

FACT SHEET

Section 90 applications- information for NGO authorised carers

What is a section 90 application?

When the Magistrate or Judge is asked to reconsider the current order for the child in your care it's called a section 90 application. Depending on what is in the best interests of the child, the order may stay the same, be changed, cancelled or a completely new order may be made.

What does it mean for carers?

No decisions will be made straight away and there will be time for you to ask your supervising agency questions. You will be asked to provide information as well as your views about what you see as important to any decision about the future of the child in your care.

What is the process?

When the court makes final care orders for a child it has to be satisfied that suitable plans are in place for the long term care and development of the child. The court will only consider a request to change final orders if it is satisfied that there has been a significant change in circumstances relevant to the child. **The court looks back at the problems that led to the original orders and decides whether things have changed enough to justify changing or cancelling the orders.**

Before changing or cancelling the orders the Magistrate or Judge considers:

- the age of the child
- the child's wishes
- how long the child has been in the current placement
- the child's relationship with his or her birth family, and other people close to the child, including you as their current carer
- the capacity of the person making the application (usually the parents) to care for the child
- the psychological effect on the child of changing their current care arrangements

What can carers expect from Family and Community Services (FACS)?

Court order's are already in place giving the Minister legal parental responsibility of the child in your care. It is ultimately the responsibility of the agency exercising the Minister's function (in most cases this is FACS) to make decisions around the court proceedings that are in the best interests of the child. FACS has an obligation to ensure that all relevant information concerning the child is presented to the court.

FACS arranges a lawyer to prepare a response to the application and ensure that the court has all the relevant evidence so that a decision can be made in the best interests of the child. The lawyer works with your agency to make sure that

all the important information held by the agency and you as the carer, including your own views, are presented to the court. The FACS lawyer will provide progress updates to the agency so that everyone knows where the court case is up to.

What can carers expect from their agency?

You and the child in your care will be provided with case management and support from your agency. Your agency will act as the formal link to the FACS lawyer. Your agency will be available to support you through the process and answer any questions you may have. Your agency is also responsible for keeping you up to date with the court proceedings and ensuring your views are available to the FACS lawyer.

What is expected of carers?

Care of the child continues as normal throughout the court proceedings. If you think things are getting too stressful for you or the child make sure you seek support and guidance from your agency. It's best to work with your agency to provide all relevant information required to allow FACS to present the evidence needed to make the best possible decision in the interests of the child.

What rights do carers have and do they need their own solicitor?

As the carer, your views are relevant to the decision that the magistrate or judge makes and you have a right to have your views expressed. In most cases you can rely on the FACS lawyer to present your views to the court.

If you feel your views are not being heard or may be misrepresented first speak to your supervising agency to try resolve the issues. If you are still concerned then you might consider getting some independent legal advice.

In some circumstances the court may allow you to appear in the court proceedings as a party in your own right. If you think this is necessary you should obtain your own independent legal advice, the costs of which you will be your responsibility.

<Date>
Reference: <Insert>

<Name of NGO>
<Address of NGO>

Dear <Name of NGO>

I understand that you are the agency supervising the placement of <Name of child/ren> < DOB> who is/are under the parental responsibility of the Minister and for whom final orders were made in the Children's Court of NSW on <Date>.

I am a lawyer with the Department of Family and Community Services (FACS). I would like to inform you that <Name of person filing the appeal/variation> has filed an application in the <Name of Court> in relation to the court orders concerning <Name of child/ren>.

<Name of person filing the appeal/variation> seeks to <challenge/rescind> the orders made by the Children's Court.

The application is first listed before the <Name of Court> at <location> on <Date>.

As you will be aware, because the Minister for Family and Community Services has parental responsibility for <Name of child/ren>, the Secretary, Family and Community Services is named as the defendant to the application.

I will have carriage of this matter and, to assist in preparing the response to this application your assistance, and that of the carer, will be required. I will shortly be writing to you setting out a list of the information that will be needed to commence consideration of the response.

To ensure information held by the carers, as well as their views, are included in preparing the response to the application, you are required to forward on our behalf the attached letter and fact sheet to the carers who have the care of <Name of child/ren>. It would be preferable that the caseworker makes contact with the carers before sending the letter in order to explain its purpose and avoid any unnecessary stress.

Please contact me on <phone or email> if you need any further information.

Yours sincerely,

<Name of legal officer>

<Date>

< Name of carer>
<Address of carer>

Dear <name of carer>

I understand that you are the authorised carer of <Name of child/ren> < DOB> for whom final care orders were made in the Children's Court of NSW on <Date> and that <Name of NGO> is supervising this placement.

I am a lawyer with the Department of Family and Community Services (FACS). I am writing to inform you that <Name of person filing the appeal/variation> has filed an application in the <Name of Court> in relation to the orders concerning <Name of child/ren>.

This means that <Name of person filing the appeal/variation> is asking the court to consider making changes to the previous orders concerning <Name of child/ren>.

The application is first listed before the <Court> at <location> on <Date>.

As you will be aware, the Minister for Family and Community Services has parental responsibility for <Name of child/ren>. Therefore (FACS) is responsible for responding to the application.

I will be responsible for this matter and to assist in preparing the response to this application your assistance, and that of your supervising agency, will be required.

I will shortly be writing to your agency setting out a list of the information that will be needed to start preparing a response. This will include information only you can provide about the progress of <Name of child/ren>, including your own views on the placement, and any other information you think the court should know.

I have enclosed a fact sheet to provide you with more information about Section 90 applications.

If you have any questions or concerns, please contact <NGO caseworker> at <Name of NGO> on <contact number>.

Yours sincerely,

<Name of legal officer>
Cc: <Name of NGO>

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