

Protection orders in the Children's Court of WA

This infosheet for parents covers final protection orders in the Children's Court of WA and revocation or cancellation of a final protection order. Carers and others may also find the information useful.

What is a protection order?

The Department of Communities ('the Department', also sometimes called 'Child Protection') can file a protection application for a child or young person under 18. This happens if the Department thinks the child or young person is in need of protection and care, that is, if it is worried about the child's safety and wellbeing.

If a magistrate finds the child or young person is still in need of protection when the case is finalised, the child or young person will be placed on a final protection order.

What are the types of final protection?

There are four different types of final protection orders that the court can make:

- Protection order (supervision)
- Protection order (time-limited)
- Protection order (until 18)
- Protection order (special guardianship).

Interim protection orders

While a case is at court, interim or temporary orders can be made about matters such as contact or where a child should live.

What is a protection order (supervision)?

With a protection order (supervision) a child remains with or is returned to:

- your care
- the care of the other parent, or
- if you and the other parent are together, the care of both of you.

A protection order (supervision) usually comes with a list of conditions which you (and/or the other parent or a person you live with) must follow so that your child can remain in your care. The Department 'supervises' or checks the wellbeing of your child while they are in your care.

With a protection order (supervision) your Department workers are allowed to see your child regularly to check how things are going and to make sure your child is safe.

Parental responsibility stays with you not the Department. This means you will be responsible for day to day and long term decisions for your child except if those decisions are affected by conditions on the order.

How long does a protection order (supervision) last?

A protection order (supervision) can be made for up to two years but must end before the young person turns 18. It can be extended for up to two years but must end before the young person turns 18.

Can my child be removed from my care if they are on a protection order (supervision)?

Yes, if the Department believes on reasonable grounds there is an immediate and substantial risk

to your child's well-being. The Department then must bring the case back to court.

Can I apply to change the conditions of an order?

Yes. You or another party to the proceedings can apply to change the conditions. Get legal advice about how to do this.

What is a protection order (time limited)?

A protection order (time-limited) gives the Chief Executive Officer (CEO) of the Department parental responsibility over a child even if they are living with you. This means the Department is in charge of deciding where your child lives and other important decisions.

There are no 'conditions' on this order.

Often when the order is made the child or young person is not living with the parent/s but there is a plan for reunification with one and/or both parents. There is a written proposal from the Department (called a 'Section 143 Written Proposal'). This sets out care arrangements for the child including contact arrangements and what the parent/s have to do or show to have their child returned to their care. If the child is already in the care of a parent, the written proposal sets out what the parent/s need to do to make sure the child stays in their care and what needs to happen so the Department can close the case at the end of the order.

Parents can have a say about what is in the proposal. So can the child or young person if the court has appointed a lawyer for them.

Can the Department apply to extend or cancel the order?

The Department can apply to:

- extend the order before it ends. This often happens if reunification has just happened or is about to happen and the Department wants to keep monitoring. The order can be extended for up to two years. The order must end before a young person turