



Attorney General
& Justice

NSW CARE CIRCLES

PROCEDURE GUIDE

Version 2

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1. INTRODUCTION

The Aboriginal Care Circles program was developed in response to the NSW Government's commitment to improving the well being of Aboriginal families.

The Aboriginal Care Circles model uses an Alternative Dispute Resolution (ADR) process to engage Aboriginal people in care proceedings before the Children's Court. It is an alternative avenue for care matters involving Aboriginal children and young people incorporating the participation of respected Elders and community members.

The purpose of a Care Circle is to implement an enhanced court process for care matters involving Aboriginal children in the New South Wales Children's Court. Care Circles does not establish if a child or young person is at risk, this has already been established through earlier court processes, rather it encourages culturally appropriate decision making and care plans for Aboriginal children and young people.

Care Circles aim to:

- Improve outcomes for Aboriginal children in care proceedings.
- Empower Aboriginal families and communities by reducing any barriers that may currently exist between courts and Aboriginal people.
- Contribute to self-determination of Aboriginal people in care proceedings.
- Increase participation in decision-making about Aboriginal children by Aboriginal families and communities.
- Improve availability of information as to placement options within the child's family, kinship group and Aboriginal community.
- Enhance the viability and effectiveness of undertakings to be agreed to by a parent in placement proceedings.
- Improve support provided to parents or people with parental responsibility.
- Increase confidence in the care process.
- Improve reporting of situations in which children or young people may be at risk.
- Ensure that all parties adhere to and address the Aboriginal and Torres Strait Islander principles in the Children and Young Persons (Care and Protection) Act 1998 (the Act).
- Strengthen relationships between the Department of Attorney General and Justice (DAG&J), Department of Family and Community Services, Community Services (CS), Children's Court, families and communities.

Care Circles benefits include:

- Decisions about out of home care will be better informed by the input of a Care Circle and this will improve outcomes for Aboriginal children and young people affected by the process.
- The Care Circle process may enhance the viability and effectiveness of undertakings agreed to by a party.
- Respected community members and/or Elders may be more effective in suggesting and reporting appropriate behaviour in line with undertakings. Aboriginal parents may be encouraged and empowered not to breach undertakings given the involvement of Elders. Care Circles may inform orders for undertakings.
- In cases where the Children's Court accepts (pursuant to section 83) that restoration is a realistic possibility, restoration plans (including interim placement and services) may be better informed by the input of a Care Circle.
- Care Circles facilitate participation by all parties by increasing accessibility to information and decreasing legal jargon and hierarchical legal structures thereby breaking down barriers between Aboriginal people and the Court. This increases participation and empowerment in the proceedings and is consistent with the principle of the Act concerning commitment to self-determination for Aboriginal people.
- Empowerment of communities by the participation of respected community members and/or Elders in the court process.
- Legitimising the Care Circles process may lead to an increased incidence of reporting of children at-risk of abuse or neglect within Aboriginal communities.
- More significant recognition of kinship relations and care of children by members of the extended family in a way that is consistent with section 13 of the Act.

2. LEGISLATION

Children and Young Person's (Care and Protection) Act 1998, the Act.

<http://www.legislation.nsw.gov.au/viewtop/inforce/act+157+1998+FIRST+0+N>

3. RELATIONSHIP WITH OTHER STAKEHOLDERS

This guide aims to assist the Project Officer to develop good working relationships with various people involved in Care Circles. They can include but are not limited to:

- Children's Court Magistrates
- Aboriginal Elders & Respected People
- Aboriginal Services Division (Staff)
- Aboriginal Community Justice Groups (ACJG)
- Local Court Registries
- Department of Family and Community Services, Community Services (CS)
- Local community service providers
- Victims Services
- Legal Aid
- Aboriginal Legal Services
- Other Legal Practitioners
- Other Community Service Providers

