

# Children's Court of New South Wales

## Practice Note 6

### Children's Court Clinic assessment applications and attendance of Authorised Clinicians at hearings, dispute resolution conferences and external mediation conferences

First issued 2 September 2011

Amended 30 June 2017

#### 1. Commencement

1.1 This amended Practice Note commences on 3 July 2017.

#### 2. Objective

2.1 The Children's Court Clinic (the Clinic) is established under section 15B of the *Children's Court Act 1987*. Pursuant to its functions under sections 52-59 of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) the Clinic assists the Children's Court in care and protection matters, by providing independent expert clinical assessments of:

- children and young persons, and
- the capacity of parents and others to carry out parental responsibility

2.2 An assessment report by the Clinic is an independent report to the Court rather than evidence tendered by a party (section 59 of the Care Act). The Children's Court Clinic Authorised Clinician (Authorised Clinician) who prepares a report is nevertheless available for cross-examination at the hearing if required.

2.3 It is in the best interests of the child or young person to ensure that the most comprehensive relevant documentation, on which to base the assessment, is provided to the Authorised Clinician conducting the assessment, as soon as possible. It is the objective of this Practice Note to ensure that:

- all assessment applications are brought expeditiously, and the Clinic is provided with all relevant documentation needed to carry out the assessment without delay, and
- when an Authorised Clinician is required to give evidence at a hearing, or to attend a dispute resolution conference or external mediation conference, their attendance is organised efficiently, and any updating documents are provided to the Clinician early enough prior to a hearing to be properly considered by the Authorised Clinician.

### 3. Nature of Clinic assessments

- 3.1 Whilst the Care Act states that the Children's Court may make orders for '*the physical, psychological, psychiatric or other medical examination of a child or young person*' (section 53(a)), the Clinic is not currently resourced to provide physical or medical examinations.

### 4. Examination and assessment of children and young persons

- 4.1 A child or young person who is the subject of care proceedings must not be examined or assessed for the purpose of placing evidence before the Court without the leave of the Court, except pursuant to an assessment order made under section 53 or 54 of the Care Act.
- 4.2 If the Court gives leave for such assessment, the Court may make such directions as it considers appropriate for the provision of any report of that assessment.

### 5. Application for assessment order

- 5.1 An assessment application under section 53 and section 54 of the Care Act must be in the prescribed form, **Application for Assessment Order**. The assessment application is to:
- a) consolidate multiple children in a sibling group into the one application, while allowing for separate questions for individual children, if required,
  - b) outline the reasons why an assessment order is required,
  - c) outline the circumstances of the persons to be assessed,
  - d) include a brief list of issues to be addressed by the Authorised Clinician (no prejudicial comments or adverse opinions should be expressed about the person to be assessed),
  - e) identify any specific expertise required of the Authorised Clinician conducting the assessment,
  - f) include contact details for parties to be assessed, their legal representatives, and the relevant caseworker or casework manager, and
  - g) list all the documents upon which the assessment is to be based, including all relevant previous clinical assessments undertaken of the child, children or family.
- 5.2 An assessment application is to be made to the Court as soon as possible after establishment, and is to be filed and served on all other parties no later than **2 days** before the application is made to the Court.

## 6. Provision of documents to the Clinic or to an assessor appointed pursuant to Section 58(2) of the Care Act

- 6.1 When the Court orders an assessment by the Clinic, the order will be taken to contain a direction that the applicant for the assessment order (or other party as directed by the Court) will, within **7 days** of the making of the assessment order, provide all the documents listed in the application (the file of documents) to the Clinic.
- 6.2 When the Court makes an order appointing a person to prepare an assessment report pursuant to section 58(2) of the Care Act, it will request the Clinic to forward the file of documents to the assessor.
- 6.3 The file of documents must contain the following:
- a) all relevant applications and orders in the current proceedings,
  - b) relevant documentary or other evidence filed in the proceedings, as agreed between the parties,
  - c) any relevant documents that have not been filed in the proceedings but that all parties agree should be included in the file of documents, including the specified documents referred to in *Practice Note 2 "Initiating report and service of the relevant portion of the Community Services file in care proceedings"*, relevant subpoenaed documents, or those that the Court has ordered for inclusion. These will include copies of previous clinical assessments undertaken of the child, children or family (e.g. paediatric, psychological, psychiatric, social work assessments or reports, school reports, Clinic assessments, Karitane/Tresillian/hospital discharge summaries) relevant to terms of the assessment order, and
  - d) relevant current court orders, including those made by courts other than the Children's Court (e.g. Apprehended Violence Orders, Family Court Orders).
- 6.4 If practicable, the file of documents is to be sent to the Clinic by email. If it is not practicable for the file of documents to be sent by email due to the size of the file **2 copies** of the file of documents are to be provided to the Clinic. Written documents are not to be provided on CD or DVD.
- 6.5 All documents provided to the Clinic are to be properly described and indexed.
- 6.6 In the event that a party objects to a document being forwarded (or not being forwarded) to the Clinic as part the file of documents, then that objection is to be determined by the Court at the time the assessment application is made, and the Court is to determine whether the document is to be sent to the Clinic as part of the file of documents.
- 6.7 Any further relevant documents in addition to the original file of documents should be forwarded to the Clinic as soon as they become available, and with the agreement of all parties. However, if all parties do not agree to a particular additional document being forwarded to the Clinic, the party

seeking to rely on the additional document is not precluded from seeking to cross-examine the Authorised Clinician in relation to the document at the hearing.

## **7. Time needed to complete Clinic assessments**

- 7.1 Assessment reports usually take approximately **6 weeks** to complete from the time the Clinic has received the assessment order **and** the file of documents. Time required to complete the assessment report may need to be extended due to case complexity, availability of clinicians, missed appointments or other factors.

