

Children’s Court of New South Wales

Practice Note 5

Case management in care proceedings

First issued 2 September 2011

Amended 19 September 2014

Amended 30 June 2017

1. Commencement

1.1 This amended Practice Note commences on 3 July 2017.

2. Overriding objective

2.1 This Practice Note has the overriding objective of enabling the Children’s Court of New South Wales to deal with cases in its care and protection jurisdiction justly. Dealing with a case justly includes, so far as is practicable:

- a) ensuring that in all decisions and determinations made with respect to the conduct of the case, the safety, welfare and well-being of the child or young person, the subject of the proceedings, are paramount;
- b) that it is dealt with expeditiously and fairly;
- c) dealing with the case in a manner which is proportionate to the nature, importance and complexity of the issues;
- d) ensuring that the parties are on an equal footing;
- e) ensuring appropriate levels of expenditure of public funds; and
- f) allotting to it an appropriate share of the Court’s resources, while taking into account the need to allot resources to other cases

2.2 The Court must seek to give effect to the overriding objective when it interprets any provision of this Practice Note.

2.3 The just determination of cases before the Court requires that the parties and their legal representatives fully comply with this Practice Note.

3. “Children’s Magistrate”

- 3.1** A reference in this Practice Note to a “Children’s Magistrate” includes a reference to the President of the Children’s Court and a Local Court Magistrate exercising the jurisdiction of a Children’s Magistrate.

4. Powers and discretions of Children’s Magistrates and Children’s Registrars not affected

- 4.1** This Practice Note does not limit or interfere in any way with the powers and discretions of a Children’s Magistrate or Children’s Registrar under the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act), the *Children’s Court Act 1987* and the *Children’s Court Rules 2000* either generally or in a particular case.

5. Time standards

- 5.1** The Children’s Court aims to complete 90% of care cases within 9 months of commencement and to complete all cases within 12 months of commencement.

6. Dispensing with requirements on terms or conditions

- 6.1** Where a Children’s Magistrate or Children’s Registrar may give leave or dispense with any requirements under any Act including the Care Act, the *Children’s Court Act 1987*, the *Children’s Court Rules 2000* or a Practice Note (including this Practice Note), he or she may do so on such terms or conditions as he or she determines.

7. Representation

- 7.1** If a party is legally represented, a legal practitioner with adequate knowledge of the case must represent that party whenever the case is listed before the Court including a dispute resolution conference conducted under section 65 or an external alternative dispute resolution conference conducted under section 65A of the Care Act. A legal practitioner (other than the independent legal representative of a child) must have sufficient instructions to answer the Court’s questions and to enable the Court to make all appropriate orders and directions.
- 7.2** If a party is represented by an agent, that agent should have adequate instructions to deal with any questions asked by the Court.

7.3 In the event that a legal practitioner acts as agent for a party, the agent must forward a copy of all court orders and directions to the principal legal practitioner as soon as possible after the orders or directions are made.

8. Guardian ad litem

8.1 In the event that a legal representative for a child or young person or of a parent of a child or young person becomes aware of any circumstance or circumstances which may warrant the appointment by the Court of a guardian ad litem under section 100 or 101 of the Care Act, the legal practitioner must bring the circumstance or circumstances to the attention of the Court as soon as is reasonably possible following the legal practitioner becoming aware of the circumstance or circumstances.

9. Waiver of address for service requirements

9.1 A legal practitioner acting for a party in care proceedings on a duty basis only is excused from complying with clause 30F of the *Children's Court Rules 2000*, unless the Court orders otherwise.

10. Representation of children and young persons in care proceedings

10.1 The appointment of a legal representative to act for a child or young person under section 99(1) of the Care Act shall be deemed to have been made to a solicitor or barrister employed or engaged by Legal Aid NSW on the filing of a care application.

10.2 When a legal practitioner has appeared on the record as the legal representative of a child or young person in an application for an emergency care and protection order (ECPO) that legal practitioner is taken to be the child's or young person's representative for all future proceedings and must be notified by the applicant of any subsequent care applications regarding that child or young person.