4. ESTABLISHING OF A CARE CIRCLE PANEL OF COMMUNITY REPRESENTATIVES

- 4.1 An expression of interest to be a community representative, on a Care Circle will be called by the Director-General, DAG&J. Once initially called anyone, at any time thereafter, may express an interest in participating as part of a panel.
- 4.2 Where there are less than 12 people on the panel at any one time the Director-General, DAG&J will seek expressions of interest by circulating Expression of Interest forms amongst identified Aboriginal organisations in consultation with CS.
- 4.3 A person will express interest by completing an Expression of Interest form, agreeing to undertake probity checks and completing a confidentiality agreement.
- 4.4 DAG&J upon receiving an Expression of Interest form will:
 1. Request confirmation from the local Aboriginal community that the person is a member of the local Aboriginal community, through the Aboriginal Community Justice Group then will
 2. Forward a copy of the form to the relevant Manager Client Services so that CS can complete a history check based on records held on KIDS, then will
 3. Obtain a Criminal History from the Police on the person.
- 4.5 Upon receipt of a request for a history check, the relevant Manager Client Services will:
 - Identify whether any information concerning the behaviour of prospective panel members is held on KiDS
 - Identify whether any information so held, indicates that the individual might present a risk to the safety, welfare and well being of children or young people. Such a risk will be identified where a child of the individual is currently in out-of-home care and not placed with them or has otherwise been removed from their care and not restored. A risk will not be identified unless at least one of the reports upon which this conclusion has been based has been confirmed or substantiated
 - Discuss this identification with an internal CS working party
 - Reach a conclusion following this discussion.

4.6 Following the history check Department of Family and Community Services, Community Services will advise Department of Attorney General & Justice by way of a standard letter, as to whether or not a history check results in the decision of Community Services whether the person is suitable for inclusion on a panel. The letter will be sent to Department of Attorney General & Justice within 10 working days of receipt of all information required identifying the individual having the history check.

4.7 If, one or more of:

1. The local Aboriginal community stating that the applicant is not a member of the local Aboriginal community
2. Community Services advising that the person is unsuitable for inclusion on a panel.
3. The Criminal History Check establishes that the person has been convicted of a serious criminal offence that can include, but not limited to sexual assault, domestic violence or crimes involving children.

Then the Department of Attorney General and Justice will write to the person and advise that the person's expression of interest was unsuccessful, using the agreed template. (Appendix F)

