

*Local Court Act*

Practice Direction

**Care and Protection of Children Act**

The following practice direction is issued pursuant to section 21 of the *Local Court Act* and will apply from the commencement of Part 2.3 of the *Care and Protection of Children Act*.

**BACKGROUND**

Under the provisions of the *Care and Protection of Children Act* the previous Family Matters Court will become the "Family Matters" jurisdiction of the Local Court. The Local Court rules will apply to all applications made pursuant to the *Care and Protection of Children Act*. The *Care and Protection of Children Act* provides primarily for three main applications to the Court, namely for a Temporary Protection Order (TPO), Assessment order (AO) and a Protection Order (PO). Each of these applications are to be heard by a Magistrate exercising the jurisdiction of the court (see section 89(3) including all applications for TPO). All applications should be supported by an affidavit from the appropriate NT Families and Children authorised officer. There is also provision in the Act for other miscellaneous applications to be made to the Court.

**PROCEDURE**

**TEMPORARY PROTECTION ORDERS:**

1. Application for a TPO shall be made using Form 7E of the Local Court rules (Originating Application) as adapted to include the name of the child and not require an endorsement of a time for hearing. (see Annexure "A")
2. The Application shall be supported by an affidavit sworn by the appropriate authorised officer (section 104).
3. The affidavit should include as much information as possible regarding the investigation of the child's circumstances, the reason why the CEO considers the order necessary and the recommended case plan (section 104(2)(b)).
4. Application may be made to a Magistrate in chambers at the nearest venue between the hours of 9:00am and 4:30pm on weekdays. An Application made to a Magistrate on a circuit court, may be made at a time as advised by that Magistrate.
5. If impracticable to appear before a Magistrate in person the Application may be made by phone, fax or other electronic means. The provisions of section 104 (4) shall be complied with.
6. If the Application is to be made outside of the court hours then the Application should be made to the Magistrate on call but not after 11:00 pm or before 7:00am, unless the urgency of child's situation warrants the application at those times.

7. Should the child be returned to the parents before the expiry of the TPO a Notice of Return of Child (see annexure "B") shall be filed in Court.
8. Should an application for another TPO be required in relation to the same child and before the expiry of the original order (sec 110 (1)(d) & 110(2)(a)) that application shall be made as an interlocutory application ( Form 25A of the Local Court Rules) with a supporting affidavit and can be made to a Magistrate as set out above. This application must be served on the parents/guardians of the child and on the child, if that child has previously been served with a copy of the initial TPO pursuant to section 106(3). The Application will be listed on the next available Family Matters day of the relevant venue of the Court or at an earlier time if required.

### **ASSESSMENT ORDERS**

1. Any application for Assessment Order (AO) shall be made using Form 7F of the Local Court Rules (Originating Application Inter parte requiring early hearing date). The Application should set out the details of the proposed assessment and any directions sought by the CEO (section 112 ).
2. The Parties to the application shall be the CEO as the Applicant. The child, parents, and any person who has a direct and significant interest in the wellbeing of the child shall be the Respondents.
3. This application must be served on the parents/guardians of the child and the child, (if the child is of the appropriate age), and any other person who is named as a Respondent. The Application will be listed on the next available Family Matters day of the relevant venue of the Court or at an earlier time if required.
4. The Application must be supported by an affidavit setting out:
  - a. That there is no protection order in place (section 111(1)(a))
  - b. The reasons why the CEO believes an assessment is necessary to determine if the child is in need of protection ( section 111(1)(b))
  - c. The circumstances which show the assessment cannot take place without an order of the court, (eg refusal of child or parent to cooperate with the assessment (section 111(1)(c)).
  - d. The reasonable steps the CEO has taken to obtain the consent of at least one of the parents or why it is impracticable to do so( section 113).
  - e. Any information available to enable consideration of the factors set out in section 114
5. After an AO is made the CEO shall report the result of that assessment to the Court (s119). The report shall set out the following matters:
  - a. What steps have been taken in the assessment including who has been spoken to and/or consulted,
  - b. Whether the CEO believes the child is in need of protection and the basis for that belief.

- c. The outcome of the assessment (eg no further action is required or application for protection order is to be made).
6. Any application for an extension of time of the AO pursuant to section 117(2) shall be made by using Form 25A with an affidavit in support and will be listed on the next available Family Matters day or sooner if urgent. Any grounds for urgency should be contained in the affidavit in support.

