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SPECIAL SUPPLEMENT

CHILDREN'S COURT OF NEW SOUTH WALES

PRACTICE NOTE NO. 2

Erratum

THE Children's Court of New South Wales, Practice Note No. 2 which was published in the Government Gazette on the 23rd July 2010 No. 94, folios 3621 to 3623 was published incomplete.

On page 3622, the page commences with the heading "2. The prescribed p0.9" and is followed by the word "practice". That heading should actually read "The prescribed procedure" and be followed by paragraphs 2.1, 2.2, 2.3, 2.4 and 2.5. Instead the first paragraph after that heading in the Gazette is 2.6. There are 5 paragraphs missing from the practice note which need to be inserted.

Also, at paragraph 1.4 the sentence "applications for contact orders under section 86" appears twice.

This erratum now amends these errors and the Children's Court of New South Wales, Practice Note No. 2 is republished in full on the following pages.

**CHILDREN'S COURT OF NEW SOUTH WALES
PRACTICE NOTE NO. 2**

**Initiating Report and Service of the relevant portion of the Community Services file in
Care Proceedings**

1. Preamble

- 1.1 This Practice Note takes effect on 25 July 2010.
- 1.2 The Special Commission of Inquiry into Child Protection Services in New South Wales recommended in its November 2008 Report [at Recommendation 13.3] that applications for care orders under sections 45 and 61 of the *Children and Young Persons (Care and Protection) Act* 1998 (the Care Act) should be made by way of an application filed in the Children's Court supported by a written report which succinctly and fairly summarises the information available to [Community Services] and contains sufficient information to support a determination that a child is in need of care and protection and any interim orders sought, without any requirement for the filing of any affidavit, unless ordered by the Court in circumstances where establishment is contested. It was also recommended that the [Community Services'] file, or relevant portion of it, should be made available to the parties.
- 1.3 The purpose of this Practice Note is to implement the recommendations by prescribing the procedure for Community Services to provide to the parties relevant documents held on its files.
- 1.4 This Practice Note only applies to care applications made under Chapter 5 of the Care Act with the exception of the following applications;
- applications for rescission or variation of orders under section 90
 - applications on breach of undertakings under section 76 (5)
 - applications on breach of supervision under section 77(3)
 - applications for assessment orders under sections 53/54/55
 - applications for contact orders under section 86 and
 - applications for emergency care and protection orders under sections 45 (1)(a)/46

2. The prescribed procedure

- 2.1 The relevant portions of the Community Services file are to be served on each party to the proceedings in 2 stages.
- 2.2 Community Services may serve "Stage 1 documents" at the time of service of the Application and Report (Form 1) or at any time up to and including the first occasion the application comes before the court (the first return date). Community Services will then have up to fourteen (14) calendar days from the first return date to provide to the parties further relevant documents from its files ("Stage 2 documents").

2.3 Stage 1 Documents

Stage 1 documents essentially act as supporting documents to the Application and Report and as such will be limited to those that relate to the critical event or circumstances which have required the proceedings to be brought and that are necessary to enable the Children's Court to make interim orders for the care and protection of the child¹.

2.4 Community Services will tender all Stage 1 documents upon which it proposes to rely on the first return date. A party may at that time object to specific documents or parts of a document being admitted into evidence. In the event of an objection being raised the court will rule on the objection.

2.5 In the ordinary course, Stage 1 documents are to be served upon the parties with the Application and Report. This is consistent with the parties being informed of the case they must meet as soon as is practicable and with the principle that care proceedings are to proceed as expeditiously as possible. While Stage 1 documents may be served as late as the first return date, the adoption of such a practice is likely to result in the matter being adjourned to allow parties to consider the documents and this will unduly protract the matter. Therefore, service on the first return date should be the exception to the rule, rather than standard practice.

2.6 The categories of Stage 1 documents to be served by Community Services are copies of:

- i. All current orders of the Children's Court and any other order being relied upon for an argument pursuant to section 106A of the Care Act.
- ii. Such current orders of the Family Court, Federal Magistrates Court and any current enforceable apprehended violence order.
- iii. A summary (in an agreed format) of reports of risk of significant harm concerning the child*
- iv. written advices of assessments/examinations from medical practitioners in relation to an injury/medical condition where that injury/medical condition has contributed to removal/action being taken
- v. written advices from the police as to relevant incidents, consideration of which has contributed to removal/action being taken
- vi. written advices from any agency providing services to the child or the child's family where consideration of these advices has contributed to removal/action being taken
- vii. parental responsibility contracts/breach notices but only where the breach has prompted the Children's Court application
- viii. birth alerts
- ix. relevant photographs
- x. current case plan(s) and care plan(s)
- xi. any notes of interviews with the child or young person or parents/carers**

* The summary will be in the form of a 'person history report' and will provide, the following information:

- date report received
- brief description of harm
- person alleged to be causing harm

¹ For the purposes of this document a reference to a "child" includes a "young person".