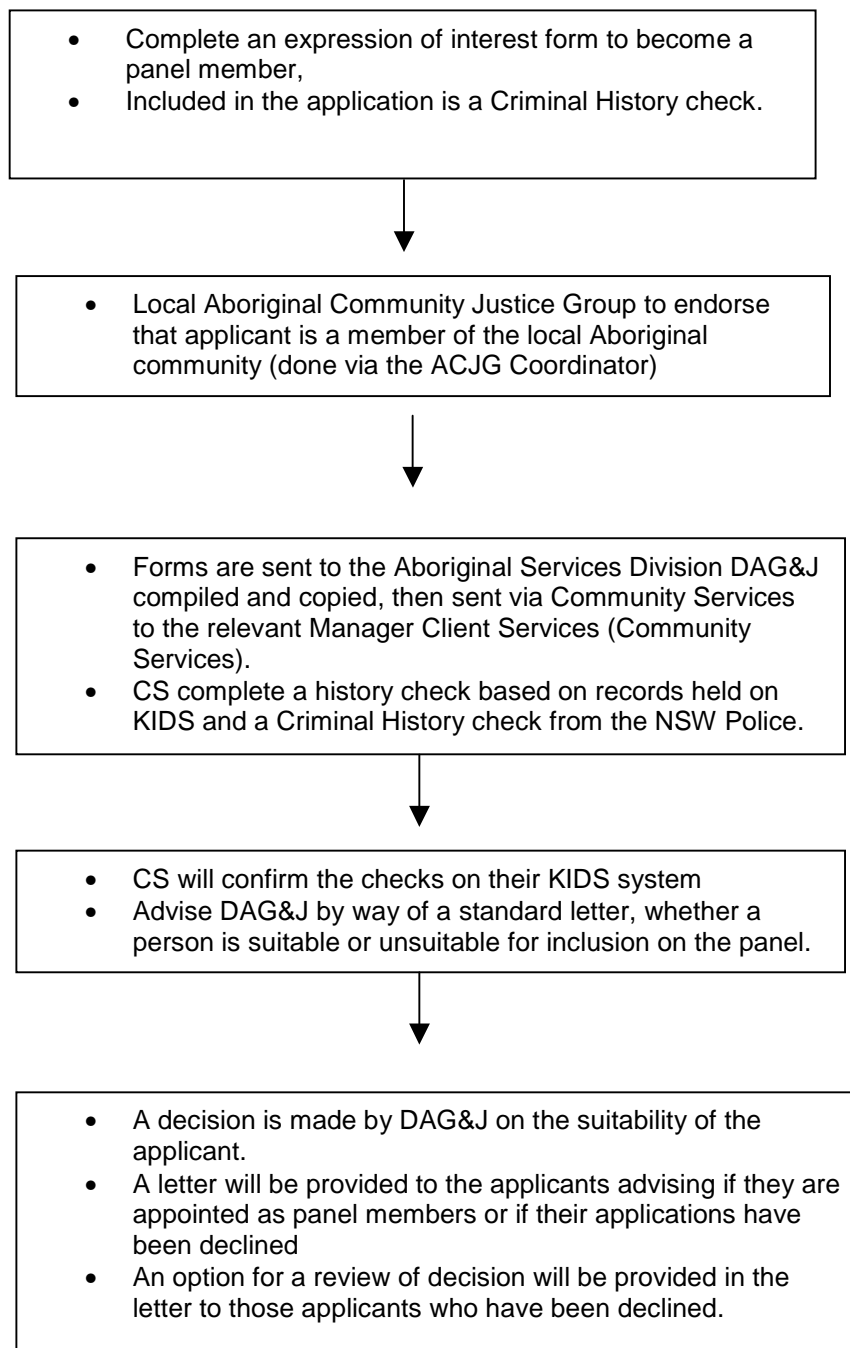
4.8 A person whose expression of interest has been unsuccessful may seek an internal review of the decision. Such application should be made in writing to the Department of Attorney General and Justice within 28 days of receipt of the decision. The Assistant Director General Crime Prevention and Community Services Division will undertake the internal review, taking into account any relevant material submitted by the applicant. An internal review should be completed within 21 days of the application being lodged. The applicant is to be notified in writing of the outcome and reasons.

4.9 Unless one or more of the circumstances set out in 2.7 exists, DAG&J will write to the person and advise that the person's expression of interest was successful and advise as to the induction process.

4.10 DAG&J in conjunction with the Children's Court, Legal Aid, Aboriginal Legal Services and CS will conduct the induction process, which will comprise:

- Principles applicable to care proceedings including the impact of abuse and neglect on children
- Description of court processes for care proceedings (including the role of Magistrates, lawyers, CS and court staff)
- Operation of Care Circles
- Role of the Care Circles Project Officer (CCPO)
- Role of a community representative on a care circle panel
- Support mechanisms for panel members.

Flow chart of Care Circles application for panel members.



5. Role of Care Circle Participants

5.1 Project Officer

An employee of the Department of Attorney General and Justice, the Project Officer acts as a liaison between the Aboriginal community, Community Panel Members, the Court and Community Services.

The Project Officer recruits Aboriginal community representatives as Community Panel Members. Induction, training and relevant resources are then arranged for the Community Panel Members by the Project Officer, in partnership with the Regional Coordinator and Aboriginal Services Division (DAGJ).

The Project Officer plays a crucial role in establishing and supporting the Community Panel and in providing ongoing consultation with the local Aboriginal community about the Care Circle program.

