



Government of **Western Australia**
Department of the **Attorney General**

Child Protection Proceedings





The *Children and Community Services Act 2004*^{*} enables the Chief Executive Officer of the Department for Child Protection (DCP) to apply to the Children's Court for a protection order for a child. A protection order can result in a child being left with their parents but with DCP supervising the child's well-being or a child being removed from their family and cared for by DCP. Therefore, a protection order can seriously affect the relationship between a parent and child.

Sometimes parents and carers do not have the benefit of a lawyer to help them in court proceedings when the Department makes an application for a protection order for their child. Even if they do have a lawyer's advice, the involvement of the Department for Child Protection and court proceedings about their child can be confusing.

The purpose of this booklet is to give a basic guide on court proceedings when DCP seeks a protection order for a child. It is not legal advice or intended to replace lawyers, but rather to help parents and carers better understand court proceedings when/if preparing their own cases.

Judge Denis Reynolds
Children's Court President

HOW A CHILD IS REMOVED

The Department for Child Protection (DCP) is the Government department primarily concerned with the welfare of children and has authority to remove children from their families. This is done if there is an immediate and substantial risk to a child's wellbeing. DCP can also apply to the Children's Court for warrants to take children into its care and for protection orders. The Department's staff will work with families to deal with problems they are experiencing and removal is the last resort.

A child in need of protection is (usually) a child who has suffered, or is likely to suffer harm as a result of:

- neglect
- physical, sexual, emotional or psychological abuse.

DCP may also remove a child if someone other than a parent or carer perpetrates the abuse and the parent or carer is unable to protect the child from further harm.

Where does DCP place a child?

Children who are removed from their families are placed in a safe environment, either in foster care or with family under DCP supervision.

Does DCP need a warrant to remove a child?

DCP will usually have a warrant that places the child in the provisional protection and care of the Chief Executive Officer. In urgent cases an authorised officer from DCP or a police officer can remove any child who appears to be in need of protection and care without a warrant. The Department will then need to make an application to the Children's Court within two working days for a protection order.

DCP is not required to advise the parent if it is making an application for a warrant.

WHAT HAPPENS AFTER A CHILD HAS BEEN REMOVED?

The court has a range of options available when dealing with protection and care applications.

Any of the following orders may be made:

Protection order (supervision)

The child stays with the family but is supervised by DCP.

Protection order (time-limited)

The child is removed and placed with DCP for up to two years.

Protection order (until 18)

The child is removed and placed with DCP until they are 18 years old.

Protection order (enduring parental responsibility)

The child is removed and placed with a carer (other than DCP) until they are 18 years old.

The protection application will generally come before the court on the first available date within the next three working days. A copy of the application will be served on the parent or carer. After that, the parent or carer will be served with a case outline.

As a parent or carer, you then have two choices. You can either:

- respond to the orders sought
- agree to a protection order being made. The court (when satisfied) will then make one of the above types of protection orders.

If you wish to respond to the orders sought, affidavit or case outline, you may file a response. For example, you may not agree with the type of order sought by DCP but consent to a different protection order being made.

You may want orders in place while the matter is being decided (interim orders). A Protection Orders - Respondent's Kit is available from the Court to help you with your application.

Legal advice

You should get legal advice as soon as possible, even if you are thinking of agreeing to an order being made. If you can't afford a lawyer, contact Legal Aid or the Aboriginal Legal Service, who may be able to help you with the protection order/case. Contact details are on the back of this booklet.

Tips for going to court

Be on time.	Dress neatly.
If you cannot attend a court appearance you must let the court and your lawyer know beforehand.	Address the magistrate as 'sir' or 'ma'am' or 'your honour'.
Always behave in a way that reflects the dignity of the court and the seriousness of the matter.	Make any necessary childcare arrangements before going to court. Contact the court on 9218 0100 at least one week before a final hearing if you require court childcare facilities.
Turn your mobile phone off.	Advise the court if you need an interpreter so arrangements can be made.

If you oppose the application

A small number of short appearances may be required so the court can check on the progress of the case and make directions to the parties. These are referred to as 'mention only'. At a mention only court date, administrative issues are discussed and dealt with. These issues may include:

- possible hearing dates
- contact between parents and children
- interim placement and other placement issues
- some orders may be finalised
- possible pre-hearing conference dates.

You appear in court before a magistrate on the day.

