

Care Applications

- ▶ What is a Care Application?
- ▶ Who can make a Care Application?
- ▶ How is a Care Application made?
- ▶ How does the Children's Court decide to make a Care Order
 - The 'finding' or 'establishment' part of the case
 - The 'placement' part of the case
- ▶ What Care Orders can the Children's Court make?

What is a Care Application?

A Care Application is an application to the Children's Court for a Care Order.

A Care Application is the main way that Community Services can obtain an order from the Court to protect the safety, welfare and well being of a child or young person.

Who can make a Care Application?

Most Care Applications can only be made by Community Services. Care Applications are made by Community Services when it believes that a child is in need of care and protection. Community Services might make a Care Application if it believes that:

- something is wrong in the child's family that has caused, is causing or might in the future cause some harm to the child, and
- certain actions are required to prevent the harm and/or to fix it, and
- the only way to get these actions to happen is to get a Care Order.

If you believe that a child or young person is at risk of significant harm you can call Community Services and make a report about the child or young person. You cannot apply to the Children's Court for a Care Order.

How is a Care Application made?

A Care Application is made by Community Services filing an Application and Report with the Children's Court.

In the Application, Community Services indicates what Care Orders it wants the Court to make and the reasons why it believes the child or young person is in need of care and protection.

How does the Children's Court decide to make a Care Order?

The 'finding' or 'establishment' part of the case

When Community Services makes a Care Application to the Children's Court and before the Children's Court can make final Care Orders, Community Services must prove that the child or young person is in need of care and protection, for one or more specific reasons set out in the legislation. This is called the 'finding' or 'establishment' part of the case.

In the finding or establishment part of the case, Community Services must give the Children's Court evidence that there is really 'something wrong'. It will use the evidence set out in its' affidavits and/or reports to do this.

If everyone agrees that the evidence given by Community Services is correct there does not have to be a hearing and the Children's Court can make a finding by consent.

Some parents may not agree with the evidence given by Community Services to the Court, but may still agree that a finding should be made. In these circumstances, the parent can agree to a finding being made without admitting the allegations made by Community Services. This could be important when the Court is considering the placement part of the case.

If there is no agreement about whether the child or young person is in need of care and protection, there will be a hearing for the Court to determine this.

Prior to this hearing, all parties will be given the chance to tell their side of the story, by giving the Court evidence of what they say happened. Evidence is usually given by parties and their witnesses making written statements, called affidavits. The Court may also consider written reports from doctors, counsellors or other professionals that support the parties case.

At this hearing, a Children's Court Magistrate will consider all of the evidence provided to the Court by all of the parties and will make a decision. If the Magistrate decides that there is enough evidence to prove 'something' is wrong in the family that has caused, is causing or might in the future cause harm to the child, the Magistrate will make a 'finding that the child is in need of care and protection'. If the Court does make a finding that the child is in need of care and protection, it will not be the end of the case.

If the Court does not make a finding that the child or young person is in need of care and protection, the Application filed by Community Services will be dismissed and any child or young person who may have been removed by Community Services will be returned to their parents' care.

The 'placement' part of the case

Once a Magistrate has made a finding that the child or young person is in need of care and protection (whether by consent, consent without admissions or after a hearing), the matter moves to the 'placement' part of the case. In this part, the Court needs to make a decision about what kind of final orders should be made for the child or young person.

To make this decision, the Magistrate may need more information about what has happened since the case began, for example, what the parents have done to change their circumstances from when the case first came to Court.

Community Services will be required to file a Care Plan for each child. The Care Plan must include details of the Orders being sought by Community Services and how Community Services says that parental responsibility should be allocated for any period that it is proposed the child or young person not live with their parents.

If Community Services considers that the child or young person cannot return to live with their parent, Community Services is required to include in the Care Plan a Permanency Plan. The Permanency Plan will set out what Community Services will do to provide the child or young person with a stable, permanent home away from his or her parents and will give the Children's Court a reasonably clear picture of how the child or young person's needs, welfare and well being will be met in the future.

If Community Services considers that the child or young person may be able to return to live with their parent, Community Services will include in the Care Plan a Restoration Plan. The Restoration Plan will set out the minimum things that Community Services believes the parent or parents need to do, for the child or young person to return home.

All other parties will have a chance to tell the Court what final Care Orders they want and to give the Court evidence supporting their recommendations.

If everyone agrees on the final Care Orders that should be made to protect the safety, welfare and well being of the child or young person, final Care Orders can be made by the Court 'by consent' providing the Children's Court Magistrate also agrees that the orders are in the best interests of the child or young person.

If parties do not agree on the final Care Orders to be made, there will be a placement hearing. At this hearing, a Children's Court Magistrate will consider all of the evidence provided by all parties and will make a decision about what final Care Orders should be made based on the evidence that they have considered. The Magistrate will make the final Care Orders that he or she believes are in the best interests of the child or young person.

What Care Orders can the Children's Court make?

The kinds of Care Orders that the Children's Court can make are found in the *Children and Young Persons (Care and Protection) Act 1998*. These include an order that:

- the parents of the child or young person, or the child or young person him or herself, give undertakings (promises) to the Court;
- Community Services supervise the care of the child or young person, even though he or she might keep living with his or her parents;
- that the child or young person live with one parent instead of the other and/or that only one of the parents should have responsibility for making decisions about the child or young person;
- the child or young person live with someone other than his or her parents (such as another family member or family friend) and/or that someone other than the parents should have responsibility for making decisions about the child or young person;
- the child or young person should live in a place arranged by Community Services (such as foster care or a group home) and that the Minister for Family and Community Services should have responsibility for making decisions about the child or young person; and/or
- specifies what kind of contact a child or young person should have with his or her parents, brothers and sisters, other family members and other important people.

The Children's Court can make one or more of these orders all at the same time.

PLEASE READ CAREFULLY:

A Care Application is a very serious court case. It could result in one or more Care Orders being made, including changing your or another person's parental responsibility for a child. There are very serious issues to consider, such as:

- whether Community Services has enough evidence to prove that a child or young person is in need of care and protection;
- whether you should consent to a finding that your child is in need of care and protection, and if so, whether that should be by consent, but without admissions;
- whether you should consent to final care orders;
- what evidence, if any, should be filed to support your case;

Only you can decide these issues. To help you decide, you may want to get advice from a lawyer before you make any decisions.

At some Courts, a duty solicitor may be available to give you advice on the date your matter is first listed.

Other places where you may be able to get independent legal advice include:

- any private solicitor (you may have to pay a fee for this)
- The Legal Aid Commission of NSW
- Community Legal Centres
- Aboriginal Legal Centres

Make sure that the person you get advice from knows about and understands the *Children and Young Persons (Care and Protection) Act 1998*.