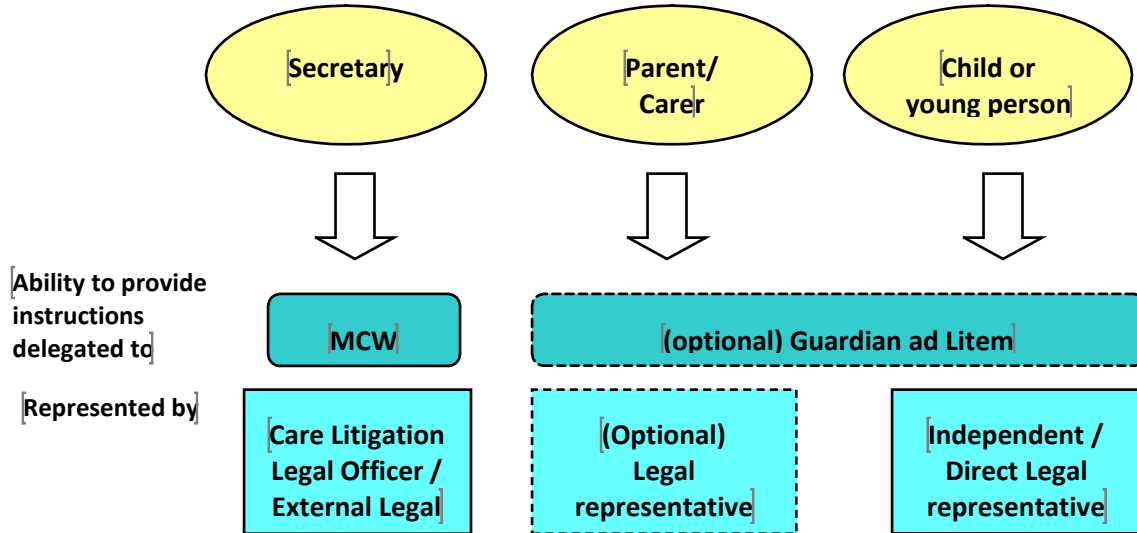
Who is at Court?



Access and read '**Other people at Children's Court proceedings**' from the readings on the LMS to support learning for this topic.



Make a note of any **other people at court** you are unsure about. Later during this module you will have the opportunity to visit a sitting court. During this visit, seek out any of these parties and clarify their role (where appropriate).



CHILDREN'S COURT ETIQUETTE



Access and read '**Processes in the Children's Court**' from the readings on the LMS to support learning for this topic.

It is important for FACS to be professional and credible in the Children's Court.

To show respect for the authority of the Court, all people in court are expected to comply with basic politeness or 'etiquette'. This includes:

- being punctual when attending court, including allowing adequate time to instruct the FACS legal representative before the proceedings commence – if you are going to be late, then informing relevant people of this

- bowing to the bench when the Magistrate or Judge enters the court and remaining standing until he or she is seated. When proceedings conclude, stand and bow to the bench and remain standing until the Magistrate or Judge leaves the room

- bowing to the bench as you enter or leave the court, while court is in session (while the Magistrate or Judge is sitting)

- addressing the Magistrate or Judge as 'Your Honour'. If you are required to speak to the Magistrate or Judge (apart from when you are giving evidence in the witness box), stand and move to the front of the row of seats for the parties to the case.

- asking permission of the Magistrate or Judge before handing over a document in the court, then handing the document to the court officer (this request is usually made by the legal representative)

- do not walk between the bench and the bar table unless directed to do so by the Court or you are granted leave to do so

- turning off your mobile telephone or other mobile device in the court or placing it on silent so that it does not make any noise and not using it to take calls, text, check emails or social media unless required for legitimate assistance while at court (such as checking dates or records or making notes)

- not approaching the Magistrate or Judge directly unless you are specifically asked to do so

- not entering or leaving the court when a person is taking the oath/affirmation

- not talking, eating or drinking in the court

- dressing appropriately (not wearing casual clothes)

If you are required to attend to give evidence in care proceedings, it is important to be present at the Court at the time the matter is listed for hearing. Any delays caused by the failure of a witness to attend could result in the hearing date being put back or 'adjourned'. The party responsible for the delay can also be ordered to pay the legal costs incurred by other parties. If court adjourns and you are not yet finished giving your evidence, you are not to speak to any person about your evidence until the conclusion of your cross-examination (unless leave is granted by the Court for a specific reason such as the need to provide instructions to your legal representative).



Arrange with your manager casework to attend the next available listing for your CSC at your local Children’s Court to observe a mention or a hearing. The purpose of this visit is to help you become familiar with the processes, people and practicalities of the Children’s Court, and to understand your role as a caseworker. During your visit, be aware of court etiquette.

You will need to seek permission to sit in the court session. The CLO or FACS legal representative or registrar may be able to help you get permission from the Court and other parties to attend, even though you are not involved in any current cases. The CLO will usually ask the Care Litigation team to write to the Magistrate to seek leave for you to attend and advise other parties. Ensure that you advise the CLO or the FACS legal representative beforehand of your intention to attend Court on a particular day so that these matters can be attended to prior to your attendance at Court

Observe the role of the people at court.

If the Care Litigation or CLO is available, ask them about their requirements for providing instructions, document preparation, timeframes etc.

Note any questions you have prior to your visit and seek to clarify these with the CLO during your visit. Note any questions that arise for you during the visit and clarify these with your manager casework upon your return to the CSC. Consider what you observed, and what impact it will have on your casework practice.

PRIOR ALTERNATIVE ACTION

Least intrusive casework intervention continuum

FACS have a responsibility to children and young people for:

- assessment and investigation of reports of child or young person at risk of significant harm
- provision of appropriate assistance to parents and other persons responsible for child-rearing in order to promote a safe and nurturing environment
- protection from significant risk of harm
- appropriate intervention when children and young people are in need of care and protection
- provision of a long-term safe, nurturing, stable and secure environment through permanent placement in accordance with the permanent placement principles

As a caseworker there is a variety of casework options available to you to meet these responsibilities. Casework actions can include prior alternative action, actions that do not involve ongoing court proceedings, and as a last option - applying to the Children's Court to make care orders. Case plans, actions and care orders that are planned in consultation with the family are usually the most effective (and least intrusive). These are also more likely to be completed with the family's consent.

When responding to a report about a child or young person, you must make sure every case plan decision or care order:

- ensures the safety, welfare and well-being of the child or young person
 - is appropriate for that particular child or young person's age, development and circumstances such as culture, language, religion, and any disability
- places removal as the option of last resort, to be used where it is the only action that will protect the child or young person from the risk of significant harm.

LEAST INTRUSIVE CASEWORK CONTINUUM					
Least intrusive				Most intrusive	
Prior alternative action: Casework, home visits or Referrals/provisions of support services	<p>Actions that do not involve court proceedings: Parental Responsibility Contracts s.38A</p> <p>Registered care plans by consent s.38</p> <p>Alternative dispute resolution such as Family Group Conferencing</p>	Parent Capacity Orders s.91C	<p>Supervision orders s.76</p> <p>Undertakings s.73</p>	Emergency intervention (removal / assumption) s.43(1), s.44(1)	Seeking appropriate orders from the Children's Court (including guardianship orders and orders allocating parental responsibility)

Please note there are many other types of options/orders that fit along this continuum. This is not an exhaustive list of casework/ legal interventions available.

Family Group Conferencing

What is Family Group Conferencing?

Family group conferencing (FGC) is a form of alternative dispute resolution (ADR). ADR has been given its own chapter in the Act (chapter 15A) which provides a framework for alternative dispute resolution in the care jurisdiction.

FGC is a family-focused, strengths based form of ADR that strengthens partnerships between families and encourages greater parental decision making and responsibility. FGC in FACS will be implemented in the context of the broader FACS Care and Protection Practice Framework and Practice Standards.

FGC aims to:

- empower parents and families in making decisions to ensure the safety and wellbeing of children and young people at risk of significant harm, through the development and implementation of a Family Plan
- improve outcomes for children and young people by providing them and their extended family with a stronger voice in decisions about their care
- maintain children and young people in the care of family where possible by including extended family in the FGC process
- build respectful relationships and communication between FACS and families to support a less adversarial approach for resolution of disputes in the care and protection system.

The FACS FGC model

The FACS' model of FGC is based on the New Zealand model and has five stages:

1. The referral
2. Preparation
3. The conference
4. Implement the plan
5. Review the plan

Within the conference there are three important phases: Introductions and information sharing; Family time; and Developing the plan. The FGC is facilitated by an impartial facilitator. Participation in FGC is voluntary.

Staged Implementation of FGC

FACS is implementing FGC through a staged roll out, commencing initially in four Districts to develop and refine key components of FGC implementation. This will also ensure flexibility in implementing the model to take account of local District needs and characteristics. The four initial Districts are Northern NSW, Illawarra/Shoalhaven, Western NSW and Murrumbidgee.

Consider your observations from your field visits to date. In the context of 'least intrusive' interventions and the continuum above, note any questions that may have arisen about the use, timing or circumstance(s) of any of these 'least intrusive' options. Discuss these with your manager or an experienced caseworker.

Consider the range options available in responding to situation where a child or young person is at risk of significant harm. What 'least intrusive' options can you use to achieve the best outcomes for children, young people, and their families? List the options below that you feel least comfortable using. You may wish to discuss these with your casework specialist or manager casework.

Thinking back to what you learnt about AVOs in Module 7, in what circumstances would an AVO be sufficient to protect a child or young person from risk of serious harm? Where on the 'least intrusive casework continuum' would an AVO fit?



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

Section 9(2)(c) Any intervention by FACS in a family, child or young person's life must be the *least intrusive* course that is consistent with protecting the child or young person from harm and promoting their development.

Section 22(1) The Secretary (and FACS as the delegate of that power), must take whatever action necessary to safeguard the safety welfare and wellbeing of the child or young person.

Section 34 FACS may take a range of possible actions for children and young persons in need of care and protection. Actions range from providing or arranging support or other services to seeking appropriate orders from the NSW Children's Court.

Section 38(2) A care plan that allocates parental responsibility only takes effect *following an order* by the Children's Court for parental responsibility.

Section 46 The Children's Court may make an order for the emergency care and protection of a child or young person if it is satisfied that the child or young person is at risk of serious harm.

Parent Responsibility Contract (PRC)

What is a PRC?

A PRC is a voluntary agreement between the Secretary and one or more primary care-givers for a child or young person that contains provisions aimed at improving the parenting skills of the primary care-givers and encouraging them to accept greater responsibility for the child or young person. Expectant parents can enter into a PRC with the Secretary in relation to an unborn child before the child is born to reduce the likelihood that the child will be at risk of significant harm after birth.

A PRC must:

- be in writing
- be signed by the Secretary (delegate) and each primary care-giver who is to be party to the PRC
- be registered with the Children's Court
- specify the period (not exceeding 12 months) during which the contract will be in force commencing on the date of registration with the Court, and
- specify the circumstances in which a breach of a term of the contract by a primary care-giver will authorise the Secretary to file a contract breach notice with the Children's Court.

Proposed parties to a PRC must be given a reasonable opportunity to seek independent advice before signing a PRC. A parent is able to approach the Legal Aid Commission and ask for this assistance.

A PRC does not create a legally enforceable agreement and failure to comply with a PRC does not give rise to civil liability of any kind.

A PRC is taken to be registered with the Children's Court when it is filed with the Registry of the Court, without any need for any order or further action by the Court (i.e. no court proceedings are involved).

The Secretary may, with the agreement of the other parties to a PRC, vary any of the terms of the PRC but not so as to increase the period of the PRC beyond 12 months.

No more than one PRC may be entered into within any period of 18 months.

When would a PRC be appropriate?

PRCs can be an effective casework tool to assist in family preservation. PRCs can, in a way that is clear and easy to understand, outline the case plan for families including services and supports to be provided, goals to be achieved and tasks to be completed, all with set timeframes. At the same time, PRCs send a clear message to families that if the provisions of a PRC are breached, the matter may proceed to the Children's Court.