10.3 When a legal practitioner has filed a **Notice of acting** as a child's or young person's legal representative in any proceedings concerning or relating to a care application, that legal practitioner is taken to be the child's or young person's representative for all future proceedings and must be notified by the applicant of any subsequent care applications regarding the child or young person.

11. Explanation pursuant to s 45 of the Care Act – “First available opportunity”

11.1 An explanation provided to the Court by the Secretary pursuant to section 45(3) of the Care Act shall be provided within **7 days** of the removal of the child or the assumption of care of the child.

12. Listing of certain care applications (ss 43, 44, 45 & 46)

12.1 An application for an emergency care and protection order under section 46 of the Care Act or a care application made following removal of a child or young person under section 43 of the Care Act or following assumption of a child or young person into care under section 45 of the Care Act is, in the ordinary course, to be listed before a Magistrate the next sitting day after the application is filed but no later than **3 working days** after the application is filed.

12.2 If a care application referred to in paragraph 12.1 is filed in a court registry and the Magistrate is not sitting, the application should be listed within the timeframe referred to in paragraph 12.1 at the nearest court where a Magistrate is sitting. Where parents cannot attend the alternative court location, arrangements may be made for the parents to appear by way of AVL or telephone.

12.3 The Secretary is to serve a care application referred to in paragraph 12.1 on the person or persons who have parental responsibility for the child as soon as possible and an affidavit of service or attempted service is to be filed with the Court registry before the application is determined.

12.4 The Secretary is to also notify any legal representative who has previously filed a **Notice of acting** for the child or young person in previous care proceedings that an application as referred to in paragraph 12.1 has been filed.

12.5 If it is necessary to adjourn the application to allow:

- a) the person or persons with parental responsibility to be located or served with the application, or
- b) the person or persons with parental responsibility to prepare for the hearing, or
- c) the legal representative of the child or children who are the subject of the application to obtain instructions or prepare for the hearing,

then the adjournment for any of those purposes should not exceed **5 working days**.

13. Application to extend an Emergency Care and Protection Order (ECPO)

- 13.1** An application for an extension of an emergency care and protection order (ECPO) under section 46(4) of the Care Act is to be filed in the registry of the Court which granted the original ECPO unless the Court directs otherwise.
- 13.2** The Secretary in making an application for an extension of an ECPO shall give at least **48 hours'** notice to the Court, the other parties, and the legal representative who appeared for the child or young person in the application for the original ECPO.
- 13.3** The requirement to provide such notice may be dispensed with (or the 48 hour time period shortened) by the Court.

14. Party seeking leave to amend or withdraw application to give notice

14.1 A party intending to apply for leave to:

- a) amend a care application (including the grounds on which the order is sought);
- b) amend the order or orders sought in the care application following the making of a determination that the child or young person is in need of care and protection; or
- c) withdraw a care application,

shall give at least **24 hours'** notice to the other parties of that application, unless such requirement is dispensed with by the Court.

15. Subpoenas to produce

- 15.1** Parties must issue subpoenas as soon as is practicable after the proceedings are commenced so that documents can be produced and inspected in a timely manner and are available for the proper preparation of the case, including submission to experts.
- 15.2** The issuing party must endorse on the subpoena the proposed access orders sought by the party.
- 15.3** The parties should confirm with the Court registry prior to the return date that the documents under subpoena have been produced to the Court.