- outcome (closed without assessment/investigated and substantiated (in part or whole)/investigated and not substantiated)

** Copies of notes from interviews can be provided in Stage 1 if they were of interviews held within the previous 12 months. These copies are made of the handwritten notes taken during the interview.

2.7 Stage 2 Documents

Community Services will have up to fourteen (14) calendar days following the first return date of the care application, to serve on each of the parties the Stage 2 documents. The categories of documents to be produced at this stage are copies of:

- i. Any of the categories of documents produced in Stage 1 that are now held by CS and have not been previously produced.
- ii. Where an argument is to be conducted pursuant to section 106A of the Care Act, copies of Children's Court judgements, orders or transcripts that Community Services retains on its files.*
- iii. Information held by Community Services from other agencies only where it is relevant to issues to be considered by the court in determining whether the child is in need of care and protection (for example, a school report where the child's educational needs are not being met)
- iv. A genogram for the child
- v. Any temporary care arrangements (whether current or expired)
- vi. Documents held by Community Services recording what took place at any home visit to the home of the child in the previous 12 months prior to the commencement of care proceedings
- vii. Any parental responsibility contracts (whether current or expired)
- viii. Third party assessments held by Community Services where they are relevant to the issues to be determined by the court**

* It is recognised that the primary source of information concerning Children's Court proceedings should be the file held by the Children's Court.

** Given that any assessment loses its reliability after a period of time, Community Services will only be required to provide third party assessments as part of Stage 2 Documents where the assessment was undertaken within the last 2 years. Earlier assessments can be sought by subpoena.

- 2.8** If parties wish to rely on any of these documents, they must be put into evidence either as an attachment to an affidavit or tendered in court. A party will not be able to tender the entire Stage 2 bundle, but must tender each document individually.

3 Further procedures applying to the service of both Stage 1 and Stage 2 documents

- 3.1** With the exception of a genogram and person history report, only documents held by Community Services at the time for service of each stage of documents are required to be produced. Documents are to be produced in the state in which they exist on the Community Services file. Community Services is not required to convert information into a different format for the purposes of inclusion in a bundle of documents. Community Services is not required to source documents that are not in its possession and that do not come into its possession through the course of its work with a family. If a party wishes to rely on documents not contained in the Stage 1 or 2 Documents, the party should subpoena the person or entity that holds the documents.

- 3.2** This Practice Note deals specifically with initiating a care application and making relevant documents from Community Services files available to the parties. The Practice Note does not deal with the disclosure of material received by Community Services after it serves the Stage 2 documents. However, Community Services officers have an obligation to adhere to the model litigant principle and disclose to the parties all material relevant to the case. If Community Services considers that there are additional documents (which may assist the court or a party) which come into its possession following serving the Stage 1 and Stage 2 bundles of documents, it will also serve those documents on the parties.
- 3.3** The supply of documents by Community Services in Stages 1 and 2 is subject to compliance with section 29 of the Care Act. Accordingly, information disclosing the identity of a person who made a report, the report and evidence of the contents of the report may be deleted from documents.
- 3.4** Neither Stage 1 nor Stage 2 documents are required to be paginated.
- 3.5** Neither Stage 1 nor Stage 2 documents are to be filed in the Court registry. Stage 1 and Stage 2 documents will only be before the court when successfully tendered in the proceedings.
- 3.6** Upon application by any party the Court may extend or abridge the time to serve either Stage 1 or Stage 2 documents.
- 3.7** A delegate of the Director General will certify that all relevant documents have been produced at Stages 1 and 2 in accordance with form numbers 1A and 1B respectively.
- 3.8** Documents produced by Community Services in either Stage 1 or Stage 2 need not be produced again in response to a subpoena.
- 3.9** Community Services may re-list the matter after giving reasonable notice to the parties to seek the court's approval not to provide a Stage 1 or Stage 2 document on the ground that provision of the document may endanger a person's safety.

His Honour JUDGE MARK MARIEN, SC,
President

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