

Consent Orders based on a Care Plan

Fact sheet

What is a “section 34” Care Plan?

A “section 34” Care Plan is a written document that sets out agreements reached between the Department of Community Services (DoCS) and a family about how a child or young person’s need for care and protection will be met in the future.

A “section 34” Care Plan is written by DoCS after discussion with the family of the child or young person, and sometimes also the child or young person.

A Care Plan is one way that DoCS can involve the child or young person and his or her family in resolving concerns about the safety, welfare or wellbeing of the child or young person.

A Care Plan includes:

- What a parent should do to ensure that a child or young person is safe and/or well cared for (for example, attending a rehabilitation program or counselling, providing urinalysis results, taking a child to day care, etc);
- Where a child or young person will live while a parent does some of the things that might be required;
- Who will be responsible for making some or all decisions about the child or young person;
- How DoCS or other agencies will help the family to ensure the safety, welfare and wellbeing of the child or young person (for example, by arranging counselling, providing financial assistance, making visits to the home, etc).

When can a “section 34” Care Plan be made?

DoCS can make a “section 34” Care Plan with a family when it believes that a child or young person in the family is in need of “care and protection” (in other words, DoCS thinks that some sort of action is required because the child or young person is believed to be at risk of harm).

DoCS can make a “section 34” Care Plan with a family instead of making an application to the Children’s Court for a Care Order.

If DoCS has not applied to the Children’s Court for a Care Order, any Care Plan made by DoCS and a family can only set

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Once a “section 34” Care Plan has been made, what does it mean?

What if someone other than a parent has responsibility for some or all decisions about the child or young person?

How can a “section 34” Care Plan be made “legal”?



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out what everyone agrees to. It cannot include anything that the child or young person or the parent does not agree with.*

Once a “section 34” Care Plan has been made, what does it mean?

Once made, a “section 34” Care Plan means that all family members and DoCS workers know exactly what they should do to ensure the safety, welfare and wellbeing of a child or young person.

Once made, a “section 34” Care Plan can be registered in the Children’s Court. However, registration does not make a “section 34” Care Plan legal. No Care Plan, and nothing that is written in a Care Plan, has any legal force unless it is approved by a Court Order.

This means that no-one legally MUST do what a Care Plan says UNLESS there is a Court Order saying that the Care Plan or parts of the Care Plan must happen.

However, even if there is no Court Order approving the Care Plan, or parts of it, this does not mean that you should not do what a Care Plan says. Although a “section 34” Care Plan is a voluntary agreement between a family and DoCS, if a person fails to do what the family and DoCS agreed in the Care Plan that the person should do, then instead of relying on the Care Plan to protect the child or young person DoCS might decide to apply to the Children’s Court for a Care Order. A failure by someone to do what was agreed in the “section 34” Care Plan could then be used as evidence that the child or young person is in need of care and protection.

What if someone other than a parent has responsibility for some or all decisions about the child or young person?

DoCS and a family could agree on a “section 34” Care Plan that gives someone other than the parent responsibility for making decisions about a child or young person. The Care Plan could say that the child or young person should live with someone other than the parent. Even if this happens, the Care Plan has no legal force unless it is approved by a Court Order. For example, just because DoCS and a family agree in a “section 34” Care Plan that a child will live with an auntie instead of a parent, this doesn’t mean that the auntie has the legal right to make all the decisions that might be needed when the child lives with her—such as authorising medical treatment, enrolments in school, etc.

How can a “section 34” Care Plan be made “legal”?

The only way for anything in a Care Plan to be “legal” is for a Children’s Court to make an Order approving the Care Plan or parts of it.

A Children’s Court can make Orders endorsing a Care Plan or parts of it if there are already care proceedings before the Children’s Court.*

If there are no care proceedings already before the Children’s Court, then the only way that the Court can make an Order endorsing a “section 34” Care Plan is for DoCS to apply for Consent Orders. DoCS does this by making an Application for Consent Orders based on a Care Plan.

* If DoCS has already applied to a Court for a Care Order and the care proceedings are ongoing, then another type of Care Plan might be made by DoCS. Care Plans in these situations are NOT “section 34” Care Plans. Please see the brochure “*Care Applications*” for more about Care Plans that are filed by DoCS in ongoing care proceedings.

* If DoCS has already applied to a Court for a Care Order and the care proceedings are ongoing, then Care Plans in these situations are NOT “section 34” Care Plans. Please see the brochure “*Care Applications*” for more about Care Plans that are filed by DoCS in ongoing care proceedings.

When an Application is made for Consent Orders based on a Care Plan, a Children's Court Magistrate can make any orders that might be needed to make the Care Plan or parts of the Care Plan "legal".

To make the Consent Orders, the Children's Court Magistrate must believe that the:

- proposed order does not break any principles of the Care and Protection legislation (for example, one principle is that the safety, welfare and wellbeing of the child must be the most important consideration in any decision made about the child or young person); and
- parents, any other family members involved in the Care Plan, and the child or young person understand the Care Plan and really do agree with it; and
- parents, any other family members involved in the Care Plan, and the child or young person have received independent advice about the Care Plan and the parts that will become "legal" once an order is made.

This means that the Children's Court Magistrate cannot make an order that a "section 34" Care Plan is "legal" unless you have actually received advice from someone other than a DoCS officer about what the Care Plan really means and what effect it will have on you if the Care Plan is made legal. This advice does not have to be from a lawyer, but does have to be from someone who can explain the legal effect of the Consent Orders and the Care Plan. This is generally the job of a lawyer. So if you want the Care Plan to be made legal by Consent Orders, it is probably a good idea to get advice from a lawyer before you go to Court.

By making a Care Plan you could be changing your or another person's parental responsibility for a child or young person. Only you can decide whether you should do this. To help you decide, you might want to get advice from a lawyer BEFORE you reach any agreement with DoCS on a Care Plan. Also, for Consent Orders to be made you will have to convince the Court that you have actually received independent advice.

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