The Project Officer also engages and discusses relevant issues with other stakeholders including families, Case Workers, Magistrates, legal representatives, community support workers etc.

Project Officers arranges suitable informal and culturally appropriate venues for Care Circles, as well as catering and transport for Community Panel Members.

The Project Officer enquires and if required provides post care circle support to panel members by way of access to the Employee Assistance Program (EAPs) which is a confidential counselling service offered by the Department of Attorney General and Justice to all of its employees and their immediate family.

5.2 Community Panel Members

Community Panel Members are Aboriginal community representatives who have undergone the relevant criminal history and KIDS system check and are deemed as suitable to be members of the Care Circle panel and participate in the Care Circle process.

Community Panel Members, assist family members to recognise the issues around parenting, during and following the Care Circle process. They will also understand the rationale behind the options identified by Community Services and will validate care plans.

Three Community Panel Members will be selected to sit for each Care Circle. Community Panel Members will be undergo training both in relation to care and protection issues and the Care Circle process.

5.3 **Community Services (including lawyers and Case Managers)**

Representatives of the Department of Human Services, Community Services, gather information and develop a care plan by engaging with participants during the initial Care Circle. At a second Care Circle, the Community Services representatives present an appropriate care plan to the Circle based on discussions and agreements from the initial Care Circle.

5.4 **Legal Representatives**

- a) Provides legal representation to the Child's parents.
- b) Provides legal representation to the Child.

5.5 **Family Members/Carers**

Family members and carers are either the parent or persons who have care of the child or young person. They are encouraged to participate in the Care Circle process and explain their circumstances in a culturally comfortable and supported environment. The Care Circle process allows parents/carers to speak and be heard, ask questions and get a better understanding of the care process.

Family members/carers who are participating in the Care Circles are encouraged to engage with community services and other stakeholders present.

Family members/carers participate in decisions about what is in the best interest of their child/children.

5.6 **Community Service Providers**

Community Service Providers may provide a personal advocacy role by providing personal encouragement and support to family members. They may also identify ways in which family members can be assisted to develop their parenting skills and meet the needs of the child.

Relevant service providers may report on the progress of family members in this regard which proves valuable in the development of restoration plans, and may also provide continued support to ensure access to programs and services.

5.7 **Children's Court Magistrate**

A Children's Court Magistrate will oversee the Care Circle. After the first and second Care Circles are complete, the Magistrate will close the Care Circle and open proceedings in the Children's Court. The Magistrate will then determine whether to make orders by consent or, where issues remain outstanding, to make directions as necessary and list the matter to be heard before the Children's Court.

The same Children's Court Magistrate oversees both of the Care Circles, but is different from the Children's Court Magistrate who presides over a hearing for any matters not resolved as part of the Care Circle.

Magistrates, who support the process, are culturally aware and are willing to adopt a non-judicial approach when participating in Care Circles.

