

Roles and Responsibilities in Care and Protection Matters

The decision to remove a child from their parents, give someone else parental responsibility for a child or return a child to their parents' care is significant and has a long-term effect on the child. To ensure care and protection matters uphold the safety, welfare and wellbeing of children, each decision involves multiple people and organisations who hold complimentary roles. The Department of Communities and Justice (DCJ) oversees the court application process even in cases when a Permanency Support Program (PSP) Service Provider has primary case responsibility.

Roles and Responsibilities within the NSW Children's Court

Children's and Local Court Magistrates

A Magistrate is a judicial officer who hears cases in a Children's Court and has the decision-making role in care and protection matters. They also hear matters about education and criminal matters involving children. There are 16 specialist Children's Magistrates in NSW. Children's Court cases are dealt with by Local Court Magistrates in locations where a specialist Children's Magistrate is not available.

The Magistrate will consider and evaluate the evidence placed before them. This evidence can be written and verbal. In care and protection matters, a Magistrate needs to be satisfied the application meets the threshold tests for bringing a matter to Court before it can proceed. For example, that the child is in need of care and protection or, for a section 90, that there has been significant change in circumstances since the Order was last made or varied. PSP Service Provider casework staff can be called by the magistrate to give direct evidence.

Both Children's Court and Local Court magistrates are independent of government. This means they don't report to DCJ, the Minister, Parliament or the executive (Cabinet).

Children's Registrar

The Children's Registrar ensures that matters apply to court timeframes and can manage the administration associated with court matters. For example, the Children's Registrar will set dates for adjournments so that the Magistrate only has to deal with matters requiring an Order to be made. The Children's Registrar is also responsible for conducting dispute resolution conferences in care and protection cases as per s65 of the *Children and Young Persons (Care and Protection) Act 1998 (Care Act)*. A dispute resolution conference is a type of mediation. The purpose is to provide the parties (people involved in the court matter) an opportunity to see if an agreement can be reached that will address the child protection concerns before the Court.

PSP Service Provider casework staff will often have information relevant for a dispute resolution conference. However, you only take part if the Children's Registrar has formally invited you to participate (called granting leave).

President of the Children's Court

The President of the Children's Court also holds office as a Judge of the District Court. In addition to dealing with cases in the Children's Court, the president has responsibility for the administration of the Court. This includes arranging the sittings of the court

- developing recommendations for rules in relation to the practice and procedure of the court
- issuing practice notes, overseeing the training of children's magistrates
- consulting with community groups and agencies on matters involving children and the court.

Practice notes are important communications from the court that give instructions and feedback to DCJ and PSP Service Providers on court expectations and judgements.

The President of the Children’s Court is also independent of government.

Roles and responsibilities of the Department of Communities and Justice

The Secretary of the Department of Communities and Justice

The Secretary is the most senior officer in the Department of Communities and Justice (DCJ). The Secretary is the applicant in all applications for care orders (s61) to the NSW Children’s Court initiated by DCJ and has many powers under the Care Act. The Secretary delegates these powers to other staff in DCJ, based on their position and seniority. DCJ will be represented by a solicitor and are the model litigant in all care proceedings.

What is a Model Litigant?

The Model Litigant is required to act with fairness in the proceedings at all times. They must present all relevant information even when it does not support their position. Model litigants must not cause undue delay in proceedings and mediate where appropriate.

For more information, please see the [Model Litigant Policy](#) factsheet.

DCJ Caseworkers and Manager Casework

DCJ manager casework (MCW) are the delegate for the Secretary in Children’s Court proceedings and is responsible for making decisions and providing instruction to the legal representative in the case. They are responsible for initiating applications as per s61 of the *Children and Young Persons (Care and Protection) Act 1998*.

DCJ caseworkers and the MCW liaise with PSP Service Provider to gather and collate evidence and prepare the Summary of Proposed Plan (SOPP), Care Plan and in cases of restoration, the Restoration Plan. They also liaise with you when the Court has ordered a Section 76 or 82 report.

Where PSP Service Provider has been given primary case responsibility before or during court proceedings, DCJ and the PSP Service Provider will have complementary roles.

DCJ liaises with PSP Service Providers and seeks direct contact with a child, their parents, family, kin and carers in order to:

- continually assess risk (in restoration matters)
- coordinate and file evidence in proceedings
- liaise with PSP Service Providers so that affidavits or reports are provided in accordance with filing directions from the Court
- liaise with PSP Service Providers to ensure witnesses availability and preparedness to give evidence in any hearing.

