

# Children's Court of New South Wales

## Practice Note No. 10

### Parent Capacity Orders

#### 1. Commencement

1.1 This Practice Note commences on 29 October 2014.

#### 2. Applications for Parent Capacity Orders

2.1 This Practice Note applies to applications for a Parent Capacity Order filed by the Secretary in accordance with section 91B(a) of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) but does not include applications filed where an application for care order is currently before the Court.

2.2 This Practice Note does not apply to Parent Capacity Orders made on the Children's Court's own initiative under section 91B(b).

#### 3. Procedure for listing applications for a Parent Capacity Order

3.1 In the usual course an application for a Parent Capacity Order is to be listed within 2 to 3 weeks of filing the application.

3.2 In rural and regional courts where the Children's Court schedules a regular circuit an application for a Parent Capacity Order is to be listed on the nominated list day for that circuit.

3.3 Wherever practicable the listing arrangements for Parent Capacity Orders should also align with the listing arrangements for Applications for Compulsory Schooling Orders.

#### 4. Service of applications for a Parent Capacity Order

4.1 At the time of service of the application the Secretary must also serve a notice informing the respondent parent or primary care-giver how to obtain legal advice or legal representation in relation to the application.

## **5. The first return date**

- 5.1 Unless the parties are seeking consent orders on the first return date the application is to be referred for a Dispute Resolution Conference (DRC).
- 5.2 Parties are not required to file and serve evidence prior to the DRC.

## **6. Dispute Resolution Conferences**

- 6.1 Practice Note 3 applies to the listing and conduct of a DRC under s 91D except as provided in this Practice Note.
- 6.2 A DRC under s 91D is to be attended in person by:
- the respondent parent or primary care-giver
  - the relevant Caseworker Manager and Caseworker from Community Services
  - the legal representatives of the parties
- 6.3 A DRC under s 91D may, upon request and at the discretion of the Children's Registrar be attended by:
- a support person for the parent or primary care-giver
  - any other person with the consent of the all the parties
- 6.4 Where agreement is reached at the DRC the Children's Registrar may conclude the DRC and make consent orders in accordance with s 91F(2) without the need to re-list the application before the Court.
- 6.5 Where no agreement is reached at the DRC the Children's Registrar will identify the issues in dispute in consultation with the parties and set a timetable for the hearing of the application.

## **7. Listing an application for Hearing**

- 7.1 Hearing dates will ordinarily only be allocated after the DRC has failed to settle the matter.

His Honour Judge Peter Johnstone

**President**

Date: 24 October 2014