PRCs may be appropriate in the following circumstances:

When FACS is of the view that the lack of parenting skills or poor behaviour of one or more of the primary care-givers for the child or young person can be modified within a period of 12 months so as to adequately reduce the risk of significant harm to the child or young person

Where the parent/s or primary care-giver/s acknowledge the need for change and are willing and able to work with FACS to achieve targeted outcomes over a specified period of time

When a more formal approach is required than implementing the standard case plan agreement, and

Where parties consent to entering a PRC.

Termination and breach of a PRC

A PRC may be terminated only by the Secretary by:

Filing a contract breach notice with the Children's Court, or

Causing a termination notice to be served on each party to the PRC, for any reason and at any time during the PRC period

If a termination notice is served, the Secretary is to notify the Registry of the Children's Court of the fact of termination of the PRC as soon as practicable. This is done by a letter drafted to the Court by a delegate of the Secretary.

A contract breach notice is a notice filed with the Children's Court and served on the parties to the PRC which notifies of an alleged breach of a term or terms of a PRC, and which seeks care orders for the subject child or young person.

A contract breach notice has the effect of initiating care proceedings before the Children's Court. That is, the filing of a contract breach notice has the same effect as a care application, and the Secretary must establish that the child or young person is in need of care and protection. A breach of a PRC can be used as evidence in subsequent care proceedings and a refusal of a parent to enter a PRC may be used as evidence of an attempt to resolve the matter without bringing a care application (prior alternative action).

Discuss the benefits of entering into a PRC with a family before considering Children's Court action. When would a PRC not be suitable?



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

[s.38A](#) Parent Responsibility Contracts

[s.38E](#) Contract breach notices

Registered care plans

What is a registered care plan?

A registered care plan is a care plan, developed by agreement between the Secretary and parents of a child or young person, in the course of ADR, which is registered with the Children's Court.

A registered care plan can be used to formalise the agreements made between FACS with the family and outlines the services and actions required to meet the care and protection needs of a child or young person without a care application. It may also be used to enable

the Children's Court to make orders to re-allocate parental responsibility with the consent of the parents.

A registered care plan may either:

- set out the plans for the child or young person without any orders, and can be registered with the Children's Court without any further action or orders
- allocate parental responsibility or aspects of parental responsibility to any person other than the parents of the child or young person, and take effect only if the Children's Court makes orders by consent to give effect to the care plan
- set out the plans for the child or young person, with orders other than orders reallocating parental responsibility, and takes effect only if the Children's Court makes orders to give effect to the care plan.

For the Court to make orders proposed by a registered care plan (without the need for a care application and without the need for the Court to establish that a child or young person is in need of care and protection), the Court needs to be satisfied that:

- the proposed order will not contravene the principles of the Act, and
- the parties to the care plan understand its provisions and have freely entered into it, and
- parties, other than the Secretary, have received independent advice concerning the provisions to which the proposed order will give effect.

A care plan is taken to be registered with the Children's Court when it is filed with the Registry of the Court, without any need for any order or further action by the Court.

An order made by the Children's Court to give effect to a registered care plan is a care order and therefore a party can seek leave to vary or rescind the order under s.90 of the Act.

When would a registered care plan be appropriate?

Registered care plans are another effective casework tool to assist in family preservation or to otherwise make an agreement about the long-term plans for a child (which may involve the allocation of parental responsibility) legally enforceable without ongoing Court proceedings.

Discuss the benefits of entering into a registered care plan with a family before considering Children's Court action. When would a registered care plan not be suitable?



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

s.38 Development and enforcement of care plans, registered with the Children's Court by consent

Parent Capacity Order (PCO)

What is a PCO?

A PCO is a stand-alone order of the Children's Court requiring a parent or primary care-giver of a child or young person to attend or participate in a program, service or course or engage in therapy or treatment aimed at building or enhancing his or her parenting skills.

A PCO remains in force for the period specified in the order, unless the order is varied or revoked.

A PCO can be made on the application of the Secretary or on the Children's Court's own initiative if it determines that a s.90A order (prohibition order) has been breached by a parent or primary care-giver. A PCO can be made whether or not an existing care application or care order has been made and it can be made at any stage in care proceedings.

When would a PCO be appropriate?

Requiring a parent to attend a compulsory parenting capacity program, therapy or other treatment suited to their particular needs and skill requirements may be an effective mechanism to re-engage parents who have become disengaged from voluntary early intervention support and reduce the escalation of risk. Some families may benefit from parental education but may not voluntarily engage in such education. A PCO may assist these families to reduce the risk of significant harm a child or young person is exposed to so as to prevent that child from being removed from his or her family.

Unlike other care orders, there is no requirement to establish the need for care and protection prior to making a PCO. The Court may make a PCO if satisfied that:

- There is an identified deficiency in the parenting capacity of the parent or primary care-giver which could place the child or young person at risk of significant harm
- It is reasonable and practicable to require the parent or primary care-giver to comply with the order, and
- The parent or primary care-giver is unlikely to attend or engage in the program unless the PCO is made.

When would be an appropriate stage in casework with a family to consider making an application for a PCO? How could you use this order effectively in your casework practice?



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

[s.91A – s.91I](#) Parent Capacity Orders

EMERGENCY INTERVENTION

Immediate safety and risk

The Act gives FACS powers of emergency removal and the authority to intervene without a warrant where the child or young person is at immediate risk of serious harm. This initial action by FACS is called 'emergency intervention'. Under the Act, Police also have the authority to remove a child or young person without a warrant (but have no power to assume care responsibility for a child or young person). Authorised emergency action can include:

- removing a child or young person from a place of risk,
- assuming care responsibility for a child or young person in their current location.

Removing a child or young person from their parents or carers without a warrant is intrusive and is only considered necessary where:

- there are reasonable grounds to believe that the child or young person is at risk of serious harm
- AND the risk is immediate (right now)
- AND less intrusive actions are not enough to reduce the risk of serious harm
- AND an apprehended violence order (AVO) would not be sufficient to protect the child or young person from that risk.

This authority can apply to cases where you or a police officer suspect on reasonable grounds that a child (person aged under 16 years) is in need of care and protection because they are not under the supervision or control of a responsible adult, and living in a public place. It can also apply to cases where you or a police officer suspect on reasonable grounds that a child or young person is in need of care and protection and has recently been on any premises where they are exposed to child prostitution, prostitution, or where persons are used for the production of child abuse material.

Emergency intervention is a short term option. If you can anticipate the need for removal/assumption, or you plan to seek final care orders, emergency intervention may not be the appropriate action. In those cases, FACS should consider whether other options such as applying for a warrant or making a 'planned' care application is appropriate. It is incumbent upon the Secretary to seek to remove children and young people by using a warrant whenever it is reasonably practicable and in the best interests of the child or young person.

You should seek legal advice from your Care Legal Support Legal Officer in relation to the range of legal options available. Emergency intervention may be necessary in domestic violence situations, situations where the child is exposed to significant drug use, extreme or cumulative neglect, sexual abuse, etc.; situations where parents may be responsible for the critical incident and these incidents can be unforeseen.

Assuming care responsibility

In some cases, a child or young person is at risk of serious harm and it is not in their best interests to be removed from the premises where they are currently located (such as from a hospital, respite care placement, or other service). FACS may 'assume' care responsibility instead of removing the child or young person.

FACS assumes care responsibility of a child or young person by serving an Order for assumption of care responsibility on the person who appears to be in charge of the premises (whether or not that person is a parent of the child or young person). Once care responsibility for the child or young person is assumed, the Secretary retains this responsibility until the matter is heard by the Court or the Secretary decides to discharge the child from the Secretary's care responsibility (prior to three working days after the date of assumption after which the Secretary would otherwise be required to make an application to the Children's Court). While under the care responsibility of the Secretary, the Secretary can place the child or young person in alternative premises (the child or young person does not necessarily have to remain at the location where they were assumed).

Search warrants

If a child or young person is removed without a warrant, on hearing the subsequent application to the Children's Court, the Secretary must explain why the removal without a warrant was considered to be necessary. It is therefore incumbent upon the Secretary to seek to remove children and young people using a warrant whenever it is reasonably practicable and in the best interests of the child or young person.

An application for a search warrant can be made (either by the Secretary or delegate or a Police Officer) if the applicant has reasonable grounds to believe one of the following:

- a child or young person is at risk of serious harm
- a person has failed to comply with a notice under s.173 to present a child or young person for a medical examination
- a person under the parental responsibility of the Minister has, without lawful excuse, been left or removed from the care responsibility of the Minister, and the Minister has directed that person to be returned.

An application for a search warrant is made to an authorised officer, such as a Magistrate, Children's Magistrate, a Registrar of a Local Court, or an employee of the Attorney-General's Department authorised by the Attorney-General as an authorised officer.

An application for a search warrant can specify one or more addresses or other description of premises. It is not necessary to specify an address or other description of premises in an application for a warrant or in a warrant.

If a delegated officer of the Secretary is the applicant, he or she must produce photo identification, confirmation of the position in which he or she is employed, and a copy of the letter signed by the Secretary confirming the officer's delegation to apply for a search warrant. Delegation can apply to Caseworkers, Casework Specialists, Managers Casework and Managers Client Services.

In determining whether to grant an application for a search warrant where a child or young person is at risk of serious harm, the authorised officer must be satisfied on reasonable grounds that:

- a child or young person is or may be at risk of serious harm, and
- the making of an apprehended violence order would not be sufficient to protect the child or young person from that risk.

For a search warrant issued where the child or young person is at risk of serious harm the warrant authorises the person named in the warrant to:

- Enter the premises (if any) specified in the warrant
- Search those premises for the presence of the child or young person, and
- Remove the child or young person.

Emergency intervention and the Court

The Act does not give FACS the power to make decisions about parental responsibility, or to allocate the care of the child or young person away from their parents/carers, without an order of the Children's Court. Within three working days after the date on which the emergency intervention occurs (i.e. the removal or assumption), FACS must make a care application to the Children's Court. The care application must specify what orders the Secretary is seeking from the Court. If appropriate, these may include an 'Emergency Care and Protection Order (ECPO)'.

ECPOs allow for the immediate protection of a child or young person where short-term emergencies arise, for example, where a parent dies or where the child or young person suffers a serious unexplained injury or where the Secretary otherwise becomes aware of a child or young person at risk of serious harm, but where the Secretary has little information about the child or young person or the circumstances that have given rise to the serious concerns for the child or young person. In these cases, the Secretary has the option of applying for an ECPO for a period of 14 days to allow FACS to conduct an investigation/assessment.

In relation to an application for an ECPO, other provisions of Chapter 5, Part 2 of the Act which relates to care applications do not apply (including the Court making 'other interim orders'). This limits the Court's ability to make other orders such as contact orders. As an ECPO cannot be made on an interim basis, the application is generally dealt with to finality on the day that it is first listed.

. The Court:

- can grant the application or dismiss it
- may initially grant the ECPO for up to 14 days
- may accept a further application to extend the ECPO for one further period of up to 14 days – if this application is filed before the expiry of the ECPO.

In some cases, the child or young person cannot be returned to their parent or carer after the expiry of the ECPO as the risks that led to the removal/assumption have not been adequately addressed and the child or young person is in need of care and protection. FACS will then need to file a fresh application for care orders for the child or young person to remain in out-of-home care.

If an assessment order is sought in addition to the ECPO, a separate application needs to be filed for the assessment order.

Which application and when?			
Court Application	Requirements	Advantages	Disadvantages
Emergency Care and Protection Order (s.46)	Immediate risk Risk of serious harm Child or young person in need of care and protection Application and Report Initiating Care Proceedings filed 3 days after the date of assumption/removal AVO is not sufficient	Provides immediate safety and protection for child or young person Short-term (Up to 14 days + one extension of up to a further 14 days) Allows time to assess other less intrusive options before making long term decisions or initiating further court proceedings	Only final orders available Orders only in force for maximum of 28 days
Other Care applications (s.45)	Child or young person in need of care and protection Application and Report Initiating Care Proceedings filed and Specified Documents served at any time during casework (but not more than 3 days after a 'critical event'.)	Can have interim and final orders More time to work with family to assess risks and strengths Potential for long term orders Flexible range of orders Time to collect information about options and conduct relevant assessments Time to plan for long-term, consider placement options etc	Can be a long process Can be highly stressful Substantial documentation required

Actions following removing or assuming care responsibility

Following removal or assumption of care responsibility for a child or young person, FACS must take the following actions:

- provide information to the child or young person and carer
- ensure parents or usual carers are kept informed
- advise service providers
- discuss contact arrangements with family members
- inform the child or young person they may apply for discharge
- arrange a placement
- make an application to the Children's Court within three working days after the date on which the removal/assumption occurred.

Information for the child or young person and carer

The person who makes the removal must tell the carer and the child or young person:

the person's name and authority
 the reasons they are being removed
 the fact the law authorises the removal
 what is likely to happen after the removal
 that they may contact any person and be assisted to contact that person
 that they may apply for discharge from the care responsibility of the Secretary, and
 how to do so.

This information may be provided verbally at the time, however it must also be provided in writing as soon as practicable in a way the child or young person can understand.

The following form is available on the intranet for provision of this information to the child/young person at **Casework practice > Resources > Working with kids & teenagers:**

[When you can't stay at home – information for children and young people](#)

Likewise, the following form is available for provision of this information to the parent/carer at **Casework practice > Resources > Working with families:**

[When your child is removed – information for parents](#)

Caseworkers will also be able to locate on the intranet other documents which could help guide children/ young people and parents through the statutory child protection and court processes. These can all be accessed at **Casework practice > Resources:**

Discharge from care responsibility of the Secretary

A child or young person may be discharged from the care responsibility of the Secretary only where their safety, welfare and wellbeing is not jeopardised. The views of the child or young person are also considered.

In some cases, a child or young person may be removed or assumed into care, and then discharged from care or restored within three working days. In these cases, a care application does not need to be made by FACS. However, FACS must file a report at Court briefly explaining the decision to remove, assume and return the child or young person. This must be done at the first opportunity, and no later than seven days after the removal or assumption.



Download a copy of the papers you must provide to a parent or carer and child/young person during emergency intervention. Make a list of any other important documents you may need below:

In practice, list examples of circumstances where you may be more likely to 'assume care' than 'remove' a child or young person.



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

Section 43(1) The Secretary (or a police officer) may remove a child or young person who is at immediate risk of serious harm, where an AVO would be insufficient to protect the child or young person from risk

Section 44(1) The Secretary may assume care responsibility of a child or young person where the child or young person is at risk of serious harm and it is not in their best interests for them to be removed from their current premises.

Section 46(1) The Children's Court may make an order for the emergency care and protection of a child or young person if it is satisfied that the child or young person is at risk of serious harm

Section 233 A search warrant authorises the person named in the warrant to remove a child or young person from the premises specified in the warrant or from any other place

EVIDENCE

Burden of proof

It is the responsibility of the applicant, or the party that makes an application, to prove what they allege or claim.

This is the 'burden of proof'.

When FACS make a care application, the Secretary is the applicant, and bears the burden of proof.

This means that the onus is on FACS to provide sufficient evidence to establish that a child or young person is in need of care and protection.



Standard of proof

Evidence proving a fact to the Children's Court needs to reach a standard of proof called the 'balance of probabilities'.

The Magistrate or Judge will weigh up the possible explanations for what has happened. They will then decide on the 'balance of probabilities' if one version of the cause is more probable than not.

This standard is different to criminal courts, which need evidence that is proven 'beyond reasonable doubt'.

Collecting evidence

When a matter is taken to court, evidence is provided to enable parties to make informed decisions. The Magistrate or Judge will make their own decision based on the evidence before the Court (filed, tendered and oral evidence if witnesses are examined) and the submissions made on behalf of the parties. Magistrates and Judges are usually not convinced by statements that are not supported by corroborating evidence. Evidence may be gathered from:

- FACS files including KiDS records
- material produced in compliance with subpoenas
- information sharing requests under Chapter 16A or s248 where express consent is given by the person or agency providing the information to use this information in care proceedings
- Affidavits and evidence tendered (handed up in and accepted by the Court)
- questioning witnesses at court hearings.

From your earlier reading of the procedural fairness and model litigant requirements, you may recall that evidence presented in Court on behalf of the Secretary must also be:

- balanced and not omit any relevant information, even if the information is unfavourable to the Secretary's case
- based on facts, not opinions (except for expert opinions).

To achieve this, all evidence must:

be verified as soon as practical to ensure it is factual and truthful

be checked to make sure it is accurate and relevant

be both fair and balanced

mention the strengths and weaknesses about children and families as well as positive and negative aspects of the parenting of the child or young person

be checked by your supervisor and then settled by your FACS legal representative to make sure that it is relevant and not misleading, if it has been taken out of context, quoted or extracted from other sources

be disclosed if it is information on which intervention has been based, or relevant to the decision to intervene

not be disclosed if it is from:

- an ADR process such as a dispute resolution conference
- legal advice or correspondence with your lawyer (attracts legal professional privilege)
- information still subject to police criminal investigation
- material which discloses the identity of a reporter or an authorised carer, or
- material provided under chapter 16A or s. 248 for which consent has not been provided to use such material in the care proceedings

include all necessary relevant material to support the application before the Children's Court

comply with all court filing dates and schedules

be presented with enough time for opposing parties to obtain legal advice and to submit their evidence in reply.

You must consult both your manager casework and FACS legal representative before filing any documents to ensure you have complied with legislative requirements and ethical guidelines. You will learn some more about subpoenas and affidavits in the Legal Issues and Interviewing Children workshop.

The application of s106A – child protection history for siblings

In some cases, previous sibling/s may have been removed from these parents/ carers and not restored, or the parents/carers may be involved in an investigation over a child or young person's death.

Under the provisions of s.106A, the Children's Court must admit in proceedings before it any evidence presented that a parent or primary care-giver of a child who is the subject of a care application is a person:

from whose care and protection a child or young person was previously removed by a Court under the Act or the *Children (Care and Protection) Act 1987* (NSW), or by a Court of another jurisdiction under an Act of that jurisdiction, and

to whose care and protection the child or young person has not been restored, or

who has been named or otherwise identified by the coroner or a police officer (whether by use of the term 'person of interest' or otherwise) as a person who may have been involved in causing a reviewable death of a child or young person.

FACS must indicate in the care application whether s.106A applies and then can provide evidence about any previous history concerning the child/young person or children/young people removed and not restored to the parent or primary care-giver. Evidence where s. 106A applies is 'prima facie' (fact presumed to be true unless it is disproved) evidence that the child or young person subject of the care application is in need of care and protection. Evidence introduced in this way changes the 'burden of proof' and shifts the onus on the parent or primary care-giver to rebut the presumption that the child or young person concerned is in need of care and protection. The parent or primary care-giver involved may rebut this presumption by satisfying the Court, on the balance of probabilities, that:

the circumstances that gave rise to the previous removal of the child or young person concerned no longer exist, or

the parent or primary care-giver concerned was not involved in causing the relevant reviewable death of the child or young person.

However, s.106A is not a ground in itself that the child or young person concerned is in need of care and protection. The Secretary must still establish that by virtue of one or more of the grounds in s.71, the child or young person is in need of care and protection. Section 106A is also not a ground for removal or assumption. As well as shifting the onus on the parents to prove that the child or young person is not in need of care and protection, this legislative provision also ensures that any relevant past child protection history of siblings/other children is before the Court and can assist in a holistic assessment for the child or young person concerned.

Review *s.106A of the Act*. Note below any circumstances where it may apply or where you have observed its application in practice. Discuss any areas for clarification with your manager casework or casework specialist.



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

S.106A the Children's Court must admit any evidence presented that a parent or primary care giver is a person of interest in a coroner's or police investigation into a reviewable child death, or has previously had a child or young person removed and not restored. This evidence is prima facie evidence that the child or young person in this care application is in need of care and protection.

s.23 (f) a child is at risk of significant harm where the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise the risk factors that gave rise to the report.

S.71 – grounds for care orders on which the Children's Court may be satisfied that the child or young person is in need of care and protection.

CARE APPLICATIONS

A care application is an application to the Children's Court for a care order under the Act.

The 'critical events' or actions by FACS that might result in a care application to the Children's Court include:

- removal or assumption

- other Emergency Intervention

- if the Secretary's delegate (i.e. manager casework) forms the opinion *that a child or young person is in need of care and protection*, following:

- secondary risk of harm assessment/safety and risk assessment (SARA)

- consultation between caseworker and manager casework

- case meetings, e.g. for file transfer/review

- consultation with Care Legal Support

- consultation with an Aboriginal person that provided culturally appropriate case planning ideas within the Aboriginal placement principles.

Making a care application

A care application is made by completing an 'Application and Report Initiating Care Proceedings', and filing this at the Court's registry. The Specified Documents are served on the parties but not filed with the Court registry. Where there is more than one child or young person in the family who will be subject to a care application, only one application and set of Specified Documents needs to be prepared which covers all of the children/young people.

The Report is designed to provide a brief summary of the critical incident(s) and history leading to the care application in chronological order. This report is not a sworn document. It reflects the factual information held by FACS, not the direct evidence of an individual caseworker. The report should give a balanced overview of all relevant information available at the time of the application and inform the court what orders are being sought.

There should be sufficient evidence in the care application and the Specified Documents to support the interim orders that are sought and the Court making a determination that the child or young person is in need of care and protection.

You may need to arrange for the care application and any other documents filed to be translated in a family's preferred language if the family are from a non-English speaking background. You can make enquiries with Multicultural NSW (www.crc.nsw.gov.au) for translation services in your local area.

In the care application, FACS may apply for any order applicable under the Act (including an Emergency Care and Protection order).



There is a template for the Application and Report Initiating Care Proceedings', along with a tool that explains sections of the form on the Intranet. You may find these resources useful:

Located at **Casework practice > Resources> Court matters:**

- ▶ [Resources for initiating care proceedings](#)

Located at **Casework practice > Forms > Court matters:**

- ▶ [Forms for initiating care proceedings](#)



Arrange with your manager to review a case practice example of an Application and Report Initiating Care Proceedings from within your CSC. (They may refer you to the CLO, casework specialist or a senior caseworker). Please ensure you consider the confidentiality of information you may read in this report if you are not directly involved in this case.

Read the Application and Report Initiating Care Proceedings and the Specified Documents

Make a time to meet with your manager casework, casework specialist, CLO or senior caseworker and discuss the example provided. Consider the following points for discussion:

Why is this example a good Application and Report Initiating Care Proceedings?

Is it clear from the documents why this case has come to court (ie: what are the grounds)?

Please note that you will receive further training on Applications and Reports Initiating Care Proceedings in the Legal Issues and Interviewing Children workshop.

Timeframes to make a care application following removal/assumption

FACS must make a care application within three working days after the day on which a child or young person has been removed or assumed. For example, if the removal/assumption occurs on a Monday, an application will need to be filed by the Thursday of the same week. A working day is defined as any day that is not a Saturday, Sunday or public holiday.

Service

To ensure people involved in a child or young person's life can contribute to decision-making and best outcomes, each party to the matter must receive a copy of the Care Application immediately after you have filed it in court. This formal process of delivering documents is called 'service'. When you 'serve' a document personally, you must:

speak to the recipient
 confirm their identity, and
 then give the document to them in person.

Leaving a document with neighbours, spouses, in letterboxes or on doorsteps is not 'service'. If you have made genuine attempts to find the person, and you have not been successful, this is called 'attempted service'.

FACS needs to prove to the court that they served or attempted to serve each party. You can prove this using a formal sworn or affirmed statement (an 'affidavit of service'). A template is available on the Intranet.

To help you prepare care applications, we have provided a brief checklist below.