PSP Service Provider casework staff support DCJ in care proceedings by:

- providing evidence including affidavits that relate to placement and other information about the child, their family, kin and carer
- arranging for witnesses to be available to give evidence in the Children's Court
- contributing to developing the Care Plan with DCJ
- writing Section 76 and 82 reports
- organising family visits, respite or other action in accordance with agreements, care plans and/or court orders.

Child and Family District Unit

When an application is made to the NSW Children's Court for a child who is under the Parental Responsibility of the Minister and in the case management of a PSP Service Provider, in most districts, the Child and Family District Unit (CFDU) oversees the

legal work. PSP Service Providers provide evidence to CFDU who then lodge the evidence with the court.

PSP Service Providers should make every effort to provide information requested to DCJ within five business days of the request.

Court Liaison Officer

Not all DCJ districts and Community Service Centres (CSCs) have court liaison officers. In regions where they do, court liaison officers act as the conduit between the courts and DCJ. They attend all mentions, liaise with the DCJ legal representatives, ensure evidence and affidavits are filed within timeframes and return court outcomes and orders to the Manager Casework (MCW), CFDU and PSP Service Providers.

Participation of Children and Young People

Participation of children is a key principle of the Children's Court.

The court has a responsibility to ensure that children's voices are heard and that they participate in proceedings. Every child is represented in care proceedings. Children who are 12 years of age and over, provide direct instructions to their legal representatives and they are known as the Direct Legal Representative. Children under 12 years of age, have a legal representative appointed to them, who can consider the child's wishes, but who will act in their best interests. They are known as an Independent Children's Lawyer.

While participation is encouraged in relation to care and protection matters, a child is usually not required to attend court unless specifically requested to do so by a court.

If a child subject to care proceedings does attend, the court may direct them to leave the court room if circumstances arise or evidence is to be given that might be considered harmful to them.

With DCJ you need to help the child to meet their solicitor before court so that they can have the proceedings explained and express their views and where appropriate, give instructions.

The court has a responsibility to ensure:

- the child can be heard and participate in the proceedings
- their age and developmental capacity is considered so that they understand the proceedings and their implications
- procedures and rulings are fully explained to them if they ask for an explanation.

Roles and Responsibilities of PSP Service Providers

The roles and responsibilities of PSP Service Providers in care and protection proceedings has changed significantly since the introduction of PSP and is likely to continue to change as PSP evolves. Although PSP Service Providers are generally not party to proceedings in care and protection matters, they support legal processes in a variety of ways through their work with DCJ. In some situations, PSP service providers can apply under Section 98(3) to be joined as a party to care proceedings.

PSP Service Providers are likely to do the following:

- provide information to DCJ to inform their decision making and for inclusion in affidavits
 - family action plans for change
 - out-of-home care case plans
 - family time reports
 - school reports
 - health reports
 - any other assessments
- write affidavits and give oral testimony at court if required
- support the development of Care Plans and Restoration Plans

- write Section 76 and 82 reports
- participate in alternative dispute resolution (ADR) where leave has been granted by the Court.

Information that PSP Service Providers can expect from DCJ:

- the date of a court appearance and any future relevant court dates
- interim or final orders made and any notations to those orders
- the timetable (due dates) for filing evidence or reports
- any relevant undertakings given by any party
- a copy of the Care Plan, including the Restoration Plan (if there is one).

This information is required so that PSP Service Providers can:

- make appropriate family and sibling visit arrangements
- align your casework with what has been agreed to in court.

DCJ do not provide PSP Service Providers with:

- information protected by legal professional privilege
- Children's Court Clinic assessment reports and documents filed in the proceedings by other parties unless the Court has granted leave to do so.

PSP service providers now have a more active role in care and protection proceedings and write affidavits and give evidence to the court.

Court Applications that can be Initiated by PSP Service Providers

There is scope under the Care Act for PSP Service Providers to make certain types of applications to the Children's Court. This includes:

- an application to be joined as a party to care proceedings under Section 98(3)
- an application for a guardianship order with the consent of the Secretary under Section 79B(1)(b)

- an application to be heard in care proceedings under Section 87.

PSP Service Providers and Dispute Resolution Conferences

When DCJ considers that the PSP Service Providers case worker should attend an Alternate Dispute Resolution (ADR) process, DCJ will seek permission for the PSP Service Providers case worker to attend the Dispute Resolution Conference (DRC).

Please see [Common Orders in Child Protection, From First Report to Permanency and General Court Terms and Definitions](#) factsheets for more information.