

Children's Court of New South Wales Practice Note No. 2

Initiating Report and Service of the relevant portion of the Community Services file in Care Proceedings

Issued 23 July 2010

Amended 1 January 2013

Amended 1 July 2016

1. Commencing proceedings for a Care Order

- 1.1 This amended Practice Note takes effect on 1 July 2016.
- 1.2 The written report required to accompany an application under s 61 (the Report) must succinctly and fairly summarise the information available to the Secretary, sufficient to support a determination that a child or young person is in need of care and protection and any interim orders sought.
- 1.3 This Practice Note applies to care applications made under Chapter 5 of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) with the exception of the following applications;
 - Applications for rescission or variation of orders under s 90
 - Applications on breach of undertakings under s 76 (5)
 - Applications on breach of supervision under s 77(3)
 - Applications for assessment orders under s 53, s 54 and s 55
 - Applications for contact orders under s 86 and,
 - Applications for emergency care and protection orders under s 45(1)(a) and s 46.

2. Service of Documents

- 2.1 Where practicable, the Secretary should serve, as a minimum, the documents specified in this Practice Note (the Specified Documents) with the Application and Report (Form 1), but must otherwise serve, or use reasonable efforts to serve, the Specified Documents as soon as possible, but no later than the first occasion the Application comes before the court (the first return date): s 64. Service on the first return date should be the exception, rather than standard practice.

2.2 The Specified Documents are copies of:

- All current orders, from any jurisdiction, including apprehended violence orders, and any other order being relied upon for an argument pursuant to section 106A.
- Redacted Risk of Serious Harm Reports from the previous 12 months.
- Any birth alerts.
- Records of any prior alternative action, including referrals to or reports from support services, any home visits or meetings with any family member, children or others responsible for the child or children in the previous 12 months.
- Safety assessments and narratives (SARA records), and any case plans, parental responsibility agreements, including assessments or reports received from other services or agencies.
- Removal or assumption records.
- Any direct evidence received from the Police, JIRT, health service providers, or mandatory reporters except where such material might prejudice an ongoing criminal investigation.
- Any assessments 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, including any test results such as urinalysis.
- A genogram for the child.

Notes:

a) The Specified Documents are to include any actual records, including photographs, together with any emails, file notes, or notes of any conversations including telephone or other electronic communications.

b) Documents are only required to be served in the form in which they exist on the Department of Family and Community Services' file. The Secretary is not required to convert information into a different format.

c) Documents are not required to be supported by an affidavit.

3 Further procedures applying to the service of documents

- 3.1** With the exception of a Summary of Risk of Serious Harm reports and a genogram, only documents held by the Department of Family and Community Services are required to be served. The Secretary is not required to source documents that are not in his or her possession at the time of service. If a party wishes to rely on documents not in the possession of the Department of Family and Community Services, the party should subpoena the person or entity that holds the documents.
- 3.2** If a genogram has not been created as at the first return date it is to be prepared and served within 14 days of the first return date.
- 3.3** If there are additional documents (which may assist the Court or a party) that come into the possession of the Secretary following service of the Specified Documents, he or she must also serve those additional documents forthwith.
- 3.4** The service of documents by the Department of Family and Community Services is subject to compliance with s 29. Accordingly, information disclosing the identity of a person who made a report, the report and evidence of the contents of the report may be deleted from documents.
- 3.5** Other than the Application and Report, the documents are not to be filed in the Court registry.
- 3.6** Documents already served in accordance with this Practice Note need not be produced again in response to a subpoena.
- 3.7** Any party may re-list the matter after giving reasonable notice to the other parties to seek an order to vary the procedures required by this Practice Note.

His Honour Judge Johnstone
President