- 15.4** Where the subpoena has not been served or where no documents have been produced the issuing party may seek a further return date from the Court on the return of subpoena or the Registrar of the Court following the mention of the return of subpoena.
- 15.5** Where an application is to be made to set aside the subpoena by the producer or any other party or person with sufficient interest, written notice of the application stating the grounds for the application in broad terms only is to be provided to the Court and the issuing party prior to the return date. No particular form of notice is required. Where an application to set aside the subpoena is to be made the applicant and the issuing party are to attend the Court on the return date.
- 15.6** Where the producer or any other party objects to the access orders proposed by the issuing party written notice of the objection is to be provided to the Court and the issuing party prior to the return date but no particular form of notice is required. Where an objection to the proposed access orders is made and agreement is not reached between the parties prior to the return date the issuing party and the objecting party are to attend the Court on the return date.
- 15.7** Where the documents have been produced and no objection to the proposed access orders has been raised the Court may make orders in accordance with the proposed access orders in the absence of the parties subject to any application to set aside the subpoena.
- 15.8** Where proposed access orders have not been endorsed on the subpoena and no objection to access has been raised the Court may make the following **standard access orders** in the absence of the parties subject to any application to set aside the subpoena:
- 'The issuing party is to have first access within **3 working days** and thereafter access to all parties. Leave is granted to a legal practitioner of a party to uplift documents for **3 working days** and photocopy documents that the party proposes to rely on at the hearing or to be forwarded to the Children's Court Clinic or other expert.'*
- 15.9** Before making an order for access in the absence of the parties under paragraph 15.7 or 15.8 the Court must be satisfied that Rule 30A(8) of the *Children's Court Rules 2000* has been complied with. Written notice of compliance by a legal practitioner for the issuing party will in the ordinary course be regarded as sufficient.
- 15.10** Where a party is not represented by a legal practitioner access is to take place in the presence of a member of the registry staff. Photocopy access may only be provided to an unrepresented party with leave of the Court.

- 15.11** If photocopy access is granted to any document produced on subpoena, it shall be a condition of photocopy access that the copy shall not be used for any purpose other than the proceedings for which the document has been produced, unless the Court otherwise directs.
- 15.12** A **subpoena for production** cannot be issued after the matter has been listed for a contested final hearing, except with the leave of the Court.
- 15.13** The producer may produce a copy of any document instead of the original document unless the issuing party has clearly indicated in the schedule of documents that the original document is required to be produced.
- 15.14** Where copies of documents have been produced on subpoena and those documents are not admitted into evidence during the course of the proceedings, the documents will be destroyed by the Registrar of the Court **42 days** after the conclusion of the matter unless arrangements have been made with the Registrar to collect the documents.
- 15.15** Original documents produced on subpoena and not admitted into evidence during the course of the proceedings will be returned to the producer at the conclusion of the matter.
- 15.16** Original documents produced on subpoena and admitted into evidence during the course of the proceedings will be returned to the producer on request at the completion of proceedings on the understanding that the documents may be required in future proceedings and should not be destroyed.

16. Standard directions in care proceedings

- 16.1** The following **standard directions** will apply to an application by the Secretary for a care order (other than an application for an ECPO or an application for an assessment order) except where the listing arrangements at a particular regional or country court do not allow strict compliance with the standard directions or where the special circumstances of a particular case (for example, where the case falls within the Short Term Care Orders Pilot Project) warrant departure from the standard directions.
- 16.2** The Court may direct that relevant standard directions be given in an application under section 90 of the Care Act where the Secretary seeks variation or rescission of an order allocating parental responsibility.

16.3 The standard directions may be departed from to allow for the conducting of a dispute resolution conference under section 65 of the Care Act, or the referral of the proceedings by the Court to an alternative dispute resolution service under section 65A of the Care Act.

16.4 In relation to ADR procedures in the Children’s Court generally, see *Practice Note 3 “Alternative dispute resolution procedures in the Children’s Court.”*

16.5 Directions by the Court as to filing of affidavits and other documents must be complied with. Should a party, without satisfactory explanation, fail to comply with a direction to file material, the Court may order that the party will have no further opportunity to file the material.

16.6 Standard directions

16.6.1. Establishment stage

- a) When a care application first comes before the Court (the first return date) the Court may grant leave to the respondent mother/father or any other party to file and serve evidence in reply to the Secretary’s **Application and report initiating care proceedings** within **24 days**.
- b) At the first return date (following consideration of any application for an interim order) the Court will adjourn the proceedings to a date that is not to exceed **28 days** after the first return date.
- c) In all cases, the Secretary must, within **14 days** of the first return date, file and serve upon the parties a **Summary of the proposed plan for the child/young person**.
- d) The parties are to advise the Court (no later than the next court date) whether the issue of establishment is contested.
- e) If the Court is advised that the issue of establishment is not contested and the Court makes a finding that the child/young person is in need of care and protection then the Court will immediately make directions in relation to the placement stage.
- f) If the Court is advised that the issue of establishment is contested then the Court:
 - i. may grant leave to the Secretary to file and serve further evidence on the issue of establishment within **14 days**, and

