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Children's Court of New South Wales

Practice Note No. 16

Applications for a Mandatory Testing Order

1. Commencement

1.1 This Practice Note commences on 29 July 2022.

2. Applications for a Mandatory Testing Order

2.1 This Practice Note applies to applications for a Mandatory Testing Order (an application) under s 14 of the *Mandatory Disease Testing Act 2021* (the Act) where the vulnerable third party (respondent young person) is at least 14 years of age and under the age of 18 years.

3. Procedure for filing an application for a Mandatory Testing Order

3.1 An application is to be filed at the Children's Court closest to where the respondent young person normally resides.

4. Procedure for listing applications for a Mandatory Testing Order

4.1 An application is to be listed between 5 and 10 working days from the date of the filing, where the Court is scheduled to sit within that timeframe.

4.2 In regional courts where the Court is not scheduled to sit within 10 working days, the application is to be listed no later than 10 working days from the date of filing at the nearest Court where a magistrate is sitting.

5. Service of applications for a Mandatory Testing Order

5.1 An application is to be served personally on:

5.1.1 the respondent young person and

5.1.2 at least one of the respondent young person's parents or guardians, if any.

5.1.3 In accordance with Children's Court Rule 30I.

5.2 At the time of service, the applicant must ensure the respondent young person is provided with written information about how to access free legal advice and representation through Legal Aid NSW and the Aboriginal Legal Service.

5.3 An application must not be served on the respondent young person or their parent or guardian by any person who was present at the incident during which the relevant contact occurred.

6. Notification of an application for a Mandatory Testing Order to the Chief Health Officer

6.1 The Applicant is to notify the Chief Health Officer in accordance with section 14(3)(c) of the Act in the manner advised by the Chief Health Officer and within sufficient time to enable the Chief Health Officer to determine whether they wish to make submissions.

7. Hearing Procedure for hearing of application for a Mandatory Testing Order

7.1 An application is to be dealt with expeditiously by the Court having regard to the *Chief Health Officer's guidelines for actions under the Mandatory Disease Testing Act 2021*.

7.2 The applicant shall serve any evidence on the respondent young person as soon as the evidence is available and no later than the first mention date. The evidence may be served upon the respondent young person's lawyer.

7.3 On the first mention date, the Court will ensure that the respondent young person has had an opportunity to obtain legal advice and representation. If there has not been an opportunity, the matter may be adjourned for up to 4 weeks for that purpose. Otherwise, the Court:

- (a) may deal with the matter on submissions, if the parties consent and time permits;
- (b) will otherwise adjourn the matter for a hearing on submissions unless the interests of justice require the attendance of any witness.
- (c) the hearing should not exceed 2 hours, except in exceptional circumstances.
- (d) where the hearing is estimated to exceed 2 hours, the Court may make directions for the filing of written submissions, time limits for oral submissions or evidence, or other case-management matters.



Judge Ellen Skinner

President of the Children's Court of NSW