

Legal Answers for Permanent Care Families

Fact Sheet 8: Am I eligible to seek Child Support payments for my child under a permanent care order (PCO)?

Most permanent care parents are not entitled to receive Child Support payments from either the child's parents (see definition below), or from a spouse (or de facto relationship) who is or is not listed on a child's PCO in cases of separation or divorce.

If you are going through a separation or divorce as a carer, you have a right to request that DHHS consent to the child being included in the parenting orders pursuant to Family Court proceedings along with any other children. DHHS is not obligated to provide this consent. [See Fact Sheet 6](#)

Persons who may apply for Child Support payments include parents and non-parent carers.

The meaning of 'parent' under Section 5 of the *Child Support (Assessment) Act 1989* includes:

- a biological mother or father of a child,
- an adoptive parent,
- a parent of a child born as the result of an artificial conception procedure, under Section 60H of the *Family Law Act 1975*,
- a parent of a child born as a result of a surrogacy arrangement, under Section 60HB of the *Family Law Act 1975*.

A 'non-parent' under Section 5 and Section 7B of the *Child Support (Assessment) Act 1989*, means 'an eligible carer of the child who is not a parent of the child' 'who has at least shared care of the child' ('the person's percentage of care for the child during a care period is at least 35% but not more than 65%').

Despite meeting the criteria of an 'eligible carer' under Section 7B of the *Child Support (Assessment) Act 1989*, permanent care parents are *not* eligible to receive Child Support payments for a child under a PCO, as:

- A PCO is granted and operates solely within the jurisdiction of Victoria;
- A PCO is a child welfare law order, and under Part 3 Section 22(1) of the *Child Support (Assessment) Act 1989*, 'the regulations may provide that children who are under the care (however described) of a person under a child welfare law are not eligible children', and may therefore be excluded from coverage of the Act. This includes child welfare law orders granted under federal Family Law jurisdictions.

However, some permanent care parents may be eligible to seek child support payments from the child's parents (for the meaning of 'parent', see above) only if they are a relative kinship carer(s) (or, 'non-parent carer') who have been granted a PCO. Under Section 26A of the *Child Support (Assessment) Act 1989*, 'if a non-parent carer has care (however described) of a child under a child welfare law, the non-parent carer may apply for child support for the child *only* if the non-parent carer is a *relative of the child*.

A non-parent carer is a relative of a child (Section 4(1) *Family Law Act 1975*) if they are:

- a step-parent of the child. A step-parent means a person who is, or has been, married to, or a de facto partner of, a parent of the child and treated the child as a member of the family formed with the parent;
- a brother, sister, half-brother, half-sister, step-brother or step-sister of the child;
- a grandparent of the child;
- an uncle or aunt of the child;
- a nephew or niece of the child; or
- a cousin of the child'.

If you are a relative kinship carer with a child under a PCO, you may be entitled to claim child support from both of the child's parents through the Child Support Agency. For more information, go to <http://www.humanservices.gov.au/customer/enablers/child-support/child-support-assessment/non-parent-carer-applying-for-child-support>.

About these fact sheets

This fact sheet was produced as part of Legal Answers For Permanent Care Families, a project of Permanent Care and Adoptive Families Inc. Project Worker – Arianne Broadbent. August 2015.

Disclaimer

The material in this fact sheet has been prepared for information purposes only. The contents of this fact sheet should not be relied upon as legal advice. Permanent Care and Adoptive Families expressly disclaim any liability howsoever caused to any person in respect of any legal advice given or any action taken in reliance on the contents of the fact sheet.

The information contained in this factsheet is designed and intended to provide general information about the current law in Victoria and was considered to be true and correct at the date of publication.