## **8. Authorised Clinicians' attendance at Court**

- 8.1 Where an Authorised Clinician is required for cross-examination at the hearing, the party seeking such attendance should consult the Authorised Clinician, by contacting the Children's Court Clinic and the other parties to determine the most appropriate date and time the Authorised Clinician is to attend. The party seeking the attendance of the Authorised Clinician must then notify the Court of the Authorised Clinician's availability when seeking a hearing date.
- 8.2 The Registrar of the Court is to send a **Notice to Authorised Clinician to Attend Court** (the Notice) to the Children's Court Clinic in the prescribed form within **7 days** of the matter being set down for hearing.
- 8.3 Upon receipt of the Notice, the Authorised Clinician is to confirm his or her availability by signing and returning a copy of the Notice to the Registrar.
- 8.4 If the Authorised Clinician is requested to attend Court to give evidence, then the party requesting that attendance (or another party as directed by the Court) shall send to the Clinic a copy of all relevant evidence, care and permanency plans, as agreed by all parties, and not previously sent to the Clinic. Any additional material must be sent to the Clinic **prior to the Readiness Hearing**. Where practicable, copies of the additional material are to be sent to the Clinic by email and if not practicable **2 copies** of the additional material are to be provided to the Clinic.
- 8.5 At the Readiness Hearing, the availability of the Authorised Clinician to attend the hearing is to be confirmed including a specific date and time. The parties should also inform the Court whether the Authorised Clinician has been provided with all relevant material as described in paragraph 17.9(g) of *Practice Note 5 "Case management in care proceedings."*
- 8.6 If all parties do not agree to a particular additional document being forwarded to the Clinic in relation to the Authorised Clinician's attendance at Court, the party seeking to rely on the additional document is not precluded from seeking to cross-examine the Authorised Clinician in relation to it at the hearing.

- 8.7 The requirements of paragraphs 8.1 to 8.5 above also apply to the provision of information to an assessor appointed under section 58(2) of the Care Act.

## **9. Authorised Clinicians' attendance at dispute resolution conferences and external mediation conferences**

- 9.1 An Authorised Clinician who has prepared an assessment report may attend a dispute resolution conference under section 65 of the Care Act or external mediation conference under section 65A of the Care Act (a conference), but only with the agreement of all parties.
- 9.2 The purpose of the attendance of an Authorised Clinician at a conference is to:
- a) assist the parties to understand the recommendations made by the Authorised Clinician in an assessment report,
  - b) explain the reasons for the recommendations in the assessment report and
  - c) assist the parties to develop or consider a care plan by providing advice as to the suitability of arrangements with reference to the assessment report.
- 9.3 An Authorised Clinician attends a conference in an advisory capacity only, and not as a witness. Questions are not to be asked of the Authorised Clinician that are in the nature of cross-examination.
- 9.4 A party may apply to the Court or a Children's Registrar for a direction requesting an Authorised Clinician to attend a conference.
- 9.5 When a case is referred to a conference, the Court is to be informed by the parties whether an Authorised Clinician is being requested to attend.
- 9.6 Before a matter is referred for a conference, a party requesting the attendance of an Authorised Clinician should enquire either through the Clinic or directly with the Authorised Clinician as to the clinician's availability and be in a position to inform the Court. Authorised Clinicians have been requested to provide details of their availability at the end of their assessment reports.
- 9.7 If the Court or Children's Registrar has determined that an Authorised Clinician will attend a conference, the Court or Children's Registrar, when allocating a conference date, will give consideration to allowing adequate time for the Authorised Clinician to prepare for the conference, having regard to the nature of the issues to be addressed.
- 9.8 The party requesting the participation of the Authorised Clinician must prepare a document in which specific agreed discussion points arising from the clinician's assessment report will be outlined. This document should be provided to the Children's Court Conference Coordinator no later than **3 working days** after the conference date has been set. The information

contained in the document will be provided to the Authorised Clinician as part of the **Notice to Authorised Clinician to attend a Dispute Resolution Conference or External Mediation Conference** (the Conference Notice), prior to the conference. This will allow the clinician to prepare for the conference.

- 9.9 The Conference Notice is to be issued by a Children's Registrar to the Children's Court Clinic within **3 working days** after the conference date has been set.
- 9.10 Upon receipt of the notice, the Authorised Clinician is to confirm his or her availability by signing and returning a copy of the Conference Notice to, in the case of a dispute resolution conference, the Children's Court Conference Coordinator, or, in the case of an external mediation conference, the Registrar of the Court or such other person nominated in the Conference Notice.
- 9.11 The party requesting the participation of the Authorised Clinician must prepare and file with the Children's Registrar a list of agreed additional material to be provided to the Authorised Clinician within **7 days** after the conference date has been set or such longer period as the Children's Registrar determines.
- 9.12 The party requesting the participation of the Authorised Clinician is to forward by email the agreed additional material properly described to the Clinic by a date not less than **1 week** prior to the conference date.
- 9.13 The Children's Registrar/mediator will contact the Authorised Clinician prior to the conference to confirm his/her attendance at the conference and to explain the purpose of the conference and the way in which it will proceed.
- 9.14 An Authorised Clinician may attend the conference by telephone.
- 9.15 An Authorised Clinician who has been requested to attend a conference may attend all or part of the conference at the discretion of the Children's Registrar or mediator.
- 9.16 The requirements of paragraphs 9.1 to 9.15 above also apply to attendance at a conference of an assessor appointed under section 58(2) of the Care Act, or any other expert who has written a report relevant to the case whose attendance is required at the conference.

Judge Peter Johnstone  
**President, Children's Court of NSW**  
30 June 2017