6. Selection of a matter for a Care Circle

- 6.1 As soon as possible in a care matter which involves an Aboriginal family (or a family in which one or more of the mother, father or child identifies as Aboriginal), the Department of Family and Community Services, Community Services lawyer (or any other legal representative) will advise the Magistrate or Registrar and other legal representatives of the parties to this fact and the possibility that this is a matter which may be suitable to proceed to a Care Circle.
- 6.2 Where an Aboriginal child has a sibling child involved in care proceedings at the same time - then all siblings should be subject to the same care circle – even where the sibling child may not be Aboriginal.
- 6.3 Once a determination has been made that a child or young person is in need of care and protection and prior to the matter being listed for final orders any party may apply, or the Magistrate may upon the Magistrate's own decision, determine that the matter is suitable to refer to a Care Circle. The Magistrate will hear submissions as to why such a decision should, or should not, be made. These submissions may include information on the willingness of the parents of the child or of the child or young person to participate.
- 6.4 In making a determination that the matter is suitable to refer to a Care Circle the Magistrate will consider whether a Care Circle would provide valuable input into the following:
1. what interim arrangements there should be for the care of the child
 2. what services/supports can be made available to the family
 3. where the child should live
 4. what contact arrangement should be in place
 5. alternative family placements, or
 6. such other matters as appear relevant.
- 6.5 Once a determination has been made that the matter is suitable to refer to a Care Circle an agreed summary of matters to be considered by the Care Circle will be handed to the Magistrate as completed and agreed by as many present (directly or by their legal representative) as possible. The agreed summary will be in the form and contain the information required set out in the template.
- 6.6 Once a determination has been made that the matter is suitable to refer to a Care Circle then the Magistrate will complete a bench sheet and based upon that the Registrar of the Children's Court will notify the Care Circles Project Officer (CCPO) within AGD and supply a copy of the agreed summary.
- 6.7 The CCPO will consult with the Magistrate and agree upon a date and a venue for the Care Circle. The CCPO will book the venue. The Magistrate will be asked to give consent under section 105(3)(b)(i) for the release of names and identifying information where such consent is not asked to be given under section 105(3)(iii) by DoCS as delegate of the Children's Guardian. Parties will advise these matters within 24 hours of the referral of the matter to a Care Circle.

- 6.8 The CCPO will select on a rotation basis either two or three panel members within 72 hours of the Magistrate's determination. The CCPO will identify the child and the child's family and then ask each of the selected panel members whether:
1. each person agrees that the child is Aboriginal
 2. he or she agrees to serve on a panel for this child
 3. any potential conflicts of interest are perceived from their participation on the particular panel.
- 6.9 If there are not 2 or 3 panel members within 5 business days of the Magistrates determination who:
1. agree that the child is Aboriginal, and
 2. accept that the child and the parents connection to the local Aboriginal community is sufficient to render the care matter suitable for reference to a care circle then the CCPO will advise the parties and arrange for the matter to be mentioned on the next list day. No reasons will be given.
 3. The matter will proceed without a Care Circle.
- 6.10 Unless 3.9 applies then the CCPO will, within 5 days of the Magistrates decision, advise the parties (including the child representative) of the names of each family member who has given notice of intent to attend and each panel member prepared to participate. The CCPO will also advise each party what, if any, relationship the panel member has to the particular child or either of the child's parents. A party can have the matter re-listed and make submissions to the Magistrate to exclude one or more family or panel members from the Circle. The party must seek to have the matter re-listed with 48 hours of being advised and a failure to seek to have the matter re-listed within that time will result in the members advised being included on the panel. The Magistrate decides who can be included on a particular panel. If this leaves less than 2 people on a panel then the CCPO will re-commence the process from 3.6.
- 6.11 At least 24 hours before a Care Circle panel meets the CCPO will advise each party to the care proceedings the final composition of the panel after having completed the process set out in clause 3.10.
- 6.12 The Community Representatives of the Care Circle will meet at the chosen venue 1 hour prior to commencement of the Care Circle. The CCPO will distribute a copy of the Agreed Summary, and a copy of a Statement as to Confidentiality to each of the Community Representatives. The Community Representatives may formulate any questions to be put to the Care Circle arising from the Agreed Summary in order to clarify the information contained in that document.

6.13 Care Circle will normally proceed by:

1. Acknowledgement of traditional custodians
2. Magistrate opens circle conference
3. CCPO will collect confidentiality statements for each participant
4. Magistrate comments on the joint summary prepared by the legal representatives/parties
5. Discussion
6. Magistrate summarises discussion
7. Each party present and each Care Circle member signs a list of agreed recommendations.
8. Magistrate closes conference
9. Community representatives and care circle project officer debrief.

6.14 The CCPO issues employer letters for each participating panel member who requests one.

6.15 No Sheriff's Officer will be in attendance at a Care Circle unless requested by one of the parties and agreed by the Magistrate. A request for attendance of a Sheriff's Officer, with reasons supplied, should be made to the CCPO.