- ii. direct (or grant leave to) the respondent mother/father/other party to file and serve evidence in reply within **14 days** after the filing of the Secretary's further evidence, and
 - iii. if appropriate, list the matter for a dispute resolution conference on the issue of establishment at the earliest opportunity following service of any further evidence by the Secretary and the respondent mother/father/other party.
- g) If following the filing of further evidence and the conducting of any dispute resolution conference the Court is advised that the issue of establishment is still contested then the parties are to file an **Application for hearing date to be set** and the Court will list the matter for hearing on the issue of establishment on the first available date to be heard expeditiously.
- h) For the purposes of this paragraph, the **Summary of the proposed plan for the child/young person** should briefly and succinctly set out the following:
- i. the alleged risk and/or safety concern(s) for the child/young person
 - ii. whether the Secretary is presently of the view that restoration is a realistic possibility
 - iii. the tasks and demonstrated changes the parents need to undertake in order for the child/young person to be returned to their parents safely (including relevant timeframes for the tasks/changes to occur)
 - iv. the kind of placement presently proposed (both on an interim basis and long-term)
 - v. the kind of contact presently proposed (including frequency and duration of proposed contact and whether contact is to be supervised both on an interim basis and long-term).

16.6.2. Placement stage

- a) If an application is to be made for an assessment order under section 53 or 54 of the Care Act the application should be filed as soon as possible after establishment.

Refer to Practice Note 6 "Children's Court Clinic assessment applications and attendance of Authorised Clinicians at hearings, dispute resolution conferences and external mediation conferences" as to the procedures for the making of an assessment application, providing all relevant documents to the Children's Court Clinic following the making of an assessment order and making arrangements for the Authorised Clinician of the Children's Court Clinic (or an assessor appointed under section 58(2) of the Care Act) to attend court to give evidence

or to attend a dispute resolution conference under section 65 or an external mediation conference under section 65A of the Care Act.

- b) After the receipt of any assessment report and prior to the preparation of a final care plan the Court will consider referring the matter to a Children's Registrar to conduct a dispute resolution conference.
- c) The Secretary is to file and serve a final care plan and permanency plan, a draft minute of order and a copy of the birth certificate for each child within **28 days**, or such other period as the Court directs, of the receipt of a Clinic assessment report, or if no assessment report is ordered, within **28 days** of establishment.
- d) The respondent mother/father/ or any other party is to file and serve evidence replying to the care plan and permanency plan within **14 days** of the filing of the care plan and permanency plan.

17. Listing a case for hearing

17.1 A matter may only be listed for hearing by a judicial officer or by a Children's Registrar at the direction of a judicial officer.

17.2 The parties are to provide to the Court an **Application for hearing date to be set** which is to be completed by or on behalf of one of the parties and signed by or on behalf of all the other parties. In the application the parties are to advise the Court, inter alia, the names of witnesses required for cross-examination, the availability of all witnesses required for cross-examination (including an Authorised Clinician or assessor appointed under section 58(2) of the Care Act and other expert witnesses), whether a joint conference of experts has been convened in the case of competing experts, the suitability of witnesses to give evidence via AVL or telephone, the need for any interpreter, the estimated length of the hearing and the issues that are in dispute.

17.3 A case will not be listed for hearing unless the Court is satisfied that all directions of the Court have been complied with (including any direction under section 65 of the Care Act that the parties attend an alternative dispute resolution conference or under section 65A of the Care Act that the parties attend an alternative dispute resolution service) and that the matter is otherwise ready for hearing.

17.4 In the event that more than one expert witness is to be called to give evidence in relation to a particular issue or issues, the parties are to raise with the Court whether directions should be made for the taking

of the evidence under concurrent evidence procedures such as a joint conference of witnesses.

17.5 Where an Authorised Clinician (or an assessor appointed under section 58(2) of the Care Act) is required for cross-examination, the party seeking such attendance must in accordance with *Practice Note 6* notify the Court of the clinician's availability.

