

Care proceedings when case management for a child or young person is assigned to a non-government OOHC agency

When and how will the agency be involved in the care proceedings during interim orders?

During interim orders, Community Services retains all statutory child protection responsibilities. Community Services will consult with the non-government OOHC agency ("the agency") case managing the child or young person about decisions and what is submitted to the Children's Court ("the Court") as part of proceedings.

Community Services will need to provide information to the Court about the child or young person's current circumstances that will be held by the agency. The agency must immediately advise the Community Services Centre (CSC) of any change in the child's circumstances that may be relevant to the final care orders.

Before final orders, the relevant agency staff member will provide up-to-date information about the child or young person to the CSC in an affidavit. The CSC will finalise the affidavit prior to the agency staff member swearing/affirming the affidavit. The CSC will then file the affidavit for use as part of the Minister's application to the Court.

When will the agency have to supply information to the Court after final orders?

Following an order allocating parental responsibility, the Court will often order a section 82 report to be prepared about the suitability of arrangements for the care and protection of the child or young person, including any subsequent events. The Court order will specify when the report needs to be provided, on a date within 12 months of final orders.

The agency with case management is responsible for preparing the section 82 report. This needs to be in the format required by the Court and covering the matters set out in the Court order.

The report is prepared by the agency and forwarded to Community Services, Child and Family Regional Unit (CFRU) for endorsement. To ensure compliance with Court timeframes, reports are to be forwarded to the CFRU for endorsement no later than two weeks prior to the date it is due to be filed in Court. If endorsed, the CFRU will file the section 82 report with the Court. If not endorsed, Community Services will liaise with the agency regarding any concerns about the report not complying with the Court's order.

The Court requires section 82 reports to be filed on time. In the event section 82 reports are not filed on time, Community Services will need to explain to the Court the reason for the delay, and may need to subpoena the agency to attend the Court to explain the delay. Community Services may also seek a financial contribution from the agency for costs arising from the non-compliance of the order in accordance with the service agreement process.

If the Court is not satisfied with the arrangements outlined in the section 82 report, it may invite the child's representative, parents and Community Services to bring an application to vary or rescind the orders allocating parental responsibility.

Apart from section 82 reports, information from the agency may also be needed for the Court in appeals, applications to vary orders and for a breach of an order. It is extremely important that agencies maintain accurate and up-to-date records for the child or young person that include all information, such as assessments, case plans and reviews, and reports on contact with the family and significant others.

See [section 82 report](#) for information and tips on drafting these reports.

How are the agency and the carer's views presented to the Court?

The agency and Community Services should seek to reach a consensus on decisions related to case management. In addition, they must work together to ensure the views of the carer are incorporated as part of the decision making. It is the responsibility of the agency to inform Community Services of the carer's views even when the agency does not share the views of the carer.

Community Services will in turn ensure the views of the agency and the carers are properly put to the Court. Where there is a difference of view between Community Services and the agency relating to the development of care plans and other Court work, the process set out in the [Case Management Policy](#) (p23 – Attachment 2) should be followed.

As a model litigant, Community Services should present all views to the Court and explain, if necessary, why the care plan and application seeks arrangements that differ from the preferred position of the agency and/or carer.

What is the role of an agency with case management in an application to vary or rescind an order or in an appeal?

Where there have been significant changes in the child or young person's circumstances since the final care orders were made, anyone involved in the proceedings can apply for the orders to be varied or rescinded via a section 90 application. Irrespective of who files the application, the agency with case management responsibility will need to give evidence to the Court by affidavit from the relevant staff member and possibly attend court as a witness.

Anyone who is involved in obtaining orders and is dissatisfied with a final order may appeal to the District or Supreme Court against the order.

The agency with case management will work with and support Community Services. The agency will be consulting Community Services about the conduct of the appeal and how to best put the child or young person's, carer's and agency's views to the appeal court.

The agency is not to provide information to the legal representative for anyone else, including the legal representative for the child or young person, unless Community Services has given explicit consent. If the agency is asked to facilitate a meeting between the child and the child's legal representative, the agency shall do so. This, however, is not a forum for the agency to provide views about the court proceedings and/or care plans. The agency should convey views about the case to Community Services.

See [section 90 applications](#) for information and tips on these applications.

Does the agency provide its own legal representation?

Given that agencies with case management have the same objectives as Community Services, there should not be a need for an agency to obtain its own legal representation. Community Services legal representative can assist Community Services witnesses, including witnesses who are agency staff members and/or carers. Care proceedings can only be filed by the Minister or Secretary and not by the case managing agency in its own right.

Where an agency or carer does become involved in their own right, Community Services will not make any financial contribution towards the costs.

How does an agency get a care order varied?

An agency can recommend to Community Services CFRU that Community Services seek to vary, rescind or appeal against a Court order. The agency must also advise the Community Services CFRU when anyone has breached a care order.

The agency can discuss and negotiate the position taken by Community Services. If the agency disagrees with the position taken by Community Services, then the dispute resolution provisions in [Case Management Policy](#) (p23 – Attachment 2) should be followed. If agreement cannot be reached, Community Services should present all views to the Court and explain why its application differs from the preferred position of the agency and/or carer.

If the agency removes a child or young person from one of their authorised carers, the agency needs to notify Community Services. As the agency, rather than Community Services, is the relevant decision maker in these circumstances, the agency will respond to the carer's application in the NSW Civil and Administrative Tribunal (NCAT – previously ADT). The agency will need to attend NCAT and deal with the proceedings at its own expense.

Do carers have to provide their own legal representation?

The carer's views will be put to the Court by Community Services. It is the responsibility of the agency to let Community Services know the views of the carer, even if the agency does not share those views. Where the carer has a different view to Community Services, a partnership approach and joint planning between Community Services, the carer and the agency is imperative to ensure the best possible outcomes for the child or young person. If the carer continues to feel disenfranchised, they can apply to the Court to be involved in the proceedings in their own right. The cost of the legal proceedings will be met by the carer subject to any contrary order from the Court.

For further information, please contact your local Community Services Child and Family Regional Unit.