7. The Care Circle

- 7.1 The Magistrate will chair the Care Circle.
- 7.2 A Care Circle is a form of independent alternative dispute resolution and as such the Care Circle is not recorded and the provisions for the protection of information contained in Clause 11, *Children and Young Persons (Care and Protection) Regulation 2000* apply.
- 7.3 At the end of each Care Circle a decision needs to be made as to whether another Care Circle is required for the purpose of commenting on any care plan prior to it being tabled in court.
- 7.4 Following the first Care Circle, Department of Family and Community Services caseworkers will hold a care plan meeting, to be attended by the parents and anyone else DoCS invites to attend. A draft care plan will be finalised. This draft care plan must set out all matters raised for consideration as part of a Care Circle. This will include the reasons why DoCS have not adopted any recommendations of the Care Circle in the care plan. This may include reasons arising as a result of interviewing family members and conducting assessments of potential carers.
- 7.5 A second Care Circle may take place. At this Care Circle Department of Family and Community Services representatives will explain why any matters discussed at the first Care Circle have been, and have not been, included in the care plan or why the care plan differs in any way from what was discussed/agreed at the first Care Circle.
- 7.6 Where a second Care Circle is to be held then the CCPO will repeat the steps at 3.10, 3.11 and 3.12.
- 7.7 A list of agreed recommendations is to be signed by each Care Circle member and each party present (or their legal representative) at the end of the Care Circle.
- 7.8 At the end of the final Care Circle the Magistrate will close the Care Circle and, open proceedings in the Children's Court. The Magistrate will then determine whether to make orders by consent or, where issues remain outstanding, to make directions as necessary and list the matter to be heard before the Children's Court.
- 7.9 The Magistrate will provide to the CCPO a copy of the completed bench sheet outlining the outcomes of the Care Circle.
- 7.10 The CCPO will arrange for a copy of the outcomes to be sent to each participant, including the child representative.
- 7.11 The CCPO will keep such data as agreed between the Attorney General's Department, Department of Family and Community Services and the Children's Court for the purposes of monitoring and evaluating the pilot programme.
- 7.12 Where a care matter is listed before the Children's Court because there remain matters still to be dealt with by the Court then the care matter will be listed before a different Children's Magistrate to the one who presided at the Care Circle.

8. Post Care Circle

- 8.1 The CCPO enquires and, if need be arranges, support for each participating panel member who requests it. This support will be provided by the Employee Assistance Program which is a confidential counselling service offered by the Attorney General's Department to all of its employees and their immediate family. Care Circle panel members may have access to this service in cases where they are affected by information disclosed during the Circle process. The provider of the program is *IPS Worldwide*. The provider's services include 24-hour telephone counselling and face-to-face counselling.
- 8.2 The CCPO to seek information from each participant in a Circle as to the processes involved in conducting a Care Circle. This information will be de-identified and summarized and supplied to whichever party may request it. This will be a way of seeking to improve future circles.

9. Relevant Forms

Documents:

- (A) Expression of Interest Document [attached]
- (B) Privacy and Confidentiality Declaration – Care Circle Member [attached]
- (C) Request for History Check [not attached]
- (D) Advice as to History Check [not attached]
- (E) Letter of Successful Community Panel Member Applicant [not attached]
- (F) Letter of Unsuccessful Community Panel Member Applicant [not attached]
- (G) Agreed Summary of Matters [attached]
- (H) Letter of Advice on Date, Venue, and Consent (Community Panel Member) [not attached]
- (I) Letter of Advice on Date, Venue, and Consent (General) [not attached]
- (J) Letter Seeking Participation on Panel [not attached]
- (K) Letter Advising Care Circle not proceeding [not attached]
- (L) Letter Advising of Community Representatives [not attached]
- (M) Employers Letter [not attached]
- (N) Request for Assistance [attached]



**COMMUNITY REPRESENTATIVES:
CARE CIRCLES EXPRESSIONS OF INTEREST SOUGHT**

The Department of Attorney General and Justice is seeking respected community members to volunteer as Community Panel Members in the Care Circle Program. You do not need to be considered an Elder within your community to participate in this Program. If this will assist, letters of support can be provided for handing to employers.