Please add any tasks you will need to complete to ensure the application is appropriate:

Care application checklist		
<input checked="" type="checkbox"/>	To do	Tasks
<input type="checkbox"/>	Critical event / casework	Consult MCW and decide that a care application will be necessary. OR remove/assume care
<input type="checkbox"/>	Prepare Application and Report Initiating Care Proceedings and Specified Documents	MCW to review your application. Care Legal Support to check, amend and review your application.
<input type="checkbox"/>	Make a copy of the report for every party	
<input type="checkbox"/>	File the application at your local Children's Court registry	
<input type="checkbox"/>	Ensure all parties are served with a copy of the application	Use the formal 'service' method to make sure this happens. Complete an affidavit of service, (or an affidavit of attempted service) for each party
<input type="checkbox"/>	Notify stakeholders that the care application has been made and advise of the listing date, including care litigation team for your area (provide a sealed copy of the care application and a copy of the Specified Documents to the Care Litigation team for the matter to be allocated) service providers involved with the family	

□	If additional security is required at Court due to the risk to safety that a party to the proceedings poses, then notify the Court Registry (you may need to complete a form to submit to the registry with the details of the matter, the person and the specific risk)	
□	If any party requires an interpreter to attend Court then liaise with the Court Registry who will make these arrangements	
□	Put a copy of the application on the case file and update KiDS Legal record	

INTERIM ORDERS



Access and read '**Orders of the Children's Court**' from the readings on the LMS to support learning for this topic.

Interim orders

Any care order available under 'the Act' (except for a guardianship order) can be made as an interim order as well as a final order. Even if the court has not yet decided if the child or young person is in need of care and protection, the Court can make interim orders if it is satisfied that the orders are in the child or young person's best interest.

Interim orders remain in place until:

- the period of the order expires, (if it is time-limited), and/or
- a further order is made, revoking the earlier order and replacing or altering it
- final orders are made, or
- the application is dismissed.

When FACS initiates a care application, any interim orders sought must be specified in the Application and Report Initiating Care Proceedings. The Children's Court may grant the orders sought, or make any other order available under the Act. The Children's Court will consider the care application, what orders other parties are seeking, as well as the Magistrate's or Judge's own concerns. Interim orders can cover details such as the child or young person's placement, supervision, and/or interim contact arrangements.

The Children's Court may make an interim care order prior to determining whether the child or young person is in need of care and protection, if the Court is satisfied that it is appropriate to do so. The Secretary, in seeking an interim care order, has the onus of satisfying the Children's Court that it is not in the best interests of the safety, welfare and well-being of the child or young person that he or she should remain with his or her parents or other persons having parental responsibility.

Final orders

Once the Court has determined that the child or young person is *in need of care and protection* the Court can make final orders for the child or young person.

There are some stand-alone orders that can be made on a final basis by the Court which do not require a finding of the child or young person being in need of care and protection. For example, parent capacity orders and assessments orders can be made whether or not an application has been made for any other care order and have different requirements for the Court to be satisfied of before these orders are made.

The Care Legal Support Legal Officer, or CLO servicing your CSC and other key District staff (as identified by your manager client services) are available to provide additional advice and direction on Children's Court application processes.



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

Section 45 a care application must be made no later than three (3) working days after the day care responsibility for a child or young person is removed or assumed by the Secretary.

Section 61 A care application may only be made by the Secretary. The application must specify the grounds for the application; the orders sought, and be accompanied by a written report.

Section 234 Any person appearing to have parental responsibility for a child or young person, as well as the child or young person themselves, must be informed of a removal in writing, or if given verbally, then to provide written notice as soon as practicable after the removal (also see s. 51).

Section 69 The Children's Court can make interim care orders in relation to a child or young person after a care application is made and before the application is finally determined (also see s.70 & s.70A).

SUPPORTING THE CARE APPLICATION

Specified documents

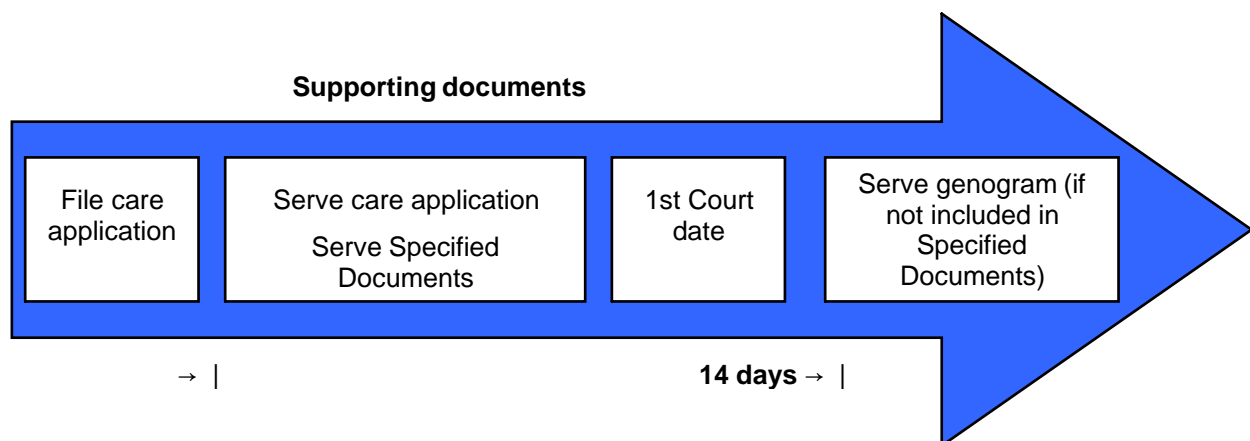
Once FACS has made a care application, the Court may make decisions about care and protection of the child or young person. These decisions will be well informed where all relevant information is provided. Families and other parties to the care application will also be able to participate in the decision-making where they have access to the information that triggered the care application.

Earlier you reviewed an Application and Report Initiating Care Proceedings. All evidence in FACS possession that is relevant to the decision to make the care application should be provided to the family and to the Court.

This evidence is provided in a bundle of documents called the 'Specified Documents'. The Specified Documents must be 'served' on all parties at the same time as the care application, or otherwise (although not ideally) before the first court date. The Court only allows service of the Specified Documents on the parties at the first court date as an exception. The Specified Documents are not filed with the Court registry. If necessary, the FACS legal representative may seek to tender the Specified Documents at an appropriate time during the care proceedings.

Often, additional documents (which may assist the Court or a party) come into FACS' possession after the Specified Documents has been served or there is a child protection history that may span beyond the last 12 months which may be relevant. This material can be included in/annexed to an affidavit which is subsequently filed with the Court and served on the parties.

FACS has up to 14 days after the first court date to prepare and serve a Summary of the Proposed Plan for the child or young person.



Preparation of Specified Documents

The Children's Court does *not* require the Specified Documents to be paginated (it does however assist if the Specified Documents are paginated so the Court and parties can easily reference pages particularly during hearings). However, you must:

copy the documents from the FACS file and KiDS and place them in chronological order

list and summarise the documents into the template index in chronological order

have the index page and contents of the Specified Documents certified by your manager casework

(There are templates for index and certification on the intranet in the Court Kit.)

What to include in the Specified Documents:

Evidence relevant to this application	Examples
All current Court orders (from any jurisdiction)	<p>Apprehended violence orders</p> <p>Children's Court orders (including orders relating to siblings if s.106A applies)</p> <p>Family Court Orders</p> <p>Coroners' Court findings</p> <p>Any other order relevant to an application under s.106A</p>
Risk of significant harm reports (from the previous 12 months)	<p>Helpline reports (with reporter's identity/identifying information redacted)</p> <p>Birth alerts</p>
Prior alternative action	<p>Referrals to or reports from support services</p> <p>Records of home visits or meetings with any family member, children/young people or others responsible for the children/young people</p> <p>Family Group Conferencing (outcome as agreed between the parties only from FGC which is a form of ADR)</p> <p>Perinatal Family Conferencing (outcome as agreed between the parties as this is a form of ADR)</p>

<p>FACS decisions, assessments and narratives</p>	<p>Safety assessments and narratives (SARA & SAS2 records)</p> <p>Case plans</p> <p>Accurate meeting records and minutes</p> <p>Handwritten notes from interviews</p> <p>Contact reports</p> <p>Parental responsibility agreements</p> <p>Case reviews e.g. formal case discussions with the manager casework on the strengths, risks, protective factors, harm consequences, harm probability, vulnerability and safety, case planning decisions</p> <p>Pre-assessment consultation (PAC) or assessment consultation (AC) notes</p> <p>Removal or assumption records</p>
<p>Any direct evidence received from other agencies or mandatory reporters.</p>	<p>Material provided under Chapter 16A or s. 248 (if express consent has been provided by the person or agency providing the information for the information to be used in care proceedings)</p> <p>Direct evidence received from Police, JIRT, health service providers or mandatory reporters</p> <p>Assessments or reports received from other services or agencies</p> <p>Assessment, test results or reports received from any health service provider or the Clinic relating to any family member, children or others responsible for the child or children, such as urinalysis</p>
<p>Genogram for the child</p>	

Exclusions from the Specified Documents

There are a number of exceptions to the requirement to provide all relevant documents.

FACS must *remove or redact* any information that is:

material which discloses the identity of a reporter

'high level identification information' – surnames of authorised carers or persons living in authorised carers' household, street address and locality of authorised carer, landline telephone of authorised carer, details of authorised carer's employment or activities that may lead to identification of carer, and the name of the school that the child or young person is attending

revealing of the identity or location of a child or young person or any person experiencing violence or threats of violence from someone in the court proceedings

confidential (such as notes from dispute resolution conferencing or other ADR process)

provided under Chapter 16A or s . 248 but did not include *consent* to be given to the court

legal advice and legal correspondence to FACS (that attracts legal professional privilege)

information related to a current criminal/Joint Investigation Response Team (JIRT) investigation – check with Police/JIRT as to what, if any, information can be used in care proceedings

Summary of Proposed Plan

A summary of FACS' proposed plans for the child or young person's placement must be provided to the Court within 14 days of the first mention (First Court date).

The Summary of the Proposed Plan should briefly describe:

the risk and/or safety concern(s) for the child/young person

whether FACS is presently of the view that restoration is a realistic possibility

the tasks and demonstrated changes the parents need to undertake before the child/young person can be returned safely to their care (including timeframes for those tasks/changes)

the kind of placement presently proposed (both on an interim basis and long-term) , taking into account the permanent placement principles

the kind of contact presently proposed (including frequency and duration or proposed contact, whether contact is to be supervised, and who will supervise contact

A template for the summary of the proposed plan is available on the Intranet at Casework practice > Forms > Court Matters > General.

What are the advantages for children and young people and their families when FACS serves the parties with the Specified Documents at the same time that the care application is filed?

How does the Summary of Proposed Plan assist in the early stage of care proceedings? Why is it also a useful document towards the end of care proceedings?

PERMANENCY PLANNING

Care plans and assessment of restoration

Assessment of restoration

If the Secretary applies to the Children's Court for an order (not an ECPO) for the removal of a child or young person from his or her parent (i.e. the allocation of parental responsibility away from a parent), the Secretary must present a care plan to the Children's Court before final orders are made.

The content of the care plan will very much depend on the outcome of the Secretary's assessment of whether there is a realistic possibility of the child or young person being restored to his or her parent. If the Secretary assesses that there is a realistic possibility of restoration, the Secretary is to prepare a permanency plan involving restoration which will set out the plan for that restoration, including minimum outcomes for the parent to achieve, timeframes for the restoration and services to be involved.

If the Secretary assesses that there is no realistic possibility of restoration, the Secretary is to prepare a permanency plan for another suitable long-term placement by applying the permanent placement principles. Essentially the 'permanency plan' is included in the current prescribed care plan form and does not constitute a separate document.

In making this assessment about restoration, the Secretary is to have regard for:

The circumstances of the child or young person, and

The evidence, if any, that the child or young person's parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care

One reason why the Summary of Proposed Plan is filed early in the care proceedings (within 14 days of the first mention), is to put parents on notice of whether or not, at that preliminary stage, the Secretary is considering restoration, and what tasks they need to undertake for restoration to be considered viable. The Summary of Proposed Plan is a valuable document to refer back to when assessing the issue of restoration to ascertain whether parents have been able to address the risks/safety concerns that led to the care application being filed. In making this assessment about restoration, you need to make sure that you have considered all relevant evidence – including the evidence filed by the parents and any assessments that have been undertaken (including a Children's Court Clinic assessment). You need to keep in mind that you need to support your assessment with relevant evidence. If the Secretary's assessment about restoration is contested, you may be required for cross-examination during a hearing and have to answer questions directed at this assessment.

