



Children's Court of Western Australia

RESPONSE KIT

**Protection and
Care of Children**



Why do a response?

If you are a respondent and want to tell the magistrate and the other parties:

- what you think is best for your children
- what you have to say about the Department of Communities' (sometimes called "Child Protection", or "the Department") application to start care proceedings and the report in support (or an affidavit lodged by Communities)
- your side of the story

you can put it in writing in the response form. This will be your "affidavit in response".

It will be your "evidence" and it must be true.

Before filling this form in it is preferable you get legal advice

In your response you can:

- **respond** to the Department's application, or
- **ask for short term (interim) orders that you think should be in place** until the application is finalised **with evidence in your response, and respond** to the Department's application.

If your position changes later in the proceedings, you can put in an amended response.

If you:

- have a lawyer they may help you do your affidavit.
- don't have a lawyer, or your lawyer can't help you (for example, because their grant of aid does not cover it) you can use this guide to do it yourself.

When do I put my response in?

Often parents or other respondents do not put in a response until the case goes to a final hearing (trial). If you want the court to know your side of the story early in your case, you should put in a response as early as possible.

If you have not put it in earlier, you must put the response in to the court and give it to the other parties no later than 7 days after a status conference.

The magistrate might set a different rule about when you put in your response if you don't have a lawyer.



The status conference is a court hearing to make a final order where everyone agrees, or where there is no agreement, to work out the best next step for the case.

What is a response?

- It is an affidavit that presents written evidence in a court case setting out what you say is true.
- There are two ways to declare that what you say in the response is true:
 - Swear an oath on the Bible or other holy book
 - Affirm.
- It must be sworn or affirmed to be true in front of an authorised official.
- You cannot sign the response until you are in front of the authorised official.

Department of Communities (Child Protection) applications and reports in support

The Department put in a report in support to the court in two situations:

- When the Department starts a protection application at court (“initial application”). It sets out briefly the reasons for bringing the case to court and things like placement and contact proposed arrangements.
- When the Department applies to extend, or revoke (cancel) an existing protection order, or revoke the existing order and replace it with another order, such as a special guardianship order or a protection order (until 18).

When a case is going to trial, the Department will lodge an affidavit setting out its evidence to give the court and other parties more information than was in the initial report.

Until 13 December 2021, the Department lodged an affidavit in support of the protection application and you may need to respond to that rather than a report in support.

Where can I get the forms I need?

Get a blank response form (Response - Protection and Care of Children Form - PCRESP) and an Endorsement of Service Form (PC_EoS) from:

- any Children’s Court of WA registry, or
- from the Children’s Court of WA website (<https://www.childrenscourt.wa.gov.au/>).



What do I put in my response?

Step 1

- Read through the Department's application and report in support or any affidavit lodged carefully.
- Write down:
 - any orders asked for by the Department that you oppose or agree with, and
 - any alternative orders you want to ask the court to make.
- Write down any allegations you disagree with and the reasons why.
- Write down if you agree with any of the Department's worries.
- Write down any family members that you want to be assessed as possible carers for your child/children to live with while they need to stay in care.
- Write down the important things:
 - you think have been left out of the Department's report, eg that show you were working on the Department's worries
 - if you want to work towards the children coming back into your care, the steps you have already taken towards getting them back in your care since your child/children were taken into care by working on the Department's worries, eg
 - what you have done, eg counselling
 - new supports in place, and
 - any plan to work on the worries you agree with.
- Where possible get proof of what you say, for example,
 - a certificate of completion of a program
 - a letter from a counsellor confirming counselling you have done and what you have got out of it
 - a letter from your doctor.



Step 2

Get legal advice if possible.

Start filling in the response form PCRESP

- FILED ON BEHALF OF: tick the box that applies to you.
- CHILD: put in the names, dates of birth and gender for each child.
- DEPONENT: put in your name, address (if you do not want another party to know your current address you can put another address where you could pick up your mail), and occupation.
- FINAL ORDERS SOUGHT:
- INTERIM ORDERS SOUGHT: eg about placement or contact.
- EVIDENCE: Additional pages can be added. See the examples at the end of this guide.
 - If you are responding to an affidavit and not just a report, make sure you put in the numbers of the Department's paragraphs
 - you agree with
 - you disagree with in part and the reasons why
 - you disagree with fully and the reasons why.
 - Each of your paragraphs should be numbered.
 - Each paragraph should only refer to one point.
 - If you have "proof" of what you say you can attach these documents to your response.

What do I need to do after I write the response?

1. Read it carefully to make sure it says what you want to say.
2. Get the response witnessed in front of an authorised official for example, a justice of the peace, a lawyer, or a registrar at a court.
3. Put your response into the court.
 - Make a copy for:
 - Yourself.