17.6 Unless otherwise specified the Authorised Clinician will be required to attend on the first day of hearing. The Registrar of the Court is to send a **Notice to Authorised Clinician to attend Court** to the Director of the Children's Court Clinic within **7 days** following the matter being set down for hearing.

17.7 At the same time as the Court lists the matter for hearing it will list the matter for a **Readiness Hearing 1 month** before the hearing date.

17.8 Further standard directions

17.8.1 The following **further standard directions** will apply in all contested hearings (other than a contested hearing on an interim order application or a contested hearing for leave under section 90) unless the Court otherwise directs.

17.8.2 The Secretary will serve on the other parties a bundle of any documents produced under subpoena upon which the Secretary proposes to rely at the hearing, including by way of cross examination at least **14 days** before the **Readiness Hearing**.

17.8.3 Any other party will serve on all the other parties a bundle of documents produced under subpoena upon which the party proposes to rely at the hearing and that have not been already served by the Secretary pursuant to paragraph 17.8.2 at least **7 days** before the **Readiness Hearing**.

17.8.4 The parties, other than the independent legal representative of a child, shall, at least **7 days** before the **Readiness Hearing**, file and serve on the other parties a proposed minute of order.

17.8.5 All parties shall, at least **7 days** before the **Readiness Hearing**, file and serve on the other parties a **Case management document** which contains:

- a) a list of all affidavits (and other documents) to be relied upon by the party at the hearing,

- b) a schedule of all documents produced under subpoena upon which a party proposes to rely at the hearing, including by way of cross-examination,
- c) a **detailed** statement of the real issues in dispute (for example, a statement that an issue in dispute is “*whether there is a realistic possibility of restoration*” is not sufficient), and
- d) confirmation of the witnesses required for cross-examination.

17.9 At the **Readiness Hearing** all legal representatives and unrepresented parties have a collective responsibility to assist the Court by ensuring that:

- a) all relevant applications, affidavits and reports have been filed,
- b) the application(s), affidavits and any reports have been reviewed and there is no need to amend the application nor file further evidence,
- c) all relevant interlocutory matters have been attended to and that the matter is ready for hearing,
- d) all possibilities of reaching agreement have been fully explored,
- e) the issues to be addressed at the final hearing are clearly identified,
- f) evidence addressing those issues is filed or otherwise available,
- g) all expert witnesses (including an Authorised Clinician or an assessor appointed under section 58(2) of the Care Act) who are required for cross-examination are available to attend the hearing **and** that the witness has been provided with all relevant material including all relevant material (as agreed by the parties) that has been filed since their report was prepared. Any further agreed additional material may only be provided to the witness after the Readiness Hearing with leave of the Court. any directions made concerning the taking of expert evidence under concurrent evidence procedures have been complied with,
- h) all other parties have been notified of which witnesses are required for cross-examination,
- i) the length of time required for the cross-examination of each witness has been estimated,
- j) all witnesses have been timetabled and are available,
- k) expert witnesses in particular have been allotted specific dates and times for their evidence, and the length of time allocated for their evidence must be carefully assessed to ensure that it can be given without the expert witnesses being required to give evidence on a further occasion,
- l) all documents, the production of which is sought upon subpoena, have been produced,

- m) a schedule of all documents produced under subpoena upon which a party proposes to rely at the hearing (including by way of cross-examination) has been filed and served on all the parties and the documents referred to in that schedule have been served on all of the parties,
- n) a chronology of relevant events will be filed a week before the hearing. In the usual course the chronology is to be prepared by the independent legal representative or, if there is no independent legal representative, by a party nominated by the Court,
- o) care plans and permanency plans have been filed and served on other parties,
- p) copies of birth certificates for each child have been filed,
- q) (where applicable) all Children's Court Clinic assessments have been carried out,
- r) the attendance of the Authorised Clinician, (or an Assessor appointed under section 58 (2) of the Care Act), if required, has been requested by the Registrar of the Court in accordance with *Practice Note 6*,
- s) arrangements have been made for the appearance of any party or witness at the hearing by AVL and, where required, a remote witness room is available,
- t) arrangements have been made for the playing of any evidence by video or other special equipment (for example, a JIRT interview), and
- u) where required, a request has been made for the attendance of an interpreter at the hearing.

