

WHAT IS IT?

Section 90 of the Children and Young Persons (Care and Protection) Act 1998 provides the framework to change the care orders for children.

If final orders have been put in place, applying for a section 90 is a way to alter children's care arrangements.

WHO CAN APPLY?

- Department of Communities and Justice (DCJ)
- The child / young person
- Person who has parental responsibility for the child
- Person who has had parental responsibility removed
- Person who considers themselves to have interest in the welfare of the child

WHEN SHOULD YOU FILE THE APPLICATION?

You should file the application when you have addressed the concerns that DCJ and the Court had.

Look to your Summary of Proposed Plan (SOPP) to find the minimum requirements.

Things to be addressed could include:

- Alcohol and other drug addiction/misuse, homelessness, domestic and family violence, parenting ability, anger management, mental and/or physical health

ADVICE

- Don't miss appointments and contact visits
- Stay in contact with DCJ
- Get legal advice before you file the application (e.g. Women's Legal Service, Legal Aid, Aboriginal Legal Service)
- Have evidence of the work you have done, e.g. certificates from rehabilitation programs or parenting courses, support letters from doctors, psychologists, social workers or other services you have been working with



WJN

APPLYING FOR A SECTION 90



WOMEN'S JUSTICE NETWORK

Applying for Leave

An application to vary the care orders can only be made with the leave of the Children's Court.* This is an important step so a child does not have to go through the court process again.

You are responsible for establishing that there has been a significant change.

Even if there is a significant change, the court can refuse leave if they don't believe there is a reasonable prospect of success, this is called 'Summary Dismissal Power'. If leave is refused, you can appeal to the District Court.

*Seeking leave means asking permission of the Court to change/cancel an order that it normally would not alter due to rules and procedures

A Good Leave Application

See a lawyer to help prepare the court documents (the application and an affidavit). The affidavit will have:

- a background of the original care order
- the nature and frequency of the current contact the parent has with the child
- detailed information about how the parent's circumstances have changed and what they have done to do so
- information about the child's future care (the parent's capacity to care and the contact the child will have with people who are important to them)
- a reference to any restoration plans or other relevant information

Hearing the s90 Application

Once leave has been granted and the court documents have been filed, there is an opportunity for an 'Alternative Dispute Resolution'. *

If this is unsuccessful, there will be a hearing before the Children's Court where the magistrate will make a decision based on what they believe to be in the best interests of the child.

* a type of mediation where the parent/s have an opportunity to see if they can reach an agreement with DCJ and others that have the child's best interests



WHAT DOES THE JUDGE/MAGISTRATE CONSIDER?

The Children's Court considers primary and additional considerations

Primary

- Views of the child (with regard to their maturity and ability to express their views)
- The length of time and stability of current care arrangements
- The course of action that has the child's best interests in mind and would result in the least intrusion

Additional

- Age of child
- Nature of application
- Plans for the child
- If the applicant has an arguable case
- Matters concerning the care and protection of the child

Evidence to Address Primary Considerations

- Views of the child from an interview with the child
- Information obtained from a home visit with the child and authorised carer
- Records of observations about the placement
- Evidence of the parent's efforts to address issues that led to the child's removal