- The Department of Communities (Child Protection).
 - The child representative (if there is one).
 - Each respondent, for example, the other parent, and anyone else who has been made a party.
 - Take the copies to the court registry where your case is on.
 - The court will stamp your original and copies with the date and court file number.
 - The court will keep the original and give you the stamped copies.
4. Serve (give) a stamped copy in person, by post, or arrange for someone else to serve it as soon as possible to:
- a. The Department (preferably the lawyer) but the caseworker will get it to the lawyer.
 - b. The child representative (if there is one).
 - c. Each respondent.

If there is a family violence restraining order in place against someone you must serve, or some other problem in relation to service, get legal advice or ask court staff about where you can get help with service.

5. Fill in the Endorsement of Service form for each person you served saying:
- a. who you served
 - b. when you served them
 - c. how you served them.
6. File the Endorsement of Service forms at the court registry where your case is on as soon as possible. These should be lodged before the court date so the court knows when the person got them.

Examples for your response

Interim orders

Listed below are examples of the type of short term (interim) orders you may seek:

- The child to remain with the mother.
- The child to be returned to the care of the mother.



- The child to be placed with Jane Smith.
- The mother to have contact with the child each Monday, Wednesday and Friday between 10am-12pm.

Final orders

Listed below are examples of the type of final orders you may seek:

- A protection order (supervision) (instead of a protection order (time limited)).
- An extension of the protection order (time limited) made on [put in date] (instead of cancelling a protection order (time limited) and replacing it with a protection order (until 18)).

Evidence

This will be different in each case. It depends what issues are mentioned in the Department's report in support and/or affidavit.

For example, you may need to talk about some or all of the following:

- Where you are living/where the children will live.
- Family or other support you have.
- Changes in your relationship since the children went into care.
- What you are doing about family violence, eg separation from your partner, counselling.
- What you are doing about drug issues, eg drug and alcohol counselling.
- Mental health support, eg is there a mental health plan, what if any medication are you on.

If you want to dispute all of the contents of a paragraph in the Department's report or affidavit

You could say:

- "I deny the contents of paragraph [put in the number] because....." or "I disagree with the following concern/s raised in the report in support"

or

- "In response to paragraph [put in the number] I disagree with [put in what you disagree with and the reasons why]."

If you want to dispute part of the contents of a paragraph in the Department's report or affidavit



You could say:

- “I agree with the [put in which sentences you agree with eg the first] sentence but disagree with [put in what you disagree with and the reasons why].”

How to attach documents supporting what you say

If you have “proof” of what you say you can attach these documents to your response. For example, if the Department’s affidavit says there are drug problems and you have done counselling you could say “Since [insert date] I have completed 10 drug and alcohol counselling sessions with Mary Smith at Palmerston. A letter from her stating this is attached and marked as ‘Attachment A’”. A blank Attachment form is included at the end of this kit.

If you are responding to more than one affidavit

You will need to make clear which affidavit you are responding to: For example “In response to the affidavit of [put in name] witnessed on [put in date] I disagree with paragraph [put in number].”

Where to get legal advice

- If you do not have a lawyer, Legal Aid WA may be able to help you complete the forms and obtain legal advice and information about the court process. Phone the Legal Aid WA Infoline on 1300 650 579 between 9.00am and 4.00pm or go to Legal Aid WA Children’s Court (Protection) Services (CCPS), 160 Pier Street, Perth. You can also phone CCPS on 9218 0160.
- Contact Aboriginal Legal Service of WA on 9265 6666 / 1800 019 900 (freecall)
- Ruah Legal Services provides legal representation and simultaneous social support to families/individuals experiencing a mental illness and going through protection and care proceedings. Phone 9328 8012 or 1800 620 285 (freecall).
- Your local community legal service may be able to help. Phone **9221 9322** to find the one nearest to you or visit the website: <https://www.communitylegalwa.org.au/>.
- For victims of family violence and/or sexual assault who are Aboriginal or Torres Strait Islander peoples, or whose partner or children are Aboriginal or Torres Strait Island peoples and who have a child protection matter contact:
 - Djinda Services for the Perth metropolitan area on 9200 2202.
 - Aboriginal Family Legal Services on 9355 1502 or 1800 469 246 (freecall) or website: <https://www.afls.org.au/> for the contact details of AFLS offices in regional areas.
 - Albany Family Violence Prevention Legal Service on 9842 7751.
 - Marnin Family Support & Legal Unit (MFSLU) on 9191 5284.



Other help

- Contact the Family Inclusion Network of Western Australia Inc (FINWA) on 9328 6434.

Last reviewed: 15/03/2022

This Kit was developed as a result of collaboration between Legal Aid WA, the Department of Communities, the Family Inclusion Network of Western Australia Inc and the Children’s Court of WA.

Attachment “[put in letter eg A, B etc]”

This is the Attachment marked with the letter “__” [put in letter eg A, B etc]
referred to in the response of [put in your name]

Sworn/affirmed on the
[date] _____

Before me [signed]

Justice of the Peace, Lawyer, Registrar, Deputy Registrar