17.10 Although all relevant evidence must be filed by the parties prior to the Readiness Hearing the Court may at the Readiness Hearing grant leave to a party to file prior to the hearing an affidavit which updates an affidavit previously filed.

17.11 If at the Readiness Hearing the Court is satisfied that all parties have complied with all Court directions and is satisfied that the matter is ready for hearing then the Court will confirm the hearing date.

17.12 If at the Readiness Hearing the Court finds that a party has failed to prepare their case in accordance with court directions and relevant Practice Notes (including this Practice Note), a hearing date may nevertheless still be confirmed in the best interests of the child or young person. However, the defaulting party will be given specific, detailed directions, and compliance with those specific directions will be compelled.

17.13 Failure to comply with such a specific direction will usually result in the proceedings being determined on the evidence that has been filed in compliance with the Court's timetable and directions.

18. Order for costs

- 18.1** Failure to comply with directions of the Court or this Practice Note may result in an order for costs being made against the non-complying party in accordance with section 88 of the Care Act.

19. Re-listing for non-compliance with directions

- 19.1** If any direction of the Court is not complied with, the case may be re-listed before the Court by any party on **48 hours'** notice for further directions. The Court may re-list a matter for further directions on its own motion if any direction is not complied with.

20. Application to vacate hearing

- 20.1** If it appears to a party that a hearing date is in jeopardy as a result of non-compliance with orders or directions of the Court or because of intervening events, the party must immediately approach the Court for the urgent re-listing of the matter before a judicial officer.
- 20.2** Any application to vacate a hearing date must be in writing on the prescribed form **Application to vacate a hearing date** and must state the reasons for the application.
- 20.3** The party bringing the application to vacate a hearing must give reasonable notice to all other parties that an application to vacate is being made.
- 20.4** When a hearing date has been allocated, it will not be vacated unless the party seeking to vacate the hearing provides cogent and compelling reasons.

21. Explanation of proceedings

- 21.1** The Court may, in proceedings in which a legal practitioner represents a child or young person, request the legal practitioner to advise the Court of the steps taken to ensure the child or young person understands:
- a) the proceedings;
 - b) the nature of any assertions made in the proceedings; and
 - c) the legal implications of any such assertions,

for the purpose of enabling the Court to perform the duties imposed upon it by section 95(1) of the Care Act.

22. Consolidation of applications

22.1 The Court may direct that multiple applications concerning the same child or young person or other children or young persons be heard together. The Court may give such directions as are necessary for the expeditious conduct of all those proceedings.

23. Evidence on affidavit

23.1 Except for the following documents, evidence on behalf of a party shall be filed in affidavit form unless the Court otherwise directs:

- a) a written report under section 61(2) of the Care Act
- b) a report from an Authorised Clinician
- c) any other report containing expert opinion evidence to be admitted into evidence pursuant to paragraph 29.1 of this Practice Note
- d) documents produced under subpoena that are specified in the schedule of documents referred to at paragraph 17.8.5(b) of this Practice Note.

23.2 An affidavit shall be made in the first person.

23.3 The body of an affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of subject matter.

23.4 Where an affidavit contains or annexes an extract from a document, it shall be a fair extract and the original document shall be made available for inspection by the Court or another party at the direction of the Court.

24. Evidence of witnesses

24.1 At a contested hearing where a witness is required for cross-examination, the usual procedure will be for each witness to be called and the affidavit or affidavits of that witness will be identified and formally read as the witness's evidence in chief.

24.2 If no party wishes to cross-examine a witness, the affidavit of that witness may be formally read as the evidence of the witness and the witness is to be advised prior to the hearing that his or her attendance at court is not required.

24.3 The Court will not usually permit a witness to be called if no affidavit of that witness has been filed. The Court may, however, give leave

for such a witness to be called and give oral evidence. In determining whether to grant such leave, the Court will consider the interests of justice, the interests of the child or young person who is the subject of the proceedings, the opportunity the party has had to place the evidence otherwise before the Court and any prejudice caused to another party.

