

# Director of Child Protection Litigation Practice Note

## Guidance on the service of documents in child protection proceedings

1. This Practice Note provides guidance to Director of Child Protection Litigation (DCPL) Lawyers on the service of documents in child protection proceedings.

### Summary

2. In a child protection proceeding (proceeding), all documents must be served on each other party to the proceeding, including on other persons who are also participants in the proceeding as a result of an order or by operation of the *Child Protection Act 1999* (the CP Act).

3. Child protection applications, including amended applications, must be personally served on each of a child's parents by the chief executive (Child Safety) as soon as practicable to ensure that they have notice of the application and the nature of the orders being sought. However, if it is *not practicable* to personally serve the application, it may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to Child Safety.

4. The word 'practicable' is not defined within the CP Act, and so as per *SKJ v HR & Another*,[1] 'not practicable' means it cannot be put into practice, cannot be done; cannot be effected or carried out. That is, the standard of diligence or effort required is one of reasonableness so as to show a practical impossibility of service.

5. If Child Safety have not personally served an application on a parent, the DCPL will need to satisfy the Childrens Court (court) that it was a practicable impossibility for Child Safety to personally serve the application. To do so, the DCPL will need to ensure that there is evidence within an affidavit of service of the attempts made by Child Safety to personally serve the application. If Child Safety have then served the application on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to Child Safety, the DCPL will need to satisfy the court that the residential address is the last known to Child Safety.

6. In respect of all other documents that need to be served, the *Childrens Court Rules 2016* (the Rules) provide for the following methods of service: personal, post, fax, email, leaving it with an adult residing or employed at a person's residential address, an electronic method approved by the court, or in another way ordered by the court.

7. The Rules also provide for substituted and informal service of all documents, including child protection applications, and also provide for the dispensing with, or limiting and altering of service requirements in respect of all documents except child protection applications.

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1 *SKJ v HR & Another* [2023] QChC 17

8. Finally, where Child Safety have not personally served a parent with an application and have also not been able to ascertain their residential address, provided the DCPL can evidence that extensive attempts to contact, locate, and serve a parent have been made by Child Safety, the DCPL should seek for the court to make a finding under section 195(3) of the CP Act consistent with *SBD v Chief Executive, Department of Child Safety*,[2] that the court can be satisfied that the child is an abandoned child and that it is not reasonably practicable in the circumstances for Child Safety to personally serve the parent. On this finding being made, the DCPL should then seek for the court to proceed and make the child protection order sought without personal service of the application upon the parent.

## Who needs to be served with a document filed in a proceeding

9. Section 56 of the CP Act requires that each of a child's parents must be served with a copy of a child protection application,[3] which is defined to include the following:

    a. a child's mother and father;

    b. a person who a child either lives with or spends time with under a parenting order;

    c. a person who has either custody or guardianship of a child under another Act or a law of another State;

    d. a long-term guardian of the child; or

    e. a permanent guardian of the child.[4]

10. In addition to a child's parents, the following other participants in a proceeding who are to be treated as a party, must also be served with a copy of any document filed in the proceeding:

    a. any separate representative for the child;

    b. any person the court has by order under section 113 of the CP Act to take part in the proceeding to the extent necessary to give effect to the order;

    c. a guardian for a person with impaired capacity for a matter relating to the proceeding; and

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2 "[I]*t is not to be supposed that the protection conferred by the Act is to be denied to an abandoned child because the child's parents cannot be served with proceedings*", [38] of S*BD v Chief Executive, Department of Child Safety* [2007] QCA 318.

3 Section 56(1)(a) of the *Child Protection Act 1999* (the CP Act).

4 See section 3 Definitions (Schedule 3 Dictionary – 'parent'). Note that a 'parenting order' is defined to mean an order mentioned in the *Family Law Act 1975* (Cwlth), section 64B(1) that deals with a matter mentioned in section 64B(2)(a) or (b) of that Act.

d. the public guardian if they have given written notice of their intention to appear in a proceeding under section 108B(2) of the CP Act.[5]

## Method of service: Child protection applications

11. A copy of a child protection application, including an amended child protection application, must be *personally* served by Child Safety on each of a child's parents as soon as practicable after it has been filed,[6] but in any event, at least three business days before the first mention of the application before the court.[7]

12. The purpose of the personal service requirement for an application is to ensure that a child's parents have notice of the application and the nature of the orders being sought.[8]

13. To *personally* serve a copy of an application, the person serving it must give the application to the person to be served and tell them what the application is. If the person does not accept the application, the person serving it, may serve it by putting it down in the person's presence and tell them what it is.[9]