Most matters are resolved before going to a hearing. An agreement is usually reached at a pre-hearing conference (meeting) between the parties (see below for more information).

Decisions about the child before the hearing

If you are dissatisfied with the arrangements made by the DCP, you can request short-term (interim) orders to be made for your child's accommodation and making contact with your child. If approved, these orders stay in place until the final hearing unless varied by the court on one of the parties' application.

Pre-hearing conference

A pre-hearing conference may be held at the Children's Court. Attendees will include yourself, DCP staff, a magistrate, a convener and any other parties or their lawyers.

These conferences let all parties discuss the case and try to reach an agreement without the need for a hearing. If an agreement is reached, the application can be finalised.

A hearing is only needed if no agreement is reached, or only part agreement is reached.

Everything discussed in a pre-hearing conference is confidential and cannot be used in evidence in any later court hearing about the case (unless allowed by the court or consented to by everyone at the pre-hearing conference).

Hearing

A hearing allows everyone involved in the case to present evidence and put their point of view to the court. This includes calling witnesses and introducing relevant documents. At the end of the hearing the court will decide whether or not to make a protection order. DCP will have a lawyer and the child may have an independent lawyer appointed to represent its interests (called the child representative). You may either have a lawyer or represent yourself.

Witnesses

You should bring to the hearing, any witnesses who might help your case. This usually includes family and friends who have seen you with your child. Witnesses should wait outside the courtroom until they are called to give evidence. If you want a person as a witness but they do not want to come to court, you can make them attend by serving them with a summons.

Contact the Children's Court or visit www.dotag.wa.gov.au to get more information about witness summons forms. Your lawyer can help you complete all required forms.

Supplying records to the Court

You can arrange for records and reports to be supplied to the Court by completing a Witness Summons to Produce a Record or Thing (Form 48). Staff at the Children's Court can explain how to do this.

Questioning witnesses in a hearing

The party calling a witness will ask questions first. This is called examination-in-chief. The other party can then ask the witness questions about the evidence given, or any other relevant matter. This is called cross-examination. It might help if you take notes of what witnesses say. This will help you with your cross-examination. The party who calls the witness can ask them questions about anything arising from cross-examination. This is called re-examination.

Witnesses can tell the court what they have actually seen and heard themselves. First-hand accounts from witnesses are more valuable than hearsay (telling the court about things they heard from other people).

When you or your lawyer questions your witnesses, they can be asked any questions relevant to your case. If you ask a question that is not relevant to your case or that the witness is not able to answer, the Court can stop you.

Witnesses must give truthful answers to all questions. When you question your witness you should avoid asking leading questions. For example, "I'm a good

parent to my children, aren't I?" is a leading question, as it suggests the answer. A better question would be, "can you describe my relationship with my child?" as it lets the witness make accurate comments without influence.

It is important to be polite when asking questions. The court may stop you if you are being rude or offensive. You must also remain quiet while the other party is examining a witness.

At the end, when all of the evidence has been presented to the court, you can give a summary of your case. This is called a closing address.

WHAT HAPPENS AT THE END OF THE HEARING?

If the child is not in need of protection

If the court decides your child is not in need of DCP protection the application will be dismissed. Your child will be returned to you.

You don't have to be involved with DCP unless something changes or new concerns are raised. However DCP can provide you with support services if you wish.

If the child is in need of protection

If the Court decides your child is in need of DCP protection, one of four orders will be made. These orders are detailed on page three.

DCP may apply to the court to have one protection order replaced with another type of protection order.

For example, a protection order (supervision) could be replaced with protection order (time-limited).

In most cases contact with your child is allowed and encouraged by DCP. There may be some restrictions on where, when or how you can have contact.

In some cases, the Court will make recommendations about contact or return of your child. These can be useful as they will list the requirements you need to meet for your child to be returned to you. DCP will usually follow recommendations, however they are not legally binding.



CARE PLAN

A Care Plan identifies the child's needs and outlines the steps and measures needed to maintain the wellbeing of the child. If the Court makes an order, DCP will follow up with a Care Plan meeting. This is a formal meeting with the people concerned with the care and wellbeing of the child. Care Plan meetings are not part of the court process.

The care plan will be reviewed every 12 months. Contact the Department for Child Protection for more information about care plans.

What if you disagree with the Care Plan?