Restoration timeframes

The Court is to decide whether to accept the Secretary's assessment of whether or not there is a realistic possibility of restoration within the following time frames:

In the case of a child who is less than two years of age on the date the Court makes an interim order allocating parental responsibility for the child to a person other than a parent – within 6 months after the Court makes this order.

In the case of a child or young person who is two or more years of age on the date the Court makes an interim order allocating parental responsibility for the child to a person other than a parent – within 12 months after the Court makes the interim order.

These legislative requirements mean that the Secretary needs to have made an assessment as to restoration and placed this before the Court in the care plan to allow sufficient time for the Court to consider the care plan (and any responses by the parents/other parties) and either accept or reject the assessment.

The Court may extend these timeframes or make a decision as to restoration after these timeframes if, having regard to the circumstances of the case, it considers it appropriate and in the best interests of the child to do so.

Care plans

A care plan is the long term placement plan for a child or young person, usually until they are 18 years of age. Care plans can be *finalised* with or without the consent and agreement of the family, however they must be *developed* in consultation with the:

- child or young person
- parents/carers/placement provider
- services engaged with the family.

In general terms, the care plan must make provision for:

- the outcome of the Secretary's assessment of restoration
- the allocation of parental responsibility
- the kind of placement proposed to be sought for the child or young person, including:
 - how it relates in general terms to permanency planning for the child or young person
 - any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement
- the arrangements for contact between the child or young person and his or her parents, relatives, friends and other persons connected with the child or young person
- the agency designated to supervise the placement in out- of-home care, and
- the services that need to be provided to the child or young person.

There are other details that need to be included in the care plan. The prescribed format for care plans prompts you for these details.

It is a principle of the Act that if a child or young person is temporarily or permanently deprived of his or her family environment, the child or young person's name, identity, language, cultural and religious ties should, as far as possible, be preserved. If a child or young person's cultural needs are not adequately addressed in the care plan, the Court may not be satisfied that permanency planning has been appropriately and adequately addressed and direct that further details be provided in the care plan or it may direct a separate cultural plan be developed and filed and served for the child or young person.

When you are seeking an order of the Children’s Court that will allocate parental responsibility you will always need a care plan. Care plans may be considered by the Court, with or without consent of the family. In developing the care plan, FACS must:

- discuss options with the parents/caregivers/child/young person (with consideration given to age and development)
- develop a plan in consultation with the parents/caregivers/child/young person and accurately record their views (both agreements and otherwise)
- develop a plan in consultation with any services that have/will be involved with the family
- develop a plan in consultation with the designated agency that has or will be supervising the placement or who may be transferred case management responsibility
- encourage all parties to the proceedings or persons who are not parties but who will be significantly impacted by the orders (primary carer, person who will be allocated parental responsibility) to obtain independent legal advice about the provisions of the care plan/final orders sought
- ensure it is written in language which can be understood by all parties.

Other final orders that do not allocate parental responsibility can be made without a care plan, including assessment orders, orders accepting undertakings, and/or orders for supervision.

Often caseworkers and managers will hold a case conference with all relevant family members (including the child or young person if appropriate), carers (if appropriate) and all the services proposed to be involved in the care plan. If a DRC or other form of ADR is held before the care plan is developed, then this is also an appropriate venue to work out the details of a care plan.

How would you assess whether or not restoration of a child or young person to his or her parent or parents is a realistic possibility? What sources of information would you need in this assessment?

Permanency planning

The Act defines permanency planning as the making of a plan that aims to provide a child or young person with a stable placement that offers long-term security and that:

has regard, in particular, to the principle set out in s.9(2)(e) – that is, if a child or young person is placed in OOHC, arrangements should be made in a timely manner to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child or young person’s circumstances and that, the younger the age of the child or young person, the greater the need for early decisions to be made in relation to permanent placement

meets the needs of the child or young person

avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements.

Permanency planning recognises that the first few years of a child’s life are crucial in forming relationships and attachments, and a child’s experiences in the first few years of life can have a profound effect later in their life, in terms of health, educational attainment, employment prospects and possible participation in crime.

Permanency planning recognises that long-term security will be assisted by a permanent placement. This does not mean that a permanent placement has to be secured before permanency planning is appropriately and adequately addressed. A permanency plan need not provide details as to the exact placement in the long-term of the child or young person concerned but must be sufficiently clear and particularised so as to provide the Children’s Court with a reasonably clear picture as to the way in which the child or young person’s needs, welfare and well-being will be met in the foreseeable future.

FACS has implemented a Permanency Planning Policy which describes the approach that FACS takes to case planning to maximise the achievement of permanency for children and young people.

Permanent placement principles – s.10A

The permanent placement principles (introduced into the Act on 29 October 2014 and applicable to care applications filed after this date) will guide all actions and decisions about the permanent placement of a child or young person. It is a specific principle in s.9 of the Act that if a child or young person is placed in OOHC, the permanent placement principles are to guide all actions and decisions under the Act (whether by legal or administrative process) regarding permanent placement of the child or young person. The Children’s Court must not make an order allocating parental responsibility unless it has given particular consideration to the permanent placement principles and is satisfied that the order is in the best interests of the child or young person.

The principles give preference to restoration, guardianship with family and kin and open adoption over long-term foster care. They establish a set of preferences for permanent placement of a child or young person in the following order:

1. Family preservation/restoration
2. Guardianship
3. Open adoption
4. Parental responsibility to the Minister

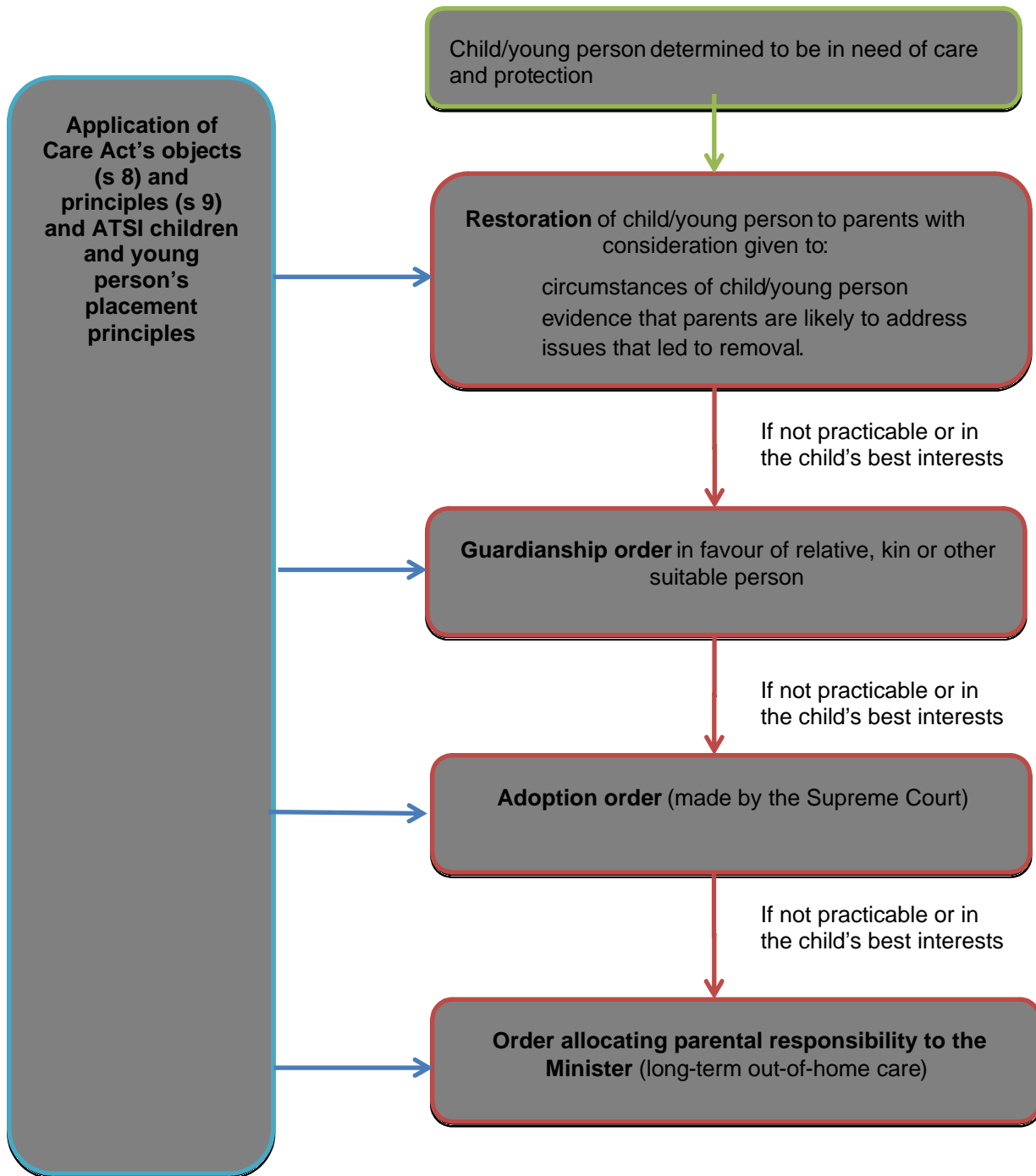
If it is practicable and in the best interests of a child or young person, the first preference for permanent placement of the child or young person is to be restoration to his or her parent or parents so as to preserve the family relationship.

If restoration is not viable, then the second preference for permanent placement is a guardianship order allocating all aspects of parental responsibility for the child or young person to a relative, kin or other suitable person.

If guardianship is not practicable or in the child or young person's best interests, the next preference (except for Aboriginal and Torres Strait Islander children and young people) is for the child or young person to be adopted.

The last preference is for a child or young person to be placed under the parental responsibility of the Minister.

While open adoption for Aboriginal and Torres Strait Islander children/young people will still be legally possible it will not be a preferred permanent placement option for them. The Aboriginal and Torres Strait Islander Child and Young Persons Placement Principles will continue to apply to placement actions and decisions about Aboriginal and Torres Strait Islander children/young people.



What is the focus of the permanent placement principles? What difficulties do you think you may encounter in applying these principles in practice?



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

Section 9(2)a Any intervention by FACS in a family, child or young person's life must be the *least intrusive* course that is consistent with protecting the child or young person from harm and promoting their development.

Sections 9(2)(g),10A Permanent placement principles – if a child or young person is placed in OOHC, the permanent placement principles are to guide all actions and decisions regarding permanent placement of the child

Section 22(1) In response to a request for assistance, the Secretary must provide whatever advice, maternal assistance or referral as considered necessary or take whatever action necessary to safeguard the safety welfare and wellbeing of the child or young person.

Section 34 The Secretary may take a range of possible actions for children and young persons in need of care and protection. Actions range from providing or arranging support or other services to seeking appropriate orders from the NSW Children's Court.

Section 38(2) A care plan that allocates parental responsibility only takes effect *following an order* by the Children's Court for parental responsibility.

Section 46 The Children's Court may make an order for the emergency care and protection of a child or young person if it is satisfied that the child or young person is at risk of serious harm.

Section 69 The Children's Court may make interim care orders in relation to a child or young person after a care application has been made and before the application is finally determined. (also see s.70 & s.70A)

Section 78(1) The Children's Court *will not make final orders* on a care application until the Secretary has presented a *care plan*. (also see s80)

Section 83 Preparation of permanency plan – the Secretary must assess whether there is realistic possibility of a child being restored to his or her parents and prepare a permanency plan in accordance with this assessment

GUARDIANSHIP AND ADOPTION

Guardianship orders

What is a guardianship order?

A guardianship order allocates to a suitable person all aspects of parental responsibility for a child who is in statutory OOHC or supported OOHC or who has been found to be in need of care and protection, until the child reaches 18 years of age. A person who has been allocated all aspects of parental responsibility for a child or young person through a guardianship order is known as a 'guardian'. A guardianship order may allocate parental responsibility jointly to more than one person (i.e. there can be more than one guardian for a child).

