# PRACTICE GUIDE

## Process for expiring child protection orders

The process below outlines how Child Safety staff and Office of the Child and Family Official Solicitor (OCFOS) lawyers can bring their different areas of expertise together to achieve the best possible outcomes for children and families at the point where an existing child protection order is expiring.

OCFOS is Child Safety’s in-house legal advice service. Its role is to provide Child Safety staff with early, independent and ongoing legal advice about child protection matters, and to assist in the preparation and review of court material in certain circumstances. OCFOS lawyers prepare a brief of evidence to be provided to the Director of Child Protection Litigation (DCPL) in matters where Child Safety considers a child protection order should be sought.

## Process and timeframes

The process for deciding whether a child continues to be in need of protection and whether a subsequent child protection order is required to ensure their safety, wellbeing and best interests begins no less than 6 months prior to the expiration of the current child protection order.

### Six months prior to the expiration of a child protection order

Six months prior to the expiration of a child protection order, the child safety officer (CSO) will complete a file review. The file review:

* helps to identify information relevant to the assessment about whether the child continues to be in need of protection
* enables the early collation of relevant documents that may be required to support an application for a subsequent child protection order, if necessary (Refer to [Relevant documents](#Relevantdocuments) below).

The CSO may also engage the family and its safety and support network in a collaborative assessment and planning (CAP) process, using the CAP framework.

The CSO will discuss the assessment, based on the information from the file review and updated CAP framework with the senior team leader to decide:

* whether the child is likely to be a child in need of protection when the child protection order expires
* the type of intervention that is likely to meet the child’s needs, if the child is likely to be a child in need of protection.

If the CSO and senior team leader are uncertain about how to proceed, they will schedule a case consultation with the senior practitioner.

Initial legal consultation

The CSO and senior team leader will seek an initial legal consultation with the OCFOS lawyer to discuss their preliminary assessment. This discussion will include a review of the evidence supporting the assessment, which will provide opportunity for the OCFOS lawyer to identify any gaps in the evidence. The OCFOS lawyer will provide their advice in writing within 5 business days.

### Three months prior to the expiration date of a child protection order

Three months prior to the expiration date of a child protection order, the CSO will ensure all requests for information made in accordance with the *Child Protection Act 1999*, Chapter 5A and any other independent evidence is obtained to inform their assessment.

The matter will be tabled at a practice panel for discussion where the CSO and senior team leader will present their assessment of whether the child continues to be in need of protection. The practice panel will authorise/confirm significant decisions including:

* whether the child continues to be a child in need of protection
* for a child not in need of protection, closing the case and making referrals for ongoing support
* for a child in need of protection, the most appropriate intervention to ensure the child’s safety, belonging and best interests.

Subsequent legal consultation

Where a practice panel has confirmed that the child continues to be in need of protection and a child protection order is required to meet their safety, belonging and wellbeing needs, the CSO and senior team leader will seek a subsequent legal consultation with the OCFOS lawyer. For this consult, the OCFOS lawyer will be provided with the practice panel minutes and the current CAP framework completed with the family (where this has been completed). The purpose of the subsequent legal consultation is to:

* consider the endorsed assessment and review evidence to ensure that it is sufficient to support the proposed intervention
* discuss the material needed to be included in the affidavit to support the application proposed to be sought
* decide timeframes and tasks, to ensure the referral meets the DCPL timeframes.

The OCFOS lawyer will provide written legal advice on the merits of proceeding with a referral to the DCPL to the CSO and senior team leader. This legal advice will be based on the information provided to them and will be completed within 5 business days.

Draft initial affidavit

After the senior team leader has considered the legal advice and decided the type and length of the child protection order to be recommended to the DCPL, the CSO will draft the initial affidavit.

### Twenty business days prior to the expiration of a child protection order

A referral to DCPL for an expiring child protection order must be made at least 20 business days prior to the expiration date. The OCFOS lawyer will make the referral to the DCPL. For a referral to the DCPL to be valid it must include:

* the referral form (Form A)
* the initial affidavit
* relevant documents exhibited to the affidavit in accordance with Rule 13 of the *Childrens Court Rules 2016* and the *Director of Child Protection Litigation Act 2016*
* the Sensitive information checklist.

## Relevant documents

Relevant documents are filed as evidence in child protection proceedings in accordance with *Childrens Court Rules 2016,* [rule 13](https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2016-0092#sec.13). Relevant documents are the documents relied on by the CSO in support of the assessment about the child’s need for protection and the most appropriate intervention to ensure their safety, wellbeing and best interests. Relevant documents include:

* record of recent family group meeting
* the child’s most recent case plan
* the most recent review of the child’s case plan (review report)
* the most recently completed Structured Decision Making tools
* any independent assessment or report about the child and or parents commissioned during the period of the order
* any previous social assessment report
* any referral made to support services for the child and the child’s parents
* any child protection, criminal and domestic violence reports generated during the period of the order, if applicable
* a copy of the child’s birth certificate
* a copy of the current or previous child protection order, including the most recent emergent orders or care agreements
* any family mapping and/or genograms
* contact visit records generated during the period of the order
* any other relevant documents.

### Swearing or affirming the affidavit

An affidavit is written evidence in support of an application for a child protection order. Affidavits must be either sworn or affirmed in front of a qualified witness as being true and correct.

It is therefore important that the CSO who has formed the assessment that the child is in need of protection - is the person who swears or affirms the affidavit.

## Escalation process

To ensure there is sufficient time to refer a matter to the DCPL, the OCFOS lawyer will escalate matters to the attention of the OCFOS senior lawyer if:

* a legal consultation has not occurred (expected to occur 3 months prior to expiry – after the practice panel)
* a first draft of the initial affidavit has not been received from the CSO (expected to be received at least 6 weeks prior to expiry).

The senior legal officer will contact the CSSC manager and advise that there is a risk the timeframes for referring to the DCPL may not be met. The senior legal officer and CSSC manager will collaboratively determine the action required to ensure the matter is progressed, ensuring timeframes for referring to the DCPL are met.

### Version history

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