14. In addition to the requirements of the CP Act, the DCPL's Guidelines also provide that a person who personally serves an application on a child's parents should:

    a. explain what the application is and what the proceedings are about;

    b. tell the child's parents when the first/next court date is;

    c. encourage the child's parents to obtain legal advice and give them information about how to contact their local Legal Aid Queensland office or other local community legal service, or if the parent is Aboriginal or a Torres Strait Islander, assisting them to seek assistance from the Aboriginal and Torres Strait Islander Legal Service (ATSILS);

    d. tell the child's parents they may bring a support person to court, although whether the person is allowed to be present in the court is at the discretion of the court; and

    e. tell the child's parents they can ask the court for permission to attend a court event by telephone or audio-visual link if, for example, it will be difficult for them to attend in person. Child Safety should also provide the parents with information about how they can make the request where the parents indicate they may make a request.[10]

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5 See rules 36, 37, 38 and 39 of the Rules.
6 Section 56(1)(a) 'Notice of application' of the CP Act – emphasis added.
7 Rule 26(2) of the Rules.
8 Section 56(1)(a) 'Notice of application' of the CP Act and *SKJ v HR & Another* [2023] QChC 17 at [24].
9 Rule 28 of the Rules.
10 Guideline 125 of the DCPL's Guidelines issued under section 39 of the *Director of Child Protection Litigation Act 2016*.

15. However, if it is *not practicable* to personally serve the application, it may be served on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to Child Safety.[11]

16. The word 'practicable' is not defined within the CP Act, and so as per the decision of Judge Loury KC in *SKJ v HR & Another*,[12] 'not practicable' means it cannot be put into practice, cannot be done; cannot be effected or carried out – see as follows:

> [26] The word "practicable" in section 56 is not defined, however it is an ordinary word commonly used in legislation relating to applications for substituted service. The word "practicable" is defined in the Macquarie Dictionary as meaning "capable of being put into practice, done or effected, especially with the available means or with reason or prudence; feasible". Not practicable, by its ordinary meaning, therefore means cannot be put into practice; cannot be done; cannot be effected or carried out.
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> [27] In *Foxe v Brown* [(1984) 58 ALR 542 at 547], Justice Mason, in speaking of the "standard of diligence or effort required of a plaintiff in seeking out a defendant in a case where substituted service is sought", said:
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> > "That standard, however it is expressed, is one of reasonableness so as to show a practical impossibility of personal service. Furthermore, the question is not whether reasonable effort has been shown by the plaintiff over a particular period but whether at the date on which the application for substituted service is made that plaintiff, using reasonable effort, is unable to serve the defendant personally."

17. If Child Safety did not personally serve an application on a parent, including an amended application, the DCPL will need to satisfy the court that it was a practicable impossibility for Child Safety to personally the application. To do so, the DCPL will need to ensure that there is evidence within the affidavit of service of the attempts made by Child Safety to personally serve the application, this may include that multiple attempts were made, or that a parent resides outside of Australia, or that there is a safety risk for personal service.

18. If Child Safety have then served the application on a parent by leaving it at, or by sending it by post to, the parent's residential address last known to Child Safety, the DCPL will need to satisfy the court that the residential address is the last known to Child Safety. To do so, the DCPL will need to ensure that there is evidence within the affidavit of service of the steps taken by Child Safety to obtain the address, which may include requests made to the Queensland Police Service or Centrelink, or explaining how else Child Safety obtained the address.

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11 Section 56(2) 'Notice of application' of the CP Act – emphasis added.
12 *SKJ v HR & Another* [2023] QChC 17

## Method of service: All other documents

19. All other documents filed in a proceeding, as with applications, must be served on a person as soon as practicable, but in any event, at least three business days before the day set for a court event,[13] in one of the following ways:

    a. by giving it personally to the person or their lawyer; or

    b. by sending it by post to the person's relevant address (or their lawyer's place of business); or

    c. if the person or their lawyer for the person has provided a fax number or an email address, faxing or sending it by emailing; or

    d. by leaving it with someone who is at their relevant address who is apparently an adult residing or employed there, or with someone who is at the address of their lawyer's place of business who is apparently an adult and employed there; or

    e. if the court approves another electronic method to send a document and the person has an address for service using that method or on the person's lawyer who has an address for service using that method; or

    f. in another way ordered by the court.[14]

20. If a document is served on a person by leaving it with someone who is at their relevant address who is apparently an adult residing or employed there, the document must also be given personally to the person at the next reasonable opportunity.[15] Note that relevant address is defined to mean either the address for the person stated in their notice of address for service, or if the person does not have a notice of address for service, the person's last known residential address.[16]

## Substituted service

21. If Child Safety have been unable to serve an application or serve another document in one of the ways outlined above in paragraph 19(a) to (e), the DCPL will need to ensure there is evidence from Child Safety within an affidavit of service that establishes it has been impracticable to serve the document, and make an application in the proceeding seeking an order of the court substituting another way of serving the document.[17]

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13 Rule 26(2) of the Rules.
14 Rule 27(1)-(3) of the Rules.
15 Rule 27(4) of the Rules.
16 Rule 27(5) of the Rules.
17 Rule 29 of the Rules.