### **Protection Orders**

1. An application for a Protection Order (PO) shall be made by using Form 7F of the Local Court Rules and shall refer to the court file number of any previous applications for TPO or AO for the same child to ensure that all relevant material is before the court at the first return date. An example of an application is attached annexure C.
2. The application must specify the intended care plan and directions the CEO requires the Court to approve and make. (see Annexure C for an example).
3. The application must be supported by an affidavit by the appropriate authorised officer. The affidavit should set out the following:
  - a. History of the department's involvement with the child
  - b. Why the CEO believes an order is necessary for the protection of the child
  - c. The options available to the CEO for the placement of the child
  - d. Any assessments made by doctors, psychologists etc are to be annexed to the affidavit
4. The Application will be endorsed by the Registry of the Court with a date and time for the appearance before Court. The Applicant (CEO or delegate) will be required to serve a copy of the application, affidavit in support and Notice required by section 124 upon each parent of the child, the child if the CEO considers it appropriate and any other person the CEO or the Court considers is appropriate.
5. Any application for extension, variation or revocation of PO should be made using form 25 A with a supporting affidavit.

### **APPLICATIONS FOR REVIEW OF CEO DECISION TO TRANSFER HOME ORDER TO PARTICIPATING STATE (S159)**

1. Applications for review pursuant to section 159 shall use form 7F with a supporting affidavit and shall be served on the CEO.
2. Upon receipt of service of an application for review the CEO shall file and serve an affidavit setting out all of the factors upon which he or she made their decision and annexing any documentation referred to in making their decision.

3. The Application shall be listed for hearing not less than 14 days from the filing of that application to allow time for all the proper documentation to be filed and served.

**APPLICATIONS FOR TRANSFER OF ORDER OR PROCEEDINGS, OR  
REVOCATION OF THE REGISTRATION OF AN INTERSTATE ORDER  
(SECTIONS 160, 165 & 175)**

1. These applications shall be made by using Form 25A with a supporting affidavit. The affidavit is to address all matters required by the Act and in particular those matters referred to in sections 163 and 167 of the Act. (an example of an application is Annexure D)
2. The Application will be listed in the next Family Matters court sittings and should be served on all interested parties.
3. The Application will be dealt with as an interlocutory application within the original proceedings for the PO and shall be allocated the same file number.

**REVIEWS OF ORDERS MADE UNDER COMMUNITY WELFARE ACT**

Any application for revocation, variation or review of orders made under the previous Act shall be made by way of Application in the form of Form 25A with a supporting affidavit.

**WARRANTS**

Any application for Warrant for access to a child pursuant to section 63 shall be made by using Form 7E with an affidavit in support. Examples of the form of Application and Warrant are annexures E and F to this Practice Direction.

**GENERAL**

1. The Local Court Rules and Forms apply unless otherwise ordered by the Court.
2. Dates and times for listing of applications are in the discretion of the Court.

Signed

**Jenny Blokland  
Chief Magistrate**

21 November 2008

**Annexure A**  
**EXAMPLE OF APPLICATION FOR TEMPORARY**  
**PROTECTION ORDER**

**FORM 7E**

Rule 7.13(1)

**ORIGINATING APPLICATION**

IN THE FAMILY MATTERS JURISDICTION  
OF THE LOCAL COURT OF THE  
NORTHERN TERRITORY OF AUSTRALIA  
AT DARWIN

CLAIM NO.....

Chief Executive Officer Department of Children and Families and  
Child Protection

**Applicant**

Re: *name of child and date of birth*  
**Child**

**TO THE COURT**

The applicant applies to the Court for the following orders or relief:

1. *Temporary protection order in relation to ( child's name and date of birth)*
2. *The daily care and control of the child be with the CEO while the order is in force.*

The applicant relies on section 104 of Care and Protection of Children Act.

The facts, matters and circumstances supporting this application are:

1. The child is in need of urgent protection
2. The order is required to safeguard the well being of the child as the child has been subject to physical abuse and is in danger of continuing abuse as set out in the affidavit filed in support of this application.

*[signature of applicant  
or legal practitioner]*

Filed:

Registrar

1. This originating application was filed –  
\*by the applicant in person.  
\*for the applicant by *[name of applicant's legal practitioner]* of  
*[name of firm]*, legal practitioner(s), of *[business address in Australia  
including telephone, facsimile and reference numbers. If the legal  
practitioner is the agent of another legal practitioner, also insert the  
name of the principal's firm and business address including  
telephone, facsimile and reference numbers.]*
  2. The address of the applicant is –
  3. The address for service of the applicant is – *[If the applicant acts in  
person, the address in 2. If the applicant is represented by a legal  
practitioner – the address in 1.]*
- \* Delete if inapplicable.

