

How to Satisfy Permanency Planning requirements to Achieve Short Term Care Orders: Restoration

The 2019 amendments to the *Child and Young Persons (Care and Protection) Act 1998* allow for Short Term Care Orders (STCOs) to be made that allocate parental responsibility to the Minister for a maximum of 24 months¹ when the child or young person's permanency goal is restoration, guardianship or adoption.

Permanency plan involving restoration

Section 79(9) of the Care Act allows the Children's Court to make a STCO allocating parental responsibility solely to the Minister for up to 24 months² where the permanency plan involves restoration.

The permanency plan should be consistent with the permanent placement principles in s.10A of the Act. It must also have regard to the principle that the younger the child, the greater the need for early decision making s.83(5).

What is required for the court to approve the permanency plan for an STCO involving restoration?

Care plans are developed by DCJ in collaboration with children, families, communities and any services working with the family, including OOH service providers.

A care plan for a STCO involving restoration must:

1. Provide a clear picture of how the permanency plan will meet the child or young person's needs, welfare and well-being in the foreseeable future.
2. Include an assessment of the parent's capacity to address the issues that led to the removal or assumption of the child or young person within a 24 month period. The court needs to be satisfied that there is a realistic

¹ In special circumstances the court can made a STCO for a period exceeding 24 months under s.79(10).

² As above.

possibility of restoration to the parent within a reasonable period (that is, within 24 months).

This should include copies of the family action plan for change, and outcome of the SDM Restoration Assessment³.

3. Clearly indicate whether restoration to one or both parents is proposed. If the proposal is restoration to both parents jointly, there is no requirement for a consecutive order at the expiry of the STCO (for example an order allocating sole parental responsibility to the mother to the exclusion of the father), as parental responsibility will revert to both parents upon the expiry of the STCO.

If restoration to only one parent is proposed, there will be a need for a consecutive order. In some cases, there may also be a need to file a s.90 application to ensure there is an appropriate allocation of parental responsibility once the STCO expires or is rescinded.

4. Include a description of the goals and outcomes that the parent **must** achieve prior to the child or young person being restored.
5. Include details of the services and supports DCJ is able to provide or arrange the provision of.
6. Include details of other services to be provided by other agencies including an OOHC service provider or other support services.
7. Specify clearly the - who, what, where and when in terms of the services, supports, programs and resources to be provided or to be utilized by the parent. For example, include:
 - a. What services, programs, courses, support and/or resources are required
 - b. Who will provide the services, programs, courses and supports?
 - c. Are these services, supports and programs currently available?
If not, when will they be available?

³ DCJ's preferred assessment is the SDM Restoration Assessment Tool and is mandatory for all DCJ managed matters. A parenting capacity assessment may also be requested by a Children's Court Clinician where required.

- d. Whose responsibility is it to make the referral, enrol or register for the service, program or course
 - e. Where will these services be delivered – for example at the parent’s home, at the service provider?
 - f. When will the services, programs, courses or support start, and when are they required to be completed.
8. Describe how all parties will know when restoration is no longer realistic or in the best interests of the child. Case planning for any relapse will also be important during the restoration process. Include information about any triggers that would indicate that the permanency plan for restoration is no longer realistic. Details of any alternative permanency plan should restoration no longer be appropriate can also be included.
9. Clearly set out the department’s commitment to bring the matter back to the court on a s.90 application if restoration is no longer realistic or in the child’s best interests.
10. Explain how the department will monitor progress in the implementation of the plan (i.e. home visits, 90 day review of family action plan and completion of the SDM Restoration Assessment). Detail what mechanisms will be put in place to ensure the matter will be brought back to court before the expiration of the STCO should more time be needed to achieve restoration or if restoration is no longer the case plan for the child. There should be sufficient information provided so that the court can be confident that the department will bring the matter back before the STCO expires.
11. This should include the timeframe within which the department will bring a s.90 application so the court can be confident the department will bring the matter back before the STCO expires. This date could be linked to the timeframes for a s.76 or s.82 report. You could also consider seeking orders to file update reports, such as, at 6, 12 and 18 months (during a 2 year order), if appropriate to give the court confidence you are on track.

12. Include the views of the child, parents and family in relation to the proposed restoration plan.

What evidence is needed to prove that there is a reasonable prospect of restoration in a reasonable period

Applications for a STCO for restoration will require evidence of the progress the parent has already made in addressing the relevant child protection concerns which led to the child or young person coming into care and improving their parenting capacity.

It is important to include evidence of goals already achieved by the parents and their progress towards achieving other restoration goals.

The court will require evidence that a parent has “runs on the board’ ... where a parent has already commenced a process of improving his or her parenting and that there has already been some significant success on the part of that parent which enables a confident assessment that continuing success might be predicted”.⁴

Evidence of the parent’s progress could include; urinalysis results, attendance at counselling, completion of programs or courses, and other evidence of how they have addressed the child protection concerns and have improved their parenting capacity and ability to meet the child of young person’s needs.

Evidence from contact reports/family time and how this is progressing will also be critical. Contact/family time is an opportunity for parents to put their new skills into practice and parent children for small periods of time.

The court needs to be provided with evidence that the proposed restoration plan and orders are realistic and are that the department’s restoration assessment is not idealistic or merely hopeful.

⁴ Judge Johnstone in *DFACS & the Steward Children* [2019] NSWChC 1

It is important that any assessments that have been undertaken, whether they support the department's proposal or not, are submitted to the court for its consideration consistent with the department's responsibility as a model litigant.

Monitoring the permanency plan

The court should be provided with reports as to the continuing compliance with the identified markers in the care plan, over the course of the STCO – these are usually reports under sections 76 and 82.