- You can apply in writing to DCP for the Care Plan decision to be reviewed by the Case Review Panel.
- You must submit a written application that sets out the decision you disagree with within 14 days after receiving the Care Plan.
- The Case Review Panel will consider the application and provide a report on its recommendations. DCP will then make a decision to confirm, change or reverse the decision that you disagree with or make a different decision.

If you disagree with DCP's decision you may apply to the State Administrative Tribunal, however time limits apply. Contact DCP for more information about this process.

CAN THE CHILD BE RELEASED FROM CARE?

You can apply to the court for your child to be released from a protection order. In your application you would normally detail any changes in your circumstances since the hearing.

You may also include changes that happened before the hearing if their impact continues or occurs after the hearing. Seek legal advice or contact court staff for more information about this process.

MORE INFORMATION

The Court has prepared a Respondent's Kit brochure. This will help you make an application and is available from the court.

Practice directions

The Court has prepared practice directions for handling child protection matters. These are detailed instructions on court procedures. These directions will help you prepare your case and understand court procedures.

This is available from court staff or visit www.dotag.wa.gov.au

GLOSSARY

Adjournment	When a magistrate puts the case off to a later court date.
Affidavit	A written statement that is sworn under oath or affirmation to be true. It can be used as a substitute for oral testimony in court proceedings (if the court allows).
Applicant	The person or organisation who applies to the Court for an order. It's usually the Chief Executive Officer of DCP.
Care Plan	A written plan that identifies the needs of the child and outlines the steps and measures that need to be taken to meet these. A Care Plan also sets out the decisions for placement and contact.
Case planning decision	A decision set out in a care plan.
Case Review Panel	An independent body made up of at least three people from outside DCP to review case planning decisions. It cannot review decisions made by the Court.
Case outline	A document filed in the court and served on you by DCP, setting out a summary of the allegations being made by DCP.
Contact	Contact between a child and another person, usually a parent. It can involve face-to-face contact or contact by telephone or letter. This was previously referred to as 'access'.
Convenor	A person appointed by the court to manage a pre-hearing conference.
DCP	Department for Child Protection.
Directions	Instructions by a judge or magistrate about how a case is to proceed. These may include dates for filing of documents, conferences and the hearing.
Filing	The process when official documents (such as case outlines and applications) are handed into the court registry.
First court date	This is the date and time marked on DCP's protection application for you to first appear at the Children's Court.
Hearing	A final hearing is where all of the parties present, choose their witnesses and evidence they will use, to help the court decide what should happen to the child. Lawyers may attend the hearing to represent the parties, DCP, the parents or carers of the child and/or the child.
Pre-hearing conference	A confidential discussion that takes place at the court, involving the parties, their lawyers and a magistrate or convenor to try and reach an agreement.
Protection application	DCP can apply to the Children's Court for a protection order if it appears to DCP that a child is in need of protection.
Mention	A court date where routine administrative issues are discussed and dealt with by the parties and magistrate.
Party	Each person who is named on the application is called a party.
Respondent	When an application is made, one or more respondents against whom orders are sought, are named on the application. Respondents are usually the parents or guardians of the child and any person who may have caused the child to be in need in of protection.
Response	A response may be filed by a respondent in answer to the applicant's affidavit and/or case outline.
Service/serving of documents.	The summons will tell the person which court they need to attend and at what time.
Summons	A document issued by the court that requires a person to appear at a court to either give evidence or produce
Taken into care	Removal of a child from normal carers by Department of the Child Protection and taken into provisional protection and care when authorised by the court.

CONTACT

Perth Children's Court
Department of the Attorney General
160 Pier Street
PERTH WA 6000
Phone 9218 0100
Fax 9221 1705
Email childrenscourt@justice.wa.gov.au

Legal Aid WA
55 St Georges Terrace
PERTH WA 6000
Phone 1300 650 579
Fax 9325 5430

Legal Aid (Protection Services)
C/- Children's Court of WA
Department of the Attorney General
Interview Rooms 1-3
160 Pier Street
PERTH WA 6000
Phone 9218 0160, 9218 0159 or
9218 0158

Aboriginal Legal Service of WA
Level 1, Piccadilly Suites
Nash Street
EAST PERTH WA 6000
Phone 9265 6666 or 1800 019 900
Fax 9221 1767

Department for Child Protection
189 Royal Street
EAST PERTH WA 6000
Phone 9222 2555
Fax 9222 2776

Department of the Attorney General
Phone 13 67 57
Website www.dotag.wa.gov.au