

Legal Answers for Permanent Care Families

Fact Sheet 4: Now that a Permanent Care Order is in place, do I have to go back to court?

Do I need to go back to court?

You may have to go back to court if any of the following happens:

- There has been an appeal against the Permanent Care Order (PCO)
- Someone has applied to vary or cancel the PCO
- Related proceedings have been brought in the Family Court.

There has been an appeal against the PCO

There are a number of people that can bring appeal against a PCO to have it changed or cancelled. The people that can appeal include the carer, the child, the parent, specific members of the police force known as a protective intervener and the Secretary of Department of Human Services (DHS). They can appeal against the Order or dismissal of an application for an Order.

Someone has applied to vary or cancel the PCO

Once an order is in place it is possible to apply to the court to have it varied or cancelled. An action of this type can be brought by carer, the child, the birth parent or the Secretary of DHS. This usually occurs when there have been significant changes in the circumstances of the carer or parent or when the order becomes unworkable.

The types of circumstances where this might occur is where the child takes action for increased contact with their parent or where the order does not require that the parent is supervised while they are visiting their child and it becomes evident that this may be necessary.

Proceedings have been brought in a Family Law Court

Family Law Court proceedings commence if spouses or de facto partners separate and require orders to regulate parental contact and care arrangements in relation to children.

[See Fact Sheet 6.](#)

Some questions you might have if you have to go to court

What can I do if I think one of the parties is a vexatious litigant?

A 'vexatious litigant' is someone who takes legal action only to cause trouble or inconvenience the other party.

If the court finds that the birth parent or one of the other parties is a vexatious litigant then they can:

- dismiss the application;
- make a costs order; and
- stop the birth parent filing any further applications, without the court's permission.

In deciding whether or not the court proceedings are vexatious they will look at all the relevant facts including the number of proceedings brought, their nature and the ultimate result.

The court may decide that a party is a vexatious litigant on its own or on the application of one of the other parties. However, the person accused of being a vexatious litigant must be able to put their case to the court.

Can the child be represented by a lawyer?

From the age of 10, a child will usually have separate legal representation in the Children's Court. This is also recognised as the age at which the child can instruct a lawyer, unless they lack the maturity to do so (in which case the lawyer must act in the child's best interests). In exceptional circumstances, the Court may decide that it is in the best interests of a child under the age of 10 to be legally represented.

The lawyer representing a child in the Children's Court is bound by the child's instructions and is the advocate for the child's wishes.

Child representation in Family Law proceedings differs. An Independent Children's Lawyer (ICL) may be allocated to the child. The ICL is not bound by the child's instructions although they usually inform the Court of the child's wishes. The role of the ICL is to provide the Court with evidence of where the child's best interests lie.

Where can I obtain legal assistance?

Victoria Legal Aid (VLA)

VLA may provide free legal assistance subject to guidelines. They also provide duty lawyers at the Melbourne Children's Court and suburban Children's Courts who may be able to provide free legal assistance on the day.

VLA's priority is to assist parents and children from age 10 onwards subject to guidelines.

According to current VLA guidelines, extended family and other third parties involved in the matter may be funded if they meet the eligibility criteria for legal aid. Information on the eligibility criteria can be found on their website.

Tel: 1300 792 387.

Web: www.legalaid.vic.gov.au

Community Legal Centres

Community legal centres are independent community organisations that provide free legal services to the public. More information about community legal centres and how to find one can be found on their website or by calling them.

Tel: (03) 9652 1500.

Web: www.fclc.org.au/cb_pages/getting_legal_help.php

Law Institute of Victoria

The Law Institute of Victoria can provide you with a referral to a private lawyers across Victoria. Their website also contains information on some things to think about when choosing a lawyer.

Tel: (03) 9607 9311

Web: www.findyourlawyer.com.au

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