

Care Applications

Fact sheet

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 the Department of Community Services (DoCS) can obtain an order from the Children's Court to protect the safety, welfare and well-being of a child or young person.

Who can make a Care Application?

Care Applications are usually made by DoCS when it believes that a child is in need of care and protection. DoCS 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 take place is to get a Care Order.

Parents, children and young people, and other people who have a significant interest in the welfare of a child or young person CANNOT make a Care Application UNLESS the Children's Court has already made a Care Order about the child or young person. If the Children's Court has already made a Care Order, then a parent, child or young person or another person with a significant interest in the welfare of a child can make a particular type of Care Application called an "Application for Variation or Rescission of a Care Order." Applications for Variation or Rescission of a Care Order are dealt with in a separate information sheet.

If you believe that a child or young person is in need of care and protection and that a Care Order is needed, you must call DoCS and make a report about the child or young person. You cannot apply to the Children's Court yourself for a Care Order.

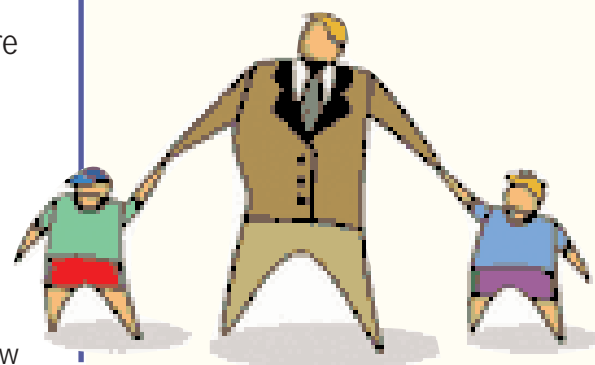
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How is a Care Application made?

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

What Care Orders can the Children's Court make?



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How is a Care Application made?

A Care Application is made by DoCS filing both an application form and an affidavit in support of that application with the Children's Court.

On the application form, DoCS must say exactly what Care Orders it wants the Court to make and the specific reasons why it believes that the child or young person is in need of care and protection.

In the affidavit, DoCS must set out the evidence that it says proves the reasons that the child or young person is in need of care and protection. However, DoCS might not file all its evidence at the same time as it files the application form, and it may ask the Court's permission to file additional affidavits and/or reports as the case goes along.

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

A Children's Court can only make a final Care Order if a Care Application has been made to the Court. A Children's Court can make an interim Care Order (an order that only lasts while the case is still proceeding) at any time during ongoing care proceedings, provided that the Children's Court Magistrate is satisfied that it is in the best interests of the child or young person to do so.

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

In the finding or establishment or threshold question part of the case, DoCS must give the Children's Court evidence that there is really

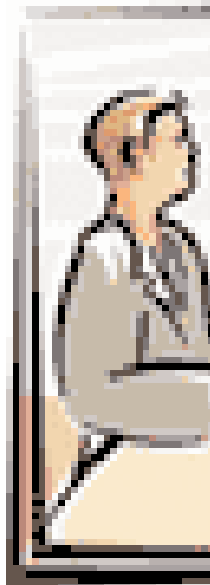
"something wrong." It will use the evidence set out in its affidavits and reports to do this.

If you do not agree that the evidence given by DoCS is correct or, even if it is correct, if you do not believe that the evidence proves that the child or young person is in need of care and protection, then you can ask the Court to hold a hearing.

At this hearing, a Children's Court Magistrate will consider all of the evidence provided to the Court by all of the parties, including DoCS, the parents of the child or young person and the child or young person him or herself (generally through the solicitor appointed to represent the child or young person).

At this hearing, you will have a chance to tell your side. To do this, you can give the Court other evidence about what happened and you can question whether the evidence provided by DoCS or by other parties is correct. You may need to ask the Court to put off the hearing for a little while so that you can obtain all the evidence that supports your side.

At the end of this hearing, the Magistrate will decide whether DoCS has proved that the child or young person is in need of care and protection for one or more of the reasons given by DoCS in its Care Application. When making this decision, the Magistrate will take into account all of the evidence given to the Court by DoCS and by anyone else, including the parents and the child or young person. If the Magistrate decides that there is enough evidence to prove that "something" is wrong in the family that has caused, is causing or might in the future cause harm to the



child, then s/he will make a "finding that the child is in need of care and protection". This will not be the end of the case.

If everyone agrees that the evidence given by DoCS is correct, or that enough of it is correct for the Court to make a finding that the child or young person is in need of care and protection, then there does not have to be a hearing for this part of the case. If everyone agrees that the child or young person is in need of care and protection, then the Court will make a "finding by consent" that the child is in need of care and protection. This will not be the end of the case.

The Court has made a finding that a child or young person is in need of care and protection. Now what happens?

Once a Magistrate has made a finding that the child or young person is in need of care and protection, the Children's Court now moves to the "disposition" or "placement" part of the case. In the disposition or placement part of the case, the Children's Court makes a decision about what kinds of Care Orders are needed to protect the safety, welfare and well-being of a child or young person.

To make this next decision, the Magistrate

might need different evidence than for the finding or establishment or threshold question part of the case. All the parties, including DoCS, the parents and the child or young person (though their solicitor) might be asked to provide the Court with evidence about what the family and the child or young person needs and what they might do themselves to fix any problems that have been identified in the first part of the case.

DoCS will usually write a "section 78" Care Plan, which summarises the child's needs, the reasons why DoCS made the Care Application and the exact Care Orders that DoCS wants the Court to make. If one of the Care Orders recommended by DoCS involves the child or young person living away from their parents, then DoCS must also write a Permanency Plan which sets out whether DoCS believes the child or young person should ever go back to living with their parents. If so, the Permanency Plan will say what DoCS thinks the parents should have to do and in what time to have their child returned to them. If not, the Permanency Plan will say what DoCS will do to provide the child or young person with a stable, permanent home away from his or her parents.

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 what final Care Orders should be made to protect the safety, welfare and well-being of the child or young person, then final Care Orders can be made "by consent" if the Children's Court Magistrate also agrees that the orders are in the best interests of the child or young person. This will be the end of the case.

If one or more parties does not agree on what final Care Orders should be made, there will be a "disposition or placement hearing."



At this hearing, a Children's Court Magistrate will consider all of the evidence provided to the Court by all of the parties, including DoCS, the parents of the child or young person and the child or young person him or herself (generally through the solicitor appointed to represent him or her).

At the end of this hearing, the Magistrate will make a decision about what final Care Orders should be made. When making this decision, the Magistrate will take into account all of the evidence given to the Court by DoCS and by anyone else, including the parents and the child or young person. The Magistrate will then make the final Care Orders that s/he believes are in the best interests of the child or young person. This will be the end of the case.

What Care Orders can the Children's Court make?

The kinds of Care Orders that the 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;
- DoCS supervise the care of the child or young person, even though s/he might keep living with his or her parents;
- 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 with another family member or a 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 DoCS (such as foster care or a group home) and that the Minister for Community Services should have responsibility for making decisions about the child or young person (this used to be called making a child or young person a "ward"); and/or

- specifies what kind of contact (previously called "access") 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 several of these orders all at the same time.

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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. Whether DoCS has enough evidence to prove that a child or young person is in need of care or protection, whether you should consent to a "finding" during the establishment phase of the case and/or whether you should consent to the final Care Orders recommended by DoCS are very serious questions.

Only you can decide whether you should do this. To help you decide, you might want to get advice from a lawyer BEFORE you make any decisions.

Places where you might 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