## Informal service

22. If Child Safety have managed to serve an application, or serve another document, but not in one of the ways outlined above in paragraph 19(a) to (e), the DCPL will need to ensure there is evidence from Child Safety within an affidavit of service that establishes how the document was served, and make an application in the proceeding seeking an order of the court that the person is taken to have been served under the CP Act or the Rules with the document on the day it came into the person's possession or a later date stated in the order.[18]

## Dispensing with, or limiting and altering service requirement

23. In respect of the requirements to serve documents under the CP Act, other than child protection applications, including amended child protection applications, which as outlined above are required to be personally served, the court under rule 31 of the Rules may decide to do the following in respect of the requirements:

    a. dispense with the requirement to serve a document, for example, if a reasonable attempt to locate the person required to be served has been made and the person cannot be found; or

    b. limit or alter the requirement, including by identifying the parts of the document that must be served, or by imposing conditions about the service, for example requiring the document be served on the party's lawyer or by requiring the document to be redacted in a particular way before it is served.

24. An application under rule 31 of the Rules should be made where there is information in an affidavit or an exhibit that the DCPL and Child Safety want the court to consider because it is materially relevant to the proceedings, and there is a concern about disclosing it to a party or participant. The application in the proceeding will need to seek the court's permission to redact the information from the copy that is to be served on the party or participant.[19] In deciding whether to make an application under rule 31, the DCPL will need to give consideration as to whether it is necessary for the DCPL to rely on the information or whether there is sufficient evidence in support of the application without including the information.

## Approach if Child Safety has not personally served a parent with an application and their residential address cannot be ascertained

25. Section 195 of the CP Act applies, if, under a provision of the CP Act amongst other things, Child Safety is required to give information or notice to a child's parents. It provides that Child Safety need only comply with the provision to the extent that is reasonably practicable in the

[18] Rule 30 of the Rules.
[19] Rule 31 of the Rules.

circumstances. Without limiting this, it includes as an example, that it is not reasonably practicable to comply with the provision in relation to a child's parents, if, after reasonable inquiries, the parents or their whereabouts can not be ascertained or, if ascertained, cannot be contacted.[20]

26. To confirm that the service of a child protection application under section 56 of the CP Act is within the ordinary meaning of section 195 of the CP Act, there may be consideration given to assist in the interpretation of the provision by having regard to the explanatory memorandum of the Child Protection Bill 1998. This includes the following when discussing clauses 54 and 189 (which became sections 56 and 195 of the CP Act):

> Clause 54 provides that each of the child's parents must receive a copy of the application. The child must also be given information. Clause 189 provides that notice need not be served on a parent if it is not practicable to do so, eg because the parent cannot be located. Clause 189(4) provides that the child is to be given information appropriate to their age and ability to understand. Under clause 189(5) young persons who are the subject of an application would usually be given a copy of the application. Departmental practice standards require that the application is fully explained to the parents and the child.
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> Clause 189 provides that when required to explain an order or declaration or to serve notice on someone, the chief executive need only comply to the extent "reasonably practicable" in the circumstances. For example, in the circumstance where a parent cannot be located or contacted it is not reasonably practicable to serve notice. … (emphasis added)[21]

27. In terms of published caselaw, the application of section 56 of the CP Act was considered in the decision of *F v Sturrock*,[22] with the President of the Childrens Court (as he was at the time), Judge O'Brien stating that:[23]

> In my view, the requirements of ss 56 and 58 are mandatory in their terms and they cannot be circumvented or ignored. To do so represents a denial of natural justice to the parents of a child the subject of an application.