**Annexure B**  
**Example of Notice of Return of child**

IN THE FAMILY MATTERS JURISDICTION  
OF THE LOCAL COURT OF THE  
NORTHERN TERRITORY OF AUSTRALIA  
AT DARWIN

CLAIM NO.....

Chief Executive Officer Department of Children and Families and  
Child Protection

**Applicant**

Re: *name of child and date of birth*  
**Child**

Notice is given to the court that the child subject of a Temporary  
Protection order issued on the *date of order* was returned to *his/her*  
parents on the *date of return*.

Dated            day of

Signed

Authorised delegate of CEO

**Annexure C**  
**Example of application for Protection Order**

**FORM 7F**

Rule 7.15(2)(a)

**ORIGINATING APPLICATION BETWEEN PARTIES**  
**WHEN EARLY HEARING REQUIRED**

IN THE FAMILY MATTERS JURISDICTION  
LOCAL COURT OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT [VENUE] Claim No.

BETWEEN  
**Chief Executive Officer Department of Children and Families**  
**and Child Protection**  
Applicant

and

*Name of parent 1*  
First Respondent

*Name of parent 2*  
Second Respondent

*Name of child*  
Child

**TO THE COURT**

The applicant applies to the Court for the following orders or relief:

1. A protection order in relation to the *name of child* who was subject to a Temporary Protection order file number .....
- 2 The order to have effect from (*date*)
3. The Child be placed in the daily care and control of *name of parent*
4. Should at anytime during the operation of the protection order the CEO is of the opinion that the child's wellbeing is not being safeguarded by the *name of parent* then the CEO shall take immediately take over the daily care and control and within 72 hours make application to the court for a variation of the protection order.

The applicant relies on section 121 -123 of the Care and Protection of Children Act

The facts, matters and circumstances supporting this application are:

1. The CEO has formed the belief that the child is in need of protection and has formed that belief on the basis of the facts and circumstances set out in the supporting affidavit.

2. The proposed order is the best means to safeguard the well being of the child.

[signature of applicant  
or legal practitioner]

The application will be heard by the Court at [address of Court] at a.m./p.m. on or as soon afterwards as the business of the Court allows.

Filed:

Registrar

**TO ....., THE RESPONDENT(S)**

The Chief Executive Officer of the Department of Health and Families has applied to the Court for the Order referred to above.

If you intend to appear before the court when this matter is heard at the date and time given above you must

- a) Complete the form *Notice of intention to appear*
- b) Give the original *Notice of intention to appear* to the Registrar of the Local Court at.....
- c) Give a copy of the *Notice of intention to appear* to the applicant, that is your Caseworker or their Manager in the Department of Health and Families.

These steps must be completed before the date and time of the hearing that is shown above.

**If you do not attend the Court on the date shown above, the Court may make an order in your absence.**

If you want to tell the Court and the applicant (your Caseworker or their Manager in the Department of Health and Families) your own statement of the facts and circumstances as you see them you will need to make an affidavit to be given to the Court and the Applicant. A lawyer can help you to prepare your affidavit. That affidavit should be done before the date of the hearing.

You may want to get your own legal advice. You should certainly seek legal advice if you do not understand this notice or what you have to do.

For Legal Advice contact:

Northern Territory Legal Aid Commission (Phone: Darwin 89993000, Alice Springs 89515377, Katherine 89738704)

Aboriginal Legal Aid (Phone: Darwin 89815266, Alice Springs 89509300, Katherine 89721133, Nhulunbuy 89871300)

A legal practitioner – look under "solicitors" in the Yellow pages

Law Society Northern Territory – they will refer you to a legal practitioner who can help with your particular matter (Phone: 89815104)

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

1. This originating application was filed –  
\*by the applicant in person.  
\*for the applicant by [*name of applicant's legal practitioner*] of [*name of firm*], legal practitioner(s), of [*business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.*]
2. The address of the applicant is –
3. The address for service of the applicant is – [*If the applicant acts in person – the address in 2. If the applicant is represented by a legal practitioner – the address in 1.*]
4. The address of the respondent is –

\* Delete if inapplicable.