Care Circles involve Aboriginal children and young persons from your community who are involved with the Department of Community Services and the Children's Court. Further detail about Care Circles is contained in an information sheet.

The following selection criteria applies:

- Aboriginality,
- A criminal records check. Minor offences may not exclude a person from being involved in the Care Circles,
- A history check with The Department of Family and Community Services, Community Services.

By supplying my contact details and signing this document I:

1. consent to a criminal records check being made on me. I understand that prior offences may exclude me from participating on the Circle and that this decision will be made by an Aboriginal staff member from the Department of Attorney General and Justice's Aboriginal Services Division located in Sydney.
2. consent to a KIDS check being made on me. I understand that information held by Human Services, Community Services, which shows that I might present a serious risk to the safety, welfare and well-being of children or young persons will be taken into consideration, and a decision made by a small internal Human Services, Community Services Working Party.

Name	
Address	
Contact Number	

I have read and understood this document and give my consent for a criminal records check and KIDS check to be made on me.

I _____ (name) formally request to be considered as a representative of my community in Care Circles involving children and young persons from my community.

Signed: _____

Date: _____

Please return completed form to the Care Circle Project Officer, Lismore Court.



**PRIVACY AND CONFIDENTIALITY DECLARATION -
CARE CIRCLE MEMBER**

It is extremely important that all information pertaining in the Care Circle Program is treated with strict confidentiality and that privacy of all participants is maintained.

I _____ hereby undertake that I shall keep strictly confidential, all information which I access through my involvement with the Care Circle.

I agree not to discuss information I receive through my involvement with the Care Circle outside the convened Care Circle.

I agree not to take any documentation (including notes, photographs or other records) that I receive during a convened Care Circle outside of the Court precinct of Care Circle conference room.

I agree not to distribute outside the convened Care Circle, any documentation (including notes, photographs or other records) I receive during a convened Care Circle outside of the Court precinct or Care Circle conference room.

I understand it is an offence under section 105 *Children and Young Persons (Care and Protection) Act NSW 1998*, to publish or broadcast any information, picture or other material that identifies or may lead to the identification of the child or young person subject to the Care Circle.

Signature of Member: _____

Name of Witness: _____

Witness Signature: _____ Date: ___/___/___

Copy to: Aboriginal Services Division, Department of Attorney General and Justice
Original to: Care Circle Project Officer, (*insert Local Court*)

**IN THE CHILDREN'S COURT
OF NEW SOUTH WALES
AT**

FILE NO.

IN THE MATTER OF:

(Name of child/young person and D.O.B.)

AGREED SUMMARY OF MATTERS

Children and Young Persons (Care and Protection) Act 1998

CHILD/YOUNG PERSON

Name of child/ young person:	
Date of birth:	

Summary of relevant family relationships:

Summary of factors alleged by Community Services, which are relevant to the child needing care and protection:

Interim Care Orders:

Possible needs of the child to be identified in any care plan:

.....
Lawyer for C.S.

.....
Lawyer for Child

.....
Lawyer for parent

.....
Dated

.....
Dated

.....
Dated

Appendix (N) Request for assistance



COMMUNITY PANEL MEMBER: REQUEST FOR ASSISTANCE

To: Care Circle Project Officer
Lismore Children's Court
(address)

On, _____(date), I _____(name),
participated in a Care Circle as a Community Panel Member.

As a consequence of my participation in that Care Circle, I request counselling support.

My contact details are:

Address	
Contact Number	

Signature: _____

Date: _____