Guardianship orders can only be made on a final and long-term basis – until the child or young person reaches 18 years of age. Guardianship orders cannot be made as an interim order.

A child or young person who is a subject of a guardianship order is not considered to be in OOHC.

Applications for guardianship orders

An application for a guardianship order may be made by:

- the Secretary
- the designated agency responsible for supervising the placement of the child, with the consent of the Secretary
- an authorised carer, with the consent of the Secretary
- a person who has been assessed by the Secretary or a designated agency as a suitable person to be allocated parental responsibility for the child, with the consent of the Secretary.

An applicant for a guardianship order must present the following to the Court before a guardianship order is made:

- copies of any written consent required (from the Secretary in relation to making the application)
- a care plan prepared by the applicant
- a copy of any report on the health, educational or social wellbeing of the child that is available and relevant to the care plan.

An applicant for a guardianship order is to make reasonable efforts to notify each parent of the child or young person of the making of the application. Each parent must be given a reasonable opportunity to obtain independent legal advice about the application and is entitled to be heard by the Court on the application.

An applicant for a guardianship order (other than the Secretary) is to notify the Secretary of the making of the application on the day the application is filed and the Secretary is entitled to be party to the proceedings.

Before making a guardianship order, the Court has to be satisfied that:

there is no realistic possibility of restoration of the child or young person to his or her parents

the prospective guardian will provide a safe, nurturing, stable and secure environment for the child or young person and will continue to do so in the future (an applicant for a guardianship order must present a *suitability statement* prepared by either a designated agency if the applicant is an authorised carer supervised by the designated agency or the Secretary)

if the child or young person is Aboriginal or Torres Strait Islander, the Aboriginal and Torres Strait Islander Children and Young Person Placement Principles have been applied

if the child or young person is 12 or more years of age and capable of giving consent

- consent has been given in writing, and
- signed by the child or young person in the presence of a witness, and
- bears a statement from the witness (principal officer of designated agency supervising the placement or employee of agency directly involved in the supervision of the placement or an Australian legal practitioner) that the witness explained the nature and effect of the guardianship order to the child or young person.

In what circumstances would a guardianship order be preferable to an adoption or placing a child under the parental responsibility of the Minister?



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

[Section 79A](#) Allocation of parental responsibility by guardianship order

[Section 79B](#) Applications for guardianship orders

Adoption

Adoption generally

Adoption is a legal process whereby legal rights and responsibility for a child are transferred from birth parents (and/or whomever has parental responsibility) to adoptive parents. The general effect of an adoption order is that once made, the adopted child is regarded in law as the child of the adoptive parent(s) and the adoptive parent(s) is/are regarded in law as the parent(s) of the adopted child (s 95(2)(c)). The adopted child has the same rights in relation to the adoptive parent(s) as a child born to the adoptive parent(s).

There are three main categories of adoptions, namely intercountry adoptions, local adoptions and 'known' adoptions. Intercountry adoptions are adoptions of children from overseas. FACS forwards adoption applications to the countries that seek families for their children, and supports families who are allocated a child from another country for the purposes of adoption. Local adoptions are adoptions of children who were born or permanently residing in Australia before the adoption, are legally able to be placed for adoption and generally have had no previous contact or relationship with the adoptive parents. 'Known' adoptions are adoptions of children who were born or permanently residing in Australia before the adoption, who have a pre-existing relationship with the adoptive parent. Known adoptions include adoptions by step-parents, other relatives and carers (i.e. OOHC adoptions).

In NSW, adoption of children by relatives is generally not favoured as a practice given its impact on family and genealogical relationships. Adoption is also a concept which is absent in customary Aboriginal child care arrangements and is not a preferred permanent placement option for Aboriginal children. Torres Strait Islander people practice customary adoption within their own community.

One of the objects of the *NSW Adoption Act 2000* is to encourage openness in adoption. That is, adopted persons, adoptive parents, birth parents, siblings and other relatives of the adopted person are able to gain certain information about each other from the day the adoption order is made. Open adoption ensures that children know their identity and, where it is in their best interests, maintain relationships with their birth family.

Adoption and children in need of care and protection

For children in need of care and protection, who require a permanent placement, according to the permanent placement principles, adoption is to be given preference before the allocation of parental responsibility to the Minister or, in other words, long-term OOHC. In order to support the permanent placement principles, dual authorisation has been introduced. This allows a person to be authorised as both an authorised carer and a prospective adoptive parent through a single assessment process.

The Children's Court does not have the jurisdiction to make adoption orders. Applications for adoption are made to the Supreme Court.

If adoption is the preferred permanency outcome for a child in need of care and protection who cannot be restored to his or her parent, then this needs to be identified in the care plan. It may be that an order allocating parental responsibility to the Minister is sought which will allow FACS to commence the adoption process after final orders are made.

If adoption is a viable permanent placement option for a child subject of care proceedings, then seek advice from your manager casework and legal representative as to how best to

pursue that option, what information should be included in the care plan, and what final orders should be sought from the Children's Court.

What are some of the benefits of open adoption for children who cannot be restored to their families and for whom guardianship is not an option? What are some of the challenges in canvassing the option of open adoption with parents and family members during care proceedings?

CHILDREN'S COURT PRO CESS

What happens once the care proceedings have started?

Mentions

After the care application has been filed, the court will set a date for the first 'mention'. During the first mention, the following issues may be canvassed in Court:

- Whether parties are in attendance and/or legally represented.

- Whether parties have been served with the initiating documents.

- The interim placement of the child and whether any placement assessments will be conducted in the interim.

- Whether interim orders should be made – and the parties' position to the interim orders sought by the Secretary.

- Whether parties can indicate their position to a finding being made by the Court that the child is in need of care and protection.

- Whether any subpoenas need to be issued and an appropriate return date for subpoenas.

- Whether evidence/further evidence needs to be filed by any party.

- Interim contact arrangements between the child and the parents/family members.

- When the next court date can be held and whether a timetable needs to be set for any interim hearings.

There may be a number of mentions throughout the course of the care proceedings.

Establishment stage

The first stage of care proceedings is referred to as the 'establishment stage'. This is the stage during which the Court will determine whether or not the child is in need of care and protection (i.e. whether the Secretary's care application should proceed and final orders be made).

Parties may consent to the Court finding that a child is in need of care and protection, without agreeing or admitting any fault. This is called 'consent without admissions', and does not impact on their consent or contest of future longer term care orders. While parties may consent to a finding or any orders, the Court still has to be satisfied that it is appropriate to make a finding or any orders.

When parties *do not agree* that the child or young person is in need of care and protection, the Court will usually:

make directions for the parties to prepare evidence supporting their position in an affidavit

if appropriate list the matter for a DRC on the issue of establishment at the earliest opportunity following service of any further evidence filed by the parties

if a DRC is not considered appropriate, or a DRC takes place and no resolution is reached, set a date for a hearing to decide whether the child or young person is in need of care and protection.

At the establishment hearing, the court will look at the evidence, in particular the 'Application and Report Initiating Proceedings'. The court will need to be satisfied, on the balance of probabilities, that there is sufficient evidence to meet one or more of the grounds in s.71 of the Act. Usually an establishment hearing will proceed on the basis of the evidence filed and submissions made on behalf of the parties. Cross-examination of witnesses is not permitted except in exceptional circumstances.

If the Children's Court is *not satisfied* that the child or young person is in need of care and protection then the application will be dismissed. The child or young person will be returned to their parents/carers.



Access and read [s.71 of the Act, Grounds for care orders](#), to support your learning for this topic.

What key reasons, or 'grounds' will be sufficient for the Children's Court to decide that a child or young person is in need of care and protection?



Legislative link

Children and Young Persons Care and Protection Act 1998

[Section 71](#) The Children's Court may make an order if it is satisfied that the child or young person is in need of care and protection for any reason.

Placement stage

If an application is to be made for an assessment order (assessment by the Children's Court Clinic) then this application needs to be filed as soon as possible after establishment. An assessment application cannot be made until a party has filed all documents relevant to the application for consideration in a Children's Court Clinic assessment.

Once the Clinic assessment is completed, the Court will allow the Secretary 21 days after the Clinic report is received to file and serve the care plan. Parties will then have up to 14 days to respond to the care plan.

If no application for an assessment order is made, the Court will usually direct that the Secretary file and serve a care plan within 21 days of establishment, unless there is a good reason to delay the care plan being filed (such as time being needed to conduct placement assessments, allow parents to undertake courses or comply with requirements that may lead to restoration, etc.).

After parents have filed in response to the care plan or otherwise indicated their response to the Care Plan to the Court, the Court may refer the matter for a DRC if issues remain in dispute.

If the matter cannot be resolved, then the Court will make directions to prepare the matter for a final hearing.

Dispute resolution conferences

Where the parties do not agree, the court will usually refer the case to a compulsory dispute resolution conference (DRC) before holding a hearing. The conferences are run by a Children's Registrar who takes a collaborative approach that is designed to:

- identify areas of agreement between the parties
- identify and narrow the issues which are in dispute
- give families an opportunity to participate in a meaningful way
- discuss the issues relevant to that application
- increase the use of alternative dispute resolution
- attempt to negotiate an agreed way forward, to resolution or consent
- reduce time taken by cases that do go to a hearing.

Only agreed outcomes are given to court. The rest of the ADR process is strictly confidential.

The responsible caseworker and manager casework must attend. FACS also have a legal representative at the conference. The parents/any other parties to the proceedings and child's legal representative must also attend. It may also be appropriate for non-parties to attend, such as grandparents, relative carers, or persons who it is proposed will be allocated parental responsibility. When an NGO has case management responsibility for the child, it may also assist to have the NGO caseworker and/or manager attend as they may be able to provide information about the child's progress and be involved in negotiations around issues such as future contact arrangements.

If a Children's Court Clinic report has been prepared during the care proceedings, it may be appropriate for the Authorised Clinician to attend. For the procedure and requirements related to the attendance of an Authorised Clinician at a DRC, see: Children's Court of NSW Practice Note 6: Children's Court Clinic Assessment Applications and Attendance of

Authorised Clinicians at Hearings, Dispute Resolution Conferences and External Mediation Conferences.

In the ordinary course a DRC will be conducted in the following format:

Opening statement by the Children's Registrar outlining the role of participants, the process and confidentiality.

Opening statement by each party outlining relevant issues in dispute.

Reflection and summary by the Children's Registrar of party statements.

Formulation of an agenda of relevant issues.

Exploration of agenda (which generally takes up the most time).

Private sessions involving the Children's Registrar, a party and the party's legal representative.

Negotiation (making and considering offers).

Further private sessions where appropriate.

Agreement and closure.

At the conclusion of the DRC, the Children's Registrar may make directions for further case management of the matter. The Children's Registrar will also provide a report to the Court indicating whether an agreement has been reached. If no agreement is reached then the Children's Registrar, in consultation with the parties, will identify the remaining issues in dispute for hearing to allow the Court to allocate hearing time.

Discussions during a DRC are confidential and are not admissible in any proceedings. There are some exceptions to this. The person conducting ADR can disclose information contained in connection with the ADR in one or more of the following circumstances:

If the person from whom the information was obtained has given consent for the information to be disclosed.

If there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property.

If there are reasonable grounds to suspect that a child or young person is at risk of significant harm within the meaning of s.23 of the Act.

If the disclosure is reasonably required for the purpose of making a referral for any party to the ADR and the parties to the ADR have given consent for the disclosure.

In accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Final hearing

If no agreement can be reached between the parties as to the final orders for the child, then the Court will make directions to prepare the matter for a final hearing.

A hearing date will only be set by the Court if all directions of the Court have been complied with and that the matter is otherwise ready for hearing. A hearing date will be set by the Court usually on application of a party, after taking into account the number of witnesses

required (including expert witnesses) and the estimated length of time required for cross-examination of witnesses as indicated by the legal practitioners.

The Court will make a decision at the conclusion of evidence and submissions at the final hearing. This may occur on the same day as the hearing or the Court may adjourn the matter and the Magistrate or Judge will provide a judgement (verbal or in writing) at a later date.