- 24.4** The Court may grant leave to enable a party to supplement the affidavit evidence of the witness called by that party with further oral evidence or to clarify matters within the written evidence by further oral evidence. In determining whether to grant such leave, the Court will consider the interests of justice, the interests of the child or young person who is the subject of the proceedings, the opportunity the party has had to place the evidence otherwise before the Court and any prejudice caused to another party.

25. Orders and directions agreed between the parties in proceedings

- 25.1** Parties are encouraged to consult and determine the best way of resolving any issues in dispute. If a common position is reached by the parties as to what orders, undertakings and/or directions should be made by the Court, the parties should record those agreed orders, undertakings and/or directions in the form of a draft minute of order.
- 25.2** Any agreements reached by the parties must reflect the objects and principles of the Care Act. The Court is not obliged to make any orders or directions that are recorded in a draft minute of order.

26. Hearing of interim and leave applications

- 26.1** The hearing of a contested application for an interim order or a contested leave application under section 90(1) of the Care Act must be no longer than **2 hours** except in exceptional circumstances.
- 26.2** Cross-examination will be allowed at such a hearing only in exceptional circumstances.

27. Duration of interim orders

- 27.1** If an interim order does not specify the duration of the order or the date upon which it expires, then the interim order will be taken to continue until the Court makes a further order which is contrary to that interim order.

28. Excusing personal attendance of child or young person from hearing

28.1 The Court is taken to have excused the attendance of a child or young person who is the subject of the proceedings unless a direction to the contrary is given.

29. Facilitating admission and admissibility of expert evidence

29.1 A report containing expert opinion evidence, whether prepared for the purpose of the proceedings or otherwise, may be admitted into evidence if:

- a) a copy of the report has been served (or filed and dealt with pursuant to clause 18 or 36 of the *Children's Court Rules 2000*); and
- b) no party required the author of the report to attend for cross-examination; or
- c) the author is available for cross-examination either in person or by audio or visual link; or
- d) the Court excuses the attendance of the author for cross-examination.

29.2 The Court may excuse the author from attending for cross-examination where it appears to the Court that:

- a) the author is unfit to attend;
- b) the author is outside the jurisdiction of the Court and it is not reasonably practical to secure his or her attendance; or
- c) having regard to all the circumstances of the case, undue delay or expense would be caused by calling the author to testify.

30. Expert opinion in proceedings

30.1 A document to be tendered in evidence in proceedings that includes matters of expert opinion shall also state the author's qualification to express that expert opinion including the author's relevant qualifications, training and experience.

30.2 This paragraph does not apply to a document produced on subpoena or as an annexure to an affidavit or to a document, which includes expert opinion, which is not contested.

31. Expert Witness Code of Conduct

31.1 The Expert Witness Code of Conduct as set out in Schedule 7 to the *Uniform Civil Procedure Rules 2005* is to apply to all expert reports referred to in this Practice Note. The expert report must expressly state that there has been compliance with the Code of Conduct in the preparation of their report. Non-compliance with this requirement does not prevent the expert report from being admitted into evidence.

32. Emotionally damaging material in reports – child under 12 years of age

32.1 The Court may direct that a report or other documentary evidence (or any part thereof) not be given, or its contents disclosed, to a child who is under 12 years of age and the subject of a care application. In making that determination the Court may take into account the prejudicial effect on the child of not becoming aware of the information contained in the report or document, and any psychological or emotional harm that is likely to be occasioned to the child if the child is made aware of that information.

32.2 If the Court determines that the report or other documentary evidence (or any part thereof) should not be disclosed to the child, the Court shall give such directions as the Court considers necessary to prevent the child becoming aware of such information contained in the report or document.

32.3 If the Court determines that the report or other documentary evidence (or any part thereof) should be disclosed to the child, the Court may nonetheless delay the release of the information or give further directions which, in the Court's opinion, may minimise any likely psychological/emotional harm to the child.

33. Emotionally damaging material in reports – child over 12 years of age

33.1 The Court may make directions to ensure a child/young person who is over 12 years of age receives any information that has the potential to cause psychological or emotional harm in an appropriate setting and from a suitably qualified person.

Judge Peter Johnstone
President, Children's Court of NSW
30 June 2017