28. It is important to note that in respect of *F v Sturrock*, the children the subject of the decision were residing with the appellant, their father, that is Child Safety knew the appellant's residential address. However, the court in this matter brought the child protection applications on immediately for hearing after they were filed and made orders granting Child Safety temporary custody of the children under section 67(1)(b) of the CP Act before no attempt was made to effect service on the appellant.[24]

29. Subsequent to *F v Sturrock*, the Court of Appeal in the decision of *SBD v Chief Executive, Department of Child Safety*[25] also considered the application of section 56 of the CP Act, in circumstances where

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20 Section 195(4) of the CP Act.
21 Pages 26 and 52 of the *Child Protection Bill 1998* Explanatory Notes.
22 *F v Sturrock* [2004] QChC 4
23 *F v Sturrock* [2004] QChC 4 at [12].
24 *F v Sturrock* [2004] QChC 4 at [1] and [8].
25 *SBD v Chief Executive, Department of Child Safety* [2007] QCA 318

the child's mother was allegedly not present in Queensland at the time of service. The decision of Justice Keane KC (with whom Muir JA, and Lyons J agreed), is relevant as he held in relation to sections 56 and 58 that:[26]

> These provisions, and especially s 58, clearly postulate a jurisdiction in the Childrens Court which, though its exercise is regulated by these statutory provisions, arises independently of compliance with them. These provisions clearly contemplate that the jurisdiction of the Childrens Court may be exercised, in some circumstances, without the child's parents being served with proceedings or even being given notice of them. That this should be so is hardly surprising. While the Act recognises and seeks to accommodate parental rights of custody and guardianship, the subject matter of the Act is children in need of protection. That need may, and often will, arise because of the unwillingness or inability of a parent to care for the child. It is not to be supposed that the protection conferred by the Act is to be denied to an abandoned child because the child's parents cannot be served with proceedings. (emphasis added)

30. Finally, the decision of Judge Loury KC in the Childrens Court in *SKJ v HR & Another*[27] is also relevant, as it considered the issue with respect to service and notice under sections 56 and 58 of the CP Act.[28] In this decision, Judge Loury KC as referred to above, found that section 56 requires the DCPL to satisfy the court that it is a practical impossibility to personally serve a respondent parent before section 56(2) is enlivened, with there needing to be evidence before the court that reasonable efforts have been made to serve the respondent personally.[29] It is however noted that this decision did not engage with the application section 195 of the CP Act, where a parent's residential address has not been able to be ascertained.

31. Where Child Safety have not personally served a parent with a child protection application and have also not been able to ascertain their residential address, provided the DCPL can evidence that extensive attempts to contact, locate, and serve the parent have been made by Child Safety, the DCPL should seek for the court to make a finding under section 195(3) of the CP Act consistent with *SBD v Chief Executive, Department of Child Safety*.[30] That is, the court can be satisfied that the child is an abandoned child and that it is not reasonably practicable in the circumstances for the Child Safety to personally serve the parent. On this finding being made, the DCPL should then seek for the court to proceed in the absence of the parent under section 58(1)(b) of the CP Act and make the child protection order without personal service of the application upon the parent.

32. This approach is consistent with the case law detailed above and the purposes of the CP Act set out in section 4 along with the paramount principle set out in section 5A of the CP Act, that the child's safety, wellbeing, and best interest are met by affording them the protection conferred by the CP Act. Also relevant are the following general principles from section 5B of the CP Act:

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26 *SBD v Chief Executive, Department of Child Safety* [2007] QCA 318 at [38]
27 *SKJ v HR & Another* [2023] QChC 17
28 *SKJ v HR & Another* [2023] QChC 17
29 *SKJ v HR & Another [*2023] QChC 17 at [28].
30 "[I]*t is not to be supposed that the protection conferred by the Act is to be denied to an abandoned child because the child's parents cannot be served with proceedings*", [38] of S*BD v Chief Executive, Department of Child Safety* [2007] QCA 318.

(d) if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child;

(g) if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care; and

(m) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.

## Abbreviations and definitions of terms used in the practice note

33. The abbreviations and definitions of terms used within the practice note are as follows:

a. *Child protection application* as per r4 of the Rules (dictionary in schedule 1) means an application under the CP Act for the making, extension, amendment or revocation of a court assessment order or child protection order

b. *Child protection order* as per s3 of the CP Act (dictionary in schedule 3) means a child protection order under Chapter 2, part 4, including:

i. an order extending, varying, or revoking a child protection order; and

ii. an interim order under s67 of the CP Act in relation to a proceeding for a child protection order.

c. *Child protection proceeding* as per s3 of the CP Act (dictionary in schedule 3) means a proceeding under the CP Act for the making, extension, amendment, or revocation of a child protection order

d. CP Act: *Child Protection Act 1999*

e. *Custody* as per s12 of the CP Act

f. DCPL Act: *Director of Child Protection Litigation Act 2016*

g. *Guardianship* as per s13 of the CP Act

h. *Proceeding* – see *child protection proceeding*

i. Rules: *Childrens Court Rules 2016*

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