While the Secretary indicates a view in the care plan on whether there is a realistic possibility of restoration of a child or young person to the care of his or her parent, ultimately it is the Court who finally determines whether there is a realistic possibility of restoration. If the Court rejects the Secretary's assessment of restoration, it can direct the Secretary to prepare a different care plan which accommodates the Court's decision. Final orders will not be made until the Court is satisfied that permanency planning has been appropriately and adequately addressed. This may mean that the matter can continue in Court after the final hearing until the Court is satisfied on this point.

Continuing casework

The Court will use other 'mentions' or short court dates to organise the case by giving directions, asking parties to submit further evidence, set new court dates, and making interim orders.

You will need to continue casework both during and following the court process.

It is the caseworker's responsibility to:

- visit the child or young person
- review and support the placement suitability
- work with the parents/carers
- update the case plan, etc.



The ongoing circumstances for families can be quite dynamic. To ensure procedural fairness and the best outcomes for children and young people, the Court will give opportunities for all parties to gather and present evidence about these changing circumstances. FACS can also present any new evidence that comes up during the court proceedings.

What are the benefits for a child or young person when casework activities continue during care proceedings?

Consider the challenges of on-going casework with parents/children/young people during Court proceedings. Consider care plan meetings, supervising contact, behaviour issues and any other issues you may think of. Discuss with your manager casework any concerns you may have about these situations.



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

[Section 65](#) If it considers it appropriate, the Children's Court may, before or at any stage during a care application, refer a matter to a confidential dispute resolution conference arranged by a Children's Registrar.

[Section 71](#) The Children's Court may make a care order in relation to a child or young person if it is satisfied that the child or young person is in need of care and protection for any reason, including ss (a) through (h) inclusive (refer to the Act for further detail).

BEING A WITNESS

The caseworker role

Most people feel anxious at the thought of being a witness. Although this feeling is normal, it is not necessary.

Your role as a witness is only one part of the picture.

Your role is to tell the truth and the facts about your casework. You do not need to argue or make submissions about the case.

Being a witness is not strictly a memory test. If you cannot remember an event clearly, you can ask the Court to either refer to the registered file, or simply state the truth,

that you do not remember the incident clearly and that you would need to check the records.

The allocated caseworker is responsible for the file as a witness. It's important to be prepared, have an ordered copy of all the court documents, read all the court documents, know the facts and circumstances of the case, and keep the evidence you give clear, brief and simple to understand. Any caseworker who has worked on the file can be cross examined. Any FACS staff member who has been called to provide evidence in a case must attend the court as ordered on the date and time required.

All FACS' evidence

- Care application and Specified Documents
- Subpoenaed material & Ch.16A /s.248 (with consent from provider)
- Children's Court clinic report, assessment and expert reports
- Update affidavits

Giving evidence

The best evidence to provide in your own sworn or affirmed evidence, such as an affidavit or when you appear as a witness, is direct evidence. Direct evidence means the things that you have experienced for yourself (using the five senses of sight, sound, touch, smell and taste). There will be times, however, when you will have to provide evidence to the Court which is not direct evidence, such as FACS' records of casework, meetings or interviews that you were not involved in.

'Direct evidence' can be a challenging concept to explore. We rely on our opinions, assumptions, guesses, feelings, intuition, hearsay, and beliefs etc. every day. It can be hard to learn not to do this when giving evidence. Try asking yourself 'how do you know that' or 'what does that prove'?

When giving evidence, usually your evidence will already be in a formal written or sworn/affirmed statement such as an 'affidavit'. If you are called as a witness, that evidence will then be tested at court in person through:

cross-examination, where the other party's legal representatives will ask you questions about your evidence

re-examination, where your legal representative can clarify anything raised in cross-examination that may have been misleading or was not clear.

When you are first called to the witness stand/box, you will be asked whether you wish to give an oath or an affirmation. An oath is a form of words spoken by a person to promise that he or she is telling the truth. An oath refers to the God recognised by the religion of the person swearing the oath. An affirmation has the same legal effect as an oath, but does not refer to God. Any person may choose to take an affirmation instead of an oath.

After you are 'sworn in', the FACS legal representative will ask you some introductory questions such as:

- your full name
- your qualifications
- your current position
- how long you have been employed by FACS
- when you were first assigned casework responsibility for the subject child/ren
- confirmation of the documents you have sworn or affirmed in the care proceedings
- whether there is anything you wish to change or to add to those documents and whether the documents are true and correct to the best of your knowledge.

The documents you have sworn or affirmed may then be 'tendered' (accepted) into evidence and marked with an exhibit number (for reference purposes during the hearing). There may be some arguments between the lawyers about any objections to your evidence being tendered. The FACS legal representative will not be able to 'lead' evidence from you (in addition to what has been filed) unless the Court grants leave for this. The Children's Court is an affidavit based court, and there would have to be a good reason why new evidence is being sought to be introduced at the time of the final hearing.

The other legal representatives will then proceed to cross-examine you. The Magistrate or Judge is also able to ask you questions if necessary for the purpose of obtaining evidence relevant to the decision the Court has to make.

What is cross-examination?

Cross examination is this process of questioning a witness about their evidence. After a witness has given evidence, they can be questioned by the other parties (usually by the other party's legal representatives) and the Magistrate or Judge. The questions that can be asked during cross examination are generally restricted to the testing the evidence that is already before the Court.

Cross-examination tests a witness's credibility, reliability, accuracy, honesty, and memory.

Legal representatives use cross examination to build up evidence for their final submission at the end of the hearing. It is designed to:

- obtain evidence and concessions that supports their case
- undermine the credibility of witnesses for the opposing party
- show up any gaps or inconsistencies in evidence.

The Court must forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting, abusive or humiliating, unless the Court is satisfied that it is essential in the interests of justice that the question be asked or answered. The Court must also forbid an examination of a witness that it regards as oppressive, repetitive or hectoring, or excuse a witness from answering questions asked during such an examination, unless the Court is satisfied that it is essential in the interests of justice for the examination to continue or for the question to be answered.

Before you answer a question, the FACS legal representative or another legal representative may object to the question that has been asked of you. The legal representatives will then make submissions about the objection and the Magistrate or Judge will rule on whether or not the question can be asked. You will need to wait until this is dealt with before you can proceed to give evidence. Do not answer the question until the Magistrate or Judge deals with the objection. If the question is allowed after the objection is dealt with and you do not remember the question then you can ask that the question be repeated.

Preparation as a witness

In preparing to give evidence, or being called as a witness for FACS you should ensure you are adequately prepared and knowledgeable about the evidence that has been filed in the care proceedings and the FACS records relating to the matter (i.e. as the allocated caseworker you should have a good knowledge and understanding of the case).

Ensure that you have a copy of all the documents filed by all parties and that these documents are ordered so that you can easily access and refer to them while giving evidence in Court. Before the court date, ensure that you have had adequate time to revise and consider:

- the FACS file (both paper and electronic records)
- any information you relied on in drafting the court documents you have authored, such as the care application, care plan/s and affidavit/s
- the events, conversations, meetings, reports and any other data that was relevant to your involvement
- what the application is for/any orders being sought
- the issues in dispute between the parties (you can ask the FACS legal representative if any parties have prepared case management documents which identifies the issues in dispute from their perspective)
- the Secretary's reasons for bringing this case to the Children's Court, the reasons for the assessment about restoration in the care plans and the way in which permanency planning has been addressed

Remember that if you attend a DRC, the information disclosed by any party at that conference is confidential and cannot be raised or referred to in the hearing before the Children's Court.

Seek advice from your legal representative prior to the hearing to discuss how to best prepare for cross-examination in your particular case.

Some dos and don'ts for responding to questions as a witness

Do

Prepare – know your facts
 Prepare – know your file
 Prepare – know the case
 Be open and honest
 Listen carefully
 Speak loudly, clearly and audibly
 Only state what you remember
 Say if you don't understand or can't hear the question
 Say no more than you need to answer the question
 Engage the judge or magistrate
 Ask for water or a comfort break if you need it, particularly if you have been giving evidence for a long time
 Ask the questioning lawyer if you can refer to a document if you need to

Don't

Talk to others about the evidence if there is a break /adjournment while you are still under cross examination

Take file notes etc. into the witness box without showing them to your lawyer first

Say more, if 'YES' or 'NO' will do

Be forced into 'YES' or 'NO' answers – explain why an answer cannot be given in 'yes' or 'no' if necessary

Argue with the cross-examiner

Question the cross-examiner

'Own' the case – remember your role is to give evidence and not make arguments or submissions

Attempt to answer questions you don't know the answer to

Attempt to justify action or inaction. Just describe the action or confirm the inaction.

Be afraid to answer 'I did not make that decision. It was ' or ' I do not have the delegation to make that decision.'

Lose sleep over giving evidence. Talk to the FACS legal representative if you are worried about it.

Reflect on the purpose of appearing as a witness in the Children's Court. What techniques could you use to be a credible witness when giving evidence for FACS? What are some ways in which you could prepare for cross-examination?

REPORTS , RESCISSION/ VARIATION AND APPEALS OF CARE ORDERS

Changing Children's Court decisions

Reports to the Court

Section 82 reports

When making an order (other than a guardianship order) allocating parental responsibility of a child or young person to a person (including the Minister) other than a parent, the Court can order that a party (usually the Secretary) prepare a written report concerning the suitability of the arrangements for the care and protection of the child or young person.

The report must:

- be provided to the Court within 12 months or such earlier period as the Court may specify (which means that the Court cannot order a report be provided beyond 12 months from the making of the order allocating parental responsibility)
- include an assessment of progress in implementing the care plan, including progress towards the achievement of a permanent placement
- be given to each of the other parties to the relevant proceedings, unless the Court orders otherwise.

If, after considering the report, the Children's Court is not satisfied that proper arrangements have been made for the care and protection of the child or young person concerned, the Court is, within 30 days of receiving the report, to notify each party to the relevant proceedings inviting the party to make an application under s.90 in relation to the order. This usually takes the form of a letter from the Registrar. Any such application must be made within 30 days of the party being notified by the Court. The Court cannot, of its own motion, rescind or vary or make a new order after receiving a s.82 report. It is up to the parties to make an application for rescission/variation. A finding by the Court that proper arrangements have not been made for the care and protection of the child or young person is a factor which indicates a significant change in relevant circumstances for the purpose of a s.90 application.

Section 76 (supervision) reports

When the Children's Court makes an order placing a child or young person under the supervision of the Secretary, the Court may require the presentation of a report before the end of the period of supervision which addresses:

- the outcomes of the supervision
- whether the purposes of the supervision have been achieved
- whether there is a need for further supervision in order to protect the child or young person, and
- whether any other orders should be made to protect the child or young person.

The Children's Court, of its own motion or on the application of the Secretary, and after giving the parties an opportunity to be heard, may extend the period of the supervision order.

The supervision order cannot exceed 24 months in total. The Court can also, of its own motion or on the application of the Secretary, revoke a supervision order that was made for a period of more than 12 months before it expires, at any time after the expiration of the first 12 months of the supervision order. The Court may do this if it considers that there is no longer a need for supervision in order to protect the child or young person.

Rescission/variation of care orders

To 'rescind' an order means to set it aside or to make it void. Rescission is by nature a final order unlike variation. Once rescinded, that is the end of the matter and an order cannot be revived.

To 'vary' an order means to alter or change its operation, such as shortening or extending the period it is in force, or varying a term of the order.

The Court has no authority to vary or rescind orders of its own motion. Only FACS or another interested person is able to make the application for rescission/variation to the Court. Applications can be made at any time after final care orders, if there has been a significant change in relevant circumstances.

A decision by FACS to rescind/vary a final care order would be made in consultation with your manager and Care Legal Support Legal Officer.

FACS is able to consider making a s.90 application at any time before final orders expire if there has been a significant change in relevant circumstances (whether or not the s.82 report is 'due'). An application for rescission/variation involves the following stages:

First ly, the Court needs to be satisfied that there has been a significant change in relevant circumstances since the final care order was made or last varied.

