

Children's Court of New South Wales

Practice Note No. 8

Apprehended Domestic and Personal Violence Proceedings in the Children's Court

1. Commencement

- 1.1 This Practice Note commences on 7 May 2012

2. Preamble

- 2.1 Sections 9 and 10 of the *Crimes (Domestic and Personal Violence) Act 2007* (the Act) set out the objects of the Act in relation to domestic and personal violence. Those objects include the ensuring of the safety and protection of all persons, including children, who experience or witness domestic or personal violence and the empowering of the courts to make apprehended domestic or personal violence orders in appropriate circumstances to protect people from violence, intimidation (including harassment) and stalking.
- 2.2 This Practice Note relates to court procedures in the Children's Court in cases where apprehended domestic or personal violence order proceedings have been commenced against a young person. The procedures are intended to promote the rehabilitation of the young person within his or her family and the community whilst acknowledging the objects of the Act and the importance of the need to protect victims of domestic and personal violence.
- 2.3 This Practice Note does not apply to domestic and personal violence applications against a young person involving allegations of sexual assault or indecent assault, applications which are related to criminal charges that are of a serious nature and cases where such applications have been repeatedly sought in the past. However, in such a case the procedures set out in the Practice Note may be applied with the consent of the prosecutor and the young person.

3. Procedures in the Children's Court relating to domestic and personal violence applications against young persons

- 3.1 When an application for a domestic or personal violence order first comes before the court (the first return date) the magistrate will enquire

of the young person, or their legal representative, whether the young person is prepared to enter into family/relationship and/or individual counselling (for example, anger management counselling) or other interventions (for example, mediation) to address the issue or issues which led to the making of the application.

- 3.2 At courts where a Court Support Officer (CSO) is available, the young person will be asked by the magistrate to speak with the CSO for the purpose of the CSO carrying out a brief assessment of the young person to determine whether any suitable family/relationship and/or individual counselling (or other intervention) is available for the young person and, in appropriate cases, his or her family. In making that assessment the CSO may also speak with members of the young person's family.
- 3.3 At courts where a CSO is not available, the young person, with the assistance of their legal representative, should ascertain the availability of suitable counselling or other intervention services for the young person, and in appropriate cases, the young person's family.
- 3.4 If the young person agrees to undertake counselling or engage in other interventions, the young person, or their legal representative, will inform the court of the identity of the relevant counselling or other intervention service and, if it is known, when the child will have their first appointment with the service. The magistrate will record this information on the court file.
- 3.5.1 If the police prosecutor and the young person consent to the making of an interim order the court may make an interim domestic or personal violence order and adjourn the proceedings for **3 months** to allow the child to engage with the relevant counselling or other intervention service.
- 3.6 In cases where there are no suitable counselling services or other intervention services available for the young person or the young person does not wish to participate in counselling or other interventions the court may, with the consent of the young person and the police prosecutor, make an interim domestic or personal violence order and adjourn the proceedings for **5 months**.
- 3.7 Where the court makes an interim order and adjourns the matter pursuant to clause 3.5 or clause 3.6 and during the adjournment period there are no breaches of the interim order the application may be withdrawn and dismissed by the court on the adjourned date if the police prosecutor makes such an application and the young person consents to this course.
- 3.8 If any of the parties do not consent to the making of an interim order (as referred to in clauses 3.5 and 3.6) or, if the application is not withdrawn by the prosecutor following an adjournment under clause 3.5

or clause 3.6, the court will proceed either to make a final domestic or personal violence order by consent or will make directions for the listing of the application for a defended hearing.

Judge Mark Marien SC
PRESIDENT
4 May 2012