**NOTICE OF INTENTION TO APPEAR**

IN THE FAMILY MATTERS JURISDICTION  
OF THE LOCAL COURT OF THE NORTHERN  
TERRITORY OF AUSTRALIA  
AT [VENUE]

No.....

BETWEEN Chief Executive Officer Department of Health and  
Families  
Applicant

and

[*name of parent*] Respondent

Re: *name of child*

TO THE APPLICANT  
AND TO THE COURT

[*Full name of parent*] gives notice of the respondent's intention to  
appear before the Court in this proceeding.

[*signature of parent or legal practitioner*]

Filed:

1. This notice was filed –

\*by the parent in person.

\*for the parent by [*name of parent's legal practitioner*] of [*name of firm*], legal practitioner(s) of [*business address in Australia including telephone, facsimile and reference numbers. If the legal practitioner is the agent of another legal practitioner, also insert the name of the principal's firm and business address including telephone, facsimile and reference numbers.*]

2. The address of the parent is –

3. The address for service of the parent is – [*If the parent acts in person, the address in 2. If the parent is represented by a legal practitioner – the address in 1.*]

\* Delete if inapplicable.

Example of an application to be used for 160,165 &175 and extension of TPO or AO

**FORM 25A**

Rule 25.02(a)

**APPLICATION**

IN THE FAMILY MATTERS JURISDICTION  
LOCAL COURT OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT [VENUE]

Claim No.

BETWEEN

**Chief Executive Officer Department of Children and Families  
and Child Protection**

Applicant

and

*Name of parent 1*  
First Respondent

*Name of parent 2*  
Second Respondent

*Name of child*  
Child

TO [IDENTIFY EACH PARTY AND PERSON TO WHOM APPLICATION IS ADDRESSED]

You are ordered to attend before the Court for the hearing of an application by the [identify party] for [describe the order sought].

The application will be heard by the Court at [address of Court] at a.m./p.m. on or as soon afterwards as the business of the Court allows.

Filed:

Registrar

This application is made in pursuance section no [160, 165 175 etc] of the Care and Protection of Children Act.

This application was filed by –

**Do not ignore this notice.** If you do not understand this notice or need help contact a Registrar of the Local Court, a legal practitioner or your local legal aid office.

Annexure E  
APPLICATION FOR WARRANT

Section 63

IN THE FAMILY MATTERS JURISDICTION  
LOCAL COURT OF THE NORTHERN TERRITORY  
OF AUSTRALIA  
AT

Chief Executive Officer/ Delegate of Chief Executive Officer  
Department of Health and Families  
**Applicant**

Re:

(Name of Child) (DOB)

**Child**

**TO THE COURT**

The applicant applies to the Court for the following order:

1. A warrant for access to the child

The applicant relies on section 63 of the Care and Protection of Children Act.

Chief Executive Officer NT Health and Families/the delegate of the Chief Executive Officer NT Health and Families\*, state that [name and DOB of child] is unable to be accessed, as part of a child protection investigation/for monitoring their wellbeing\*. I therefore apply for a.  
(particulars of application)

The facts, matters and circumstances supporting this application are:

1. The child needs to be accessed in relation to an investigation to determine whether the child is in need of protection under section 35 of the Care and Protection of Children Act.
2. The warrant is required as efforts to access the child have not been successful, as set out in the affidavit in support of this application.

[signature of applicant]

Filed:

Registrar

Annexure F  
Northern Territory of Australia

Care and Protection of Children Act

Section 63

WARRANT FOR ACCESS TO CHILD

TO: *(name of authorised officer)*

I, ..... a magistrate, am satisfied by information on oath given/ a declaration made by you on .....day of ..... 20 ... that the grounds for the warrant have been established. The grounds for the warrant are as follows:

You and any other authorised officer assisting you, are authorised to exercise the following powers as set out in section 63 of the Child and Protection of Children Act –

1. To enter, at any time, .....(*place the officer reasonably believes the child might be*) and
2. To search the place in order to find the child, and
3. To stay at the place for as long as you consider is reasonably necessary to find the child; and
4. if the child is found to stay at the place and have contact with the child for as long as you consider necessary for.....(*specify the purposes for which you need to have contact with child*) (whether or not in the presence of someone else.)

You are authorised to use reasonable force or assistance if necessary to execute this warrant.

This warrant expires .....days from the date upon which it is issued.

Issued the ..... day of.....20... at .....am/pm

Issued by .....(signature of magistrate)