If the Court is satisfied that there has been a significant change in relevant circumstances, then the Court must take into account the mandatory considerations set out in s.90(2A) of the Act before granting leave:

- The nature of the application.
- The age of the child or young person.
- The length of time for which the child or young person has been in the care of the present carer.
- The plans for the child or young person.
- Whether the applicant has an arguable case.
- Matters concerning the care and protection of the child or young person that are identified in:
 - a report under s.82, or
 - a report that has been prepared in relation to a review directed by the Children's Guardian under s.85A or in accordance with s.150.

The Court can grant leave to rescind or vary so that the whole case is open for review, or the Court can limit the grant of leave so that only particular aspects/issues can be reviewed – such as only granting leave to review the issue of contact (but not re-open the matter in respect of placement)

Once leave is granted, the case will usually proceed in the same way as standard care applications; with assessments being undertaken, the preparation of an (amended) care plan, a DRC, and the consideration of final orders.

Before making an order to rescind or vary a care order that places a child or young person under the parental responsibility of the Minister, or that allocates specific aspects of parental responsibility from the Minister to another person, the Children's Court must take the following matters into consideration:

- the age of the child or young person
- the wishes of the child or young person and the weight to be given to those wishes
- the length of time the child or young person has been in the care of the present caregivers
- the strength of the child or young person's attachments to the birth parents and the present caregivers
- the capacity of the birth parents to provide an adequate standard of care for the child or young person
- the risk to the child or young person of psychological harm if present care arrangements are varied or rescinded.

Who can make an application for rescission/variation?

An application to have a final care order rescinded or varied may be made by:

- the Secretary
- the child or young person (or their legal representative)
- a person having parental responsibility for the child or young person
- a person from whom parental responsibility of the child or young person has been removed
- any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.

Other reviews of care orders

Breach of undertakings

The Secretary or a party to the proceedings in which an order accepting undertakings was made may notify the Children's Court of an alleged breach of an undertaking.

Once the Court has been notified of a breach of an undertaking it:

- Must give the parties an opportunity to be heard concerning the allegations
- Is to determine whether the undertaking has been breached, and
- If it finds that the undertaking has been breached, make such orders as it considers appropriate in all the circumstances.

A notice of breach of undertakings is not an application for rescission/variation under s. 90. If the court finds that an undertaking has been breached, it may make an orders that it could have made when the order accepting undertakings was first made. ***Breach of supervision order.***

The Secretary may notify the Children's Court if there has been a breach of a supervision order. Circumstances where there may be a breach of a supervision order include:

- Refusal to allow FACS to inspect the premises where the child or young person, subject of a supervision order, resides
- Refusal to allow FACS to meet and talk with the child or young person
- Refusal by the child or young person to accept the supervision of FACS and obey all reasonable directions of FACS

On being notified of a breach of a supervision order, the Court:

- Must give the parties an opportunity to be heard concerning the allegations
- Determine whether the supervision order has been breached, and
- If it finds that the supervision order has been breached, make such orders as it considers appropriate in all the circumstances.

A notice of breach of supervision order is not an application for rescission/variation under s. 90. If the court finds that a supervision order has been breached, it may make a orders that it could have made when the supervision order was first made.

Appeals of care orders

Once final orders are granted by the Children's Court, if a party is dissatisfied with the orders, they can appeal these orders to the District Court under s.91 of the Act. An appeal needs to be lodged with the District Court within 28 days of final orders being made by the Children's Court, unless an application for extension of time to lodge the appeal is allowed.

The only 'ground' of appeal in s. 91(1) is that a party be 'dissatisfied with an order'. A party can therefore appeal on any ground considered relevant including both questions of law and findings of fact. Although this ground is quite broad, examples of some specific circumstances which may lead to a party being dissatisfied with an order include:

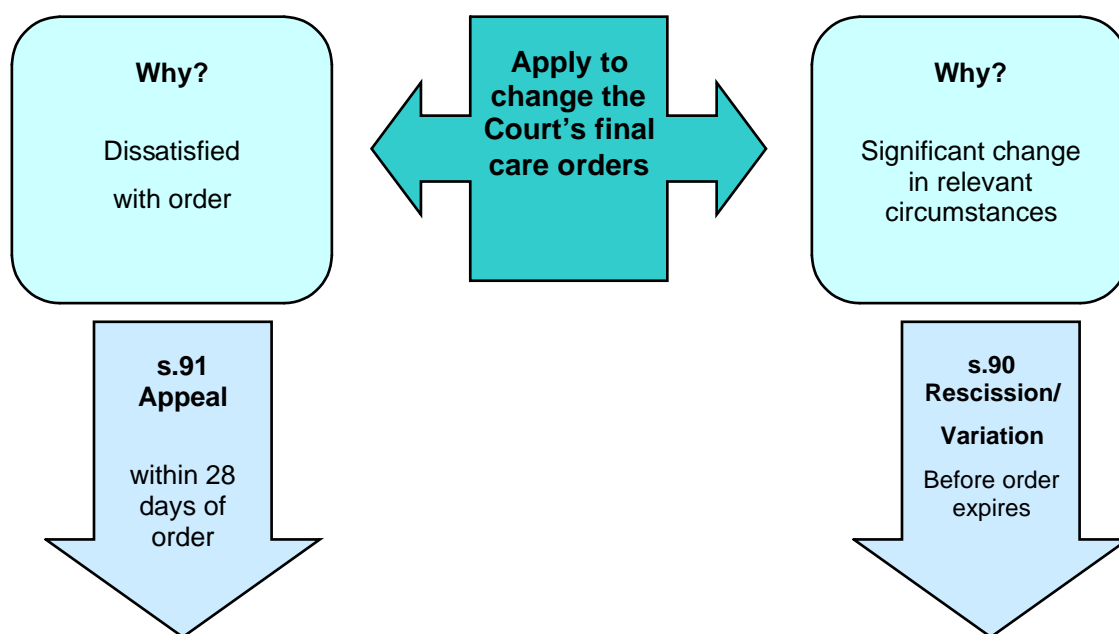
- failure of the Court to attribute sufficient weight to an issue or evidence
- errors of fact
- error of law on the face of the record
- denial of procedural fairness
- denial of natural justice, and
- jurisdictional error or ultra vires (order made without jurisdiction/power) .

The appeal involves a new hearing and fresh evidence or evidence additional to the final orders made in the Children's Court. The District Court has all the functions and discretions that the Children's Court has under Chapters 5 (proceedings/orders) and 6 (procedure) of the Act. The District Court may confirm, vary or set aside the decision of the Children's Court. The decision of the District Court is taken to be the decision of the Children's Court and has effect accordingly.

As the President of the Children's Court is a District Court Judge, an appeal against an order of the Children's Court made by the President is to be made to the Supreme Court rather than the District Court.

If you are considering that an appeal needs to be made against final orders of the Children’s Court (keeping in mind the 28 day timeframe for lodging an appeal), consult your Manager Casework and seek legal advice.

Appeals against interim orders of the Children’s Court can be made to the Supreme Court. An appeal to the Supreme Court would only be warranted in exceptional circumstances, such as where there is risk of serious harm to a child or young person if the interim order is implemented. Again, if you are considering an appeal against an interim order, consult with your manager caseworker and seek legal advice.



As a new caseworker, talk to your manager about any reviews or appeals that your CSC has recently been involved with. What are the key casework practice points you can learn from these cases?



Legislative links

The Children and Young Persons (Care and Protection) Act 1998

Section 76(4) reports filed within the period of a supervision order.

Section 82 reports filed when parental responsibility is allocated to a person other than a parent.

Section 90 Where there has been a significant change in relevant circumstances, any interested person (including the Secretary) may apply to the Court to rescind (set aside) or change (vary) a care order.

Section 91 Any party to proceedings may appeal a final care order of the Children's Court to the District Court if dissatisfied with the order.

SELF CARE



'It is one of the most beautiful compensations of this life that no man can sincerely try to help another without helping himself.'

Ralph Waldo Emerson

(American essayist, lecturer and poet 1803-1882)

In Module 1 you were referred to the **Self Care Toolkit** located in the 'key resources' section on the LMS.



For this module, access and read '**The ABCs – Important themes in preventing vicarious trauma**' fact sheet from the LMS.

Discuss this self care topic with your MCW in supervision.



KEY POINTS FOR PRACTICE

Caseworkers should ensure that an updated copy of the *Children and Young Persons Care and Protection Act 1998* is used and referred to. It is extremely important to keep up to date with legislative changes and court processes through attendance at training and local meetings.

Casework staff should promptly seek legal advice from the appropriate lawyer for any legal issue or queries

FACS best practice guidelines is to use the least intrusive options available when responding to risk of significant harm to a child or young person. FACS must ensure that prior alternative action has been attempted in case work with families prior to considering court action. In all cases a child or young person's best interests, safety, welfare and wellbeing must be paramount when considering the most appropriate options.

Detailed, accurate and timely record keeping is important, particularly when records need to be produced to a court.

All conversations, observations and consultations should be recorded accurately and respectfully providing context and rationale. Information may be required as evidence and may also be read by the children, young people and families it relates to. Therefore it is extremely important to think about the purpose of recording information and to consider it in the context of who might be reading it in the future. It is also important in attempting to prove professional judgements and to support decisions made in casework.



WHERE TO GO FOR FURTHER LEARNING SUPPORT

Policies

[FACS Permanency Planning Policy](#)

Memorandum of understanding between FACS and the Legal Aid Commission of NSW

Memorandum of understanding between FACS and the Federal Magistrates Court of Australia

Protocol for the settlement of court documentation in care proceedings for filing in the Children's Court

People

Care Legal Support Team - part of FACS Legal Services, this team is able to provide local advice, review and settle the Initiating Applications and Reports for all court proceedings.

Care Litigation Team and External Legal Practitioners (ELPs) – provide advice and representation in care matters before the court, including advice about the court, court processes, evidence and applications/reports filed with the court.

Court Liaison Officer (CLO) - is the representative that attends court on behalf of the caseworker and the manager casework and conveys the manager casework's instructions to the FACS legal representative.

Casework specialist – casework specialists work with caseworkers and managers to support your practice and integration of knowledge and theory into case practice skills in the field with families. They can advise you regarding the application of the Act and court proceedings.

Resources

[The Children's Court website](#)

Practice notes issued by the President of the Children's Court on the practice and procedure page of [Children's Court website](#)

Report of the [Special Commission](#) of Inquiry into Child Protection Services in New South Wales (the Wood Report), The Hon James Wood AO QC, Published by NSW Department of Premier and Cabinet, 2008.

[A Safe Home for Life, Report on the outcomes of public consultation on the child protection legislative reforms discussion paper 2012, FACS, November 2013.](#)

Code of Conduct for Legal Representatives in Care and Protection Proceedings in the Children's Court of New South Wales as prepared by the Children's Court of NSW Advisory Committee.



EXTENDING PRACTICE

Now that you have completed this module, you may wish to consider tasks to extend your practice that you have been introduced to here.

These activities are designed or suggested as optional, additional activities to further develop skills, knowledge and attitudes in relation to Legal Frameworks and Responsibilities. These tasks are not assessed by Learning and Development and may be undertaken at anytime.

Practice ideas

Preparation for supervision

Use this opportunity to consider topics for reflection in supervision with your manager. As a starting point you might like to consider:

Reflect on your feelings about giving evidence. Discuss the challenges and benefits of the model litigant policy and 'natural justice' in your ongoing work with families.

Reflect with your manager how you feel about your legal work being critiqued and having to make extensive changes to work in short time frames.

Observe an S82 report visit

Attend a home visit/ placement visit as a secondary caseworker where a Section 82 Report is due to the court. Observe the information that the caseworker discusses with the child/ young person, family and carers. After the Report has been filed, make a time to review the final document. Take note of the format, layout, and how the information obtained from the parties, service providers, or agencies is represented in the Report and the recommendations made.

Service of documents

As a secondary caseworker attend a service of documents home visit and view the process for serving parties and completing an Affidavit of Service.

Service of subpoenas

Assist in serving subpoenas on organisations. This can be done by finding out if conduct money is required and organising this, finding out where in the organisation the subpoenas need to be addressed, served – this is especially important in large organisations like NSW Health, or Police that may have varying procedures.

Filing of documents

File prepared documents with the Court Registry that your CSC uses for care matters. Distribute the sealed documents to relevant legal representatives.