

Common Orders in Child Protection

A Children’s Court magistrate has the authority to make a range of orders under the *Children and Young Persons (Care and Protection) Act 1998* (known as the Care Act). These orders are commonly referred to as care orders. In regional areas orders are usually made by a Local Court magistrate.

Care orders are made in response to applications brought before the court and are intended to ensure the safety, welfare and wellbeing of a child or young person (child).

Care orders can be:

- Made on an interim basis (known as interim orders) or final basis (known as final orders).
- A final order can be for any length of time, but if no end date is given the order is until a child turns 18.

The two most common types of applications filed in NSW child protection matters are:

- Application Initiating Care Proceedings (s61) or application for Care Order
 - This application is always initiated by the Department of Communities and Justice (DCJ)
- Application to Vary or Rescind Care Orders (s90)
 - A s90 application can be made by DCJ, the parents, the child or another person who has a significant relationship with the child.

Common care orders made in child protection are:

Care and Related Orders under the Care Act		
Section	Order	Details
s. 46	Emergency Care and Protection	<ul style="list-style-type: none"> • Provides emergency care and protection for a child who is at risk of serious harm where the Secretary (of DCJ) requires more time to assess the full extent of this risk. • Places the child under the care responsibility of the Secretary for a period of up to 14 days which can be extended once only for up to a further 14 days. • Is a final order.

s.48	Order for removal	<ul style="list-style-type: none"> • Can be made by the Court following an application by the Secretary. • Includes the powers to enter and search any premises in order to locate and remove a child. • May be executed by the Secretary or a Police Officer. <p><i>Note the DCJ Secretary ‘delegates’ many of his or her powers. See Roles and Responsibilities in Care and Protection Matters for more information.</i></p>
s.53	Assessment of a child or young person	<ul style="list-style-type: none"> • Provides for a child to undergo physical, psychological or other medical examination, or an assessment, as directed by the Court. • The child who is assessed as being able to make an informed decision can refuse any form of assessment as defined above.
s.54	Assessment of person’s capacity for parental responsibility	<ul style="list-style-type: none"> • The Court may appoint a person to assess the parenting capacity of a person with parental responsibility or who is seeking parental responsibility. • Any assessment may only be carried out with the person’s consent.
s.69	Order for interim care	<ul style="list-style-type: none"> • The Court may make interim care orders in relation to a child after a care application is made and before the application is finally determined. • The Court may make an interim care order prior to determining whether the child is in need of care and protection. • The Secretary must demonstrate that it is not in the best interests of the child’s safety, welfare and well-being to remain in the care of their parents. • <i>Most children who come into care will be on interim orders before a final order is made.</i>

s.73	Order accepting undertakings	<ul style="list-style-type: none"> • Accepts undertakings from the child or young person about their conduct. • Accepts undertakings from a ‘responsible person’ (person with parental responsibility, birth parent or person who is a primary caregiver) for the child about the care and protection of that child. • All undertakings must be in writing, signed, and copies given to all parties.
s.73(5)	Order following breach of undertakings	<ul style="list-style-type: none"> • If the Secretary notifies the Court that any undertakings have been breached and the Court agrees, the Court may make any other orders as it considers appropriate. • Gives the parties the chance to be heard (about the breach).
s.74	Order for provision of support services	<ul style="list-style-type: none"> • The Court may make any order directing a person or organisation to provide support for a child, but only with consent of the person or organisation. • Takes the views of the child into account.
s.75 (1)	Order for a child no less than 14 years of age to attend therapeutic or treatment program	<ul style="list-style-type: none"> • Order for a child to attend a therapeutic or treatment program for sexually abusive behaviours. • The child must be under 14 years and not have been convicted in any criminal proceedings arising from the sexually abusive behaviour.
s.75 (1B)	Order for a parent to attend therapeutic or treatment program	<ul style="list-style-type: none"> • Orders a parent to attend a therapeutic program for sexually abusive behaviours, or any kind of therapeutic or treatment program. • The parent must not have been convicted of any sexually abusive behaviours.
s.76 & 77(1)	Order for Supervision	<ul style="list-style-type: none"> • Places the child or young person under the supervision of the Secretary.

		<ul style="list-style-type: none"> • Generally, can be made for up to 12 months, or if there are special circumstances, the Court may make an order for a maximum period of 24 months. • A supervision order may be extended by the Court if it does not exceed 24 months in total. • If an order is made for longer than 12 months, then the order may be revoked by the Court before the end of the order if there is no longer a need for supervision. • Requires the Court to specify the reason, purpose and length of the order. • May require a report on the outcomes of the supervision to be presented to the Court before the end of the supervision period. • <i>Orders for supervision are often given in restoration matters, at the expiry of an Order allocating parental responsibility to another person other than the parent.</i>
s.77(3)	Order following breach of supervision order	<ul style="list-style-type: none"> • Requires an allegation of a breach of a supervision order, an opportunity to be heard and the Court finding a breach. • Allows the Court to reconsider the matter and make any other orders as it considers appropriate.
s.79	Order allocating parental responsibility	<ul style="list-style-type: none"> • Allocates all aspects of parental responsibility (all duties, powers, responsibilities and authority which by law parents have in relation to their children) or aspects of parental responsibility to: <ul style="list-style-type: none"> ○ one parent to the exclusion of the other, or to both parents ○ solely to the Minister ○ to one or both parents and to another person or persons jointly ○ the Minister and another suitable person or persons jointly ○ to a suitable person or persons jointly.

