

PROTOCOL – SHARING OF INFORMATION BETWEEN THE FAMILY AND YOUTH COURTS

PRINCIPAL FAMILY COURT JUDGE

PRINCIPAL YOUTH COURT JUDGE

Introduction

1. The Principal Family Court Judge and the Principal Youth Court Judge have agreed that there should be a protocol in place to provide for the sharing of information between the Family Court and the Youth Court.
2. An earlier version of this Protocol was signed and circulated in 2012. This Protocol has been updated to reflect the current legal position.
3. Information is only to be sought, shared and used where it is necessary to further the interests of justice and, in particular, for the Family Court to discharge its functions under the care and protection provisions of the Oranga Tamariki Act 1989 (“OTA”) and for the Youth Court to discharge its functions under the youth justice provisions of the OTA.
4. Information may be released pursuant to this Protocol where permitted by the relevant legislative enactments – namely, the District Court (Access to Court Documents) Rules 2017 (“DC Access Rules”), the Family Court Rules 2002 (“FC Rules”) and the OTA.

Definitions

5. Unless the context otherwise requires, “Court” shall include both the Family Court and the Youth Court and “Judge” shall include both a Family Court Judge and a Youth Court Judge.
6. The term “child or young person” shall include persons under the age of 18 years.
7. The term “counsel” shall include the lawyer appointed to represent the child or young person in the Family Court under the care and protection provisions of the OTA and the youth advocate appointed in the Youth Court under the youth justice provisions of the OTA.
8. The term “professional report” includes reports obtained under sections 178, 181, 186, 187, 333, 334 and 336 of the OTA.

Sharing of information

9. On any occasion when a Judge has reason to believe there are, or have been, proceedings before the Court concerning any child or young person who is the subject of an application under the OTA, the Judge may request information as to –
 - the nature of the proceedings;
 - the stage the proceedings have reached;
 - any order, sentence or direction made; and

- what professional reports have been ordered.

10. The Judge may also request copies of –

- any professional report; and
- any plan obtained for the child or young person under sections 128, 135 and 260 of the OTA and any report or plan obtained for the purpose of making any order under section 283 of the OTA.

11. Upon receiving a request, the Judge in one court may release copies of the report or plan to the other Judge and may place restrictions on who else may receive such copies.

Legislative basis

12. Under rule 429 of the FC Rules, Family Court information may be shared with any person who the Judge considers has a genuine and proper interest.

13. The sharing of Youth Court information is enabled by the inherent power of the Court to control court processes.

- Rule 5 of the DC Access Rules provides that these rules do not affect the Court's inherent power to control its own proceedings.
- The DC Access Rules apply to criminal proceedings under specified enactments and any other enactment, to the extent determined by a Judge. This includes Youth Court proceedings under the OTA where deemed appropriate by a Judge.

14. The sharing of any professional report or plan is provided for by sections 191(d) and 339 of the OTA.

- Section 191(d) provides that the information given to the Court shall also be provided to counsel representing the child or young person and to any person who the Court considers has a proper interest in receiving a copy of the report.
- Section 339 specifies the reports and plans that section 191(d) applies to.

15. Before deciding whether to release any professional report or plan, the Court shall obtain the views of the report writer, parties, and counsel for the child or young person, and shall give them the opportunity to be heard if they wish.

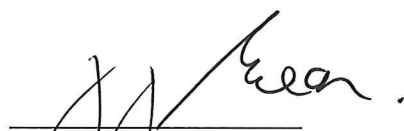
16. The Court may make an order under section 192 of the OTA that the whole or any part of a report shall not be disclosed where the Court is satisfied that disclosure would be, or would be likely to be, detrimental to the health or well-being of the child or young person.

Implementation

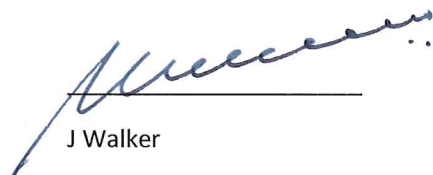
17. The discretion to share information shall preferably be exercised by the Judge who presided over the proceedings for which the professional report or plan was obtained.

18. Where practical, Judges shall ensure the same counsel represents the child or young person in both the Family Court and the Youth Court.
19. Where there are proceedings affecting the same child or young person in both the Family Court and the Youth Court, the respective files in each Court shall be identified for administrative purposes accordingly.
20. Judges shall ensure Court staff are aware of the content of this Protocol and that they be assisted in its implementation.

Dated this 13 day of July 2020



J Moran
Principal Family Court Judge
Kaiwhakawā Matua o te Kōti a Whānau



J Walker
Principal Youth Court Judge
Kaiwhakawā Matua o te Kōti a Taiohi