		<ul style="list-style-type: none"> • Specific aspects of parental responsibility that may be allocated include residence, contact, education and training, religious and cultural upbringing and medical and dental treatment. • A parental responsibility order under this section made on a final basis can be made ‘long term’ (i.e. until the child or young person reaches 18 years of age) or for a shorter period. This is explained in more detail in the Short Term Care Orders.
s.79A	Guardianship Orders	<ul style="list-style-type: none"> • Allocates all aspects of parental responsibility to a suitable person (‘guardian’) for a child who is in statutory OOHC or supported OOHC or who the Court finds needs care and protection. • Is a final order in place until a child reaches 18 years of age. • Cannot be made unless there is no realistic possibility of restoration and the prospective guardian will provide a safe, nurturing, stable and secure environment for the child and will continue to do so in the future. • If the child is Aboriginal or Torres Strait Islander, the order must be in accordance with Aboriginal and Torres Strait Islander Child and Young Person Placement Principles (s.13). • For a child aged 12 or more years who can give consent – the consent of the child is required. Can be made either by an application for care orders made under section 61, by an application to vary or rescind final care order under s90 or by an application for consent orders under section 38. • <i>In determining whether there is a realistic possibility of restoration, the Court considers the primary and secondary considerations set out in s. 90 (see below).</i>

s.82	Report on suitability of care arrangements	<ul style="list-style-type: none"> • When making an order allocating parental responsibility for a child (not including guardianship orders), the Court may order DCJ to prepare a written report concerning the suitability of the arrangements for the care and protection of the child. • The report must be provided within 12 months or earlier if directed by the Court. • The report must include an assessment of the progress of implementing the care plan, including the progress towards the achievement of a permanent placement. • If after considering the report, the Court is not satisfied that proper arrangements have been made for the care and protection of the child, the Court may conduct a review of the progress in implementing the care plan (a progress review), and relist the matter for this purpose. Before conducting the progress review, and within 30 days of receiving the report, the Court must give notice to the parties of the review and may invite the parties to give evidence and make submissions at the progress review. • The Court cannot, of its own motion, rescind or vary or make a new order after receiving a s.82 report. It is up to the parties to make an application for rescission/variation.
s.86	Contact orders (during care proceedings)	<ul style="list-style-type: none"> • Provide for the minimum requirements concerning the frequency and duration of contact between the child or young person and their parents, relatives or other persons of significance. • Can deny contact with a specified person if that is in the best interests of the child or young person. • Can require that contact with a specified person be supervised. • Can make an order approving someone to supervise the contact but only with the person's consent.

		<ul style="list-style-type: none"> • The Court can order that the Secretary or a person employed by the Department supervise contact but only with the Secretary's consent. • If the court has decided that there is no realistic possibility of restoration of a child or young person to his or her parent, the maximum period that may be specified in a contact order is 12 months. • The Court cannot order supervision of contact where the child is subject of a guardianship order. • The Court can make contact orders for a child who is subject to a Guardianship Order for more than 12 months, if the Court is satisfied this is in the child's best interests. • <i>Note that in most cases contact arrangements are made in the Care Plan, and not through a s.86 contact order.</i>
s.86	Contact Orders (after care proceedings)	<ul style="list-style-type: none"> • An application for a contact order can be made, with the leave of the Court, by persons who were parties to care proceedings or any person who consider themselves to have a sufficient interest in the child if the Court gives them leave. • The applicant needs to establish that there has been a significant change in relevant circumstances since a final order was made. • Before granting leave, the Court must take into consideration whether Alternative Dispute Resolution has been attempted and may order the parties to attend a Dispute Resolution Conference or another form of dispute resolution. • If there has been a previous contact order and a further order is sought, the Court can make the Order for any time frame.
s.86A	Variation of contact orders by agreement	<ul style="list-style-type: none"> • An agreement to vary the terms of a contact order in light of a change in any relevant circumstances since the contact order was made or last varied.

		<ul style="list-style-type: none"> • Must be in writing, signed and dated by the parties (and the legal representatives for the child if the agreement is made less than 12 months after the contact order was made) and registered with the Court within 28 days of signing. • Takes effect once registered until the end of the period specified in the agreement.
s.90	Rescission and variation of care orders	<ul style="list-style-type: none"> • The Court must be satisfied that there has been significant change in relevant circumstances since the care order was made or last varied and takes into account a number of factors before granting leave for the application to proceed ('primary considerations' (section 90(2B)) and 'additional considerations' (section 90(2C))). • 2B covers views of the child, the length and stability of the present care arrangements and the least intrusive intervention in the child's life. • 2C covers the age of the child, the nature of the application, plans for the child, whether there is an arguable case and matters related to section 82 reports and placement reviews. • If leave is granted and the Court considers it appropriate to do so, the Court may, by order, vary or rescind the order and if it rescinds the order, make any one of the orders it could have made initially
s.90A	Order prohibiting action	<ul style="list-style-type: none"> • Prevents any person (including a parent) from doing anything that could be done by the parent in carrying out his or her parental responsibility.
s.91A to s91I	Parenting capacity orders	<ul style="list-style-type: none"> • Order requiring a parent or primary caregiver of a child or young person to attend or participate in a program, service or course or engage in therapy or treatment aimed at building or enhancing his or her parenting skills. • Before making an order, Court has to be satisfied that there is an identified deficiency in the parenting capacity to place the child the parent or primary care-giver that

		has the potential to place the child or young person at risk of significant harm and it is reasonable and practicable to require the parent or primary care-giver to comply with the order and they are unlikely to otherwise attend unless the order is made.
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Please see [Short Term Care Orders](#) factsheet and [Roles and Responsibilities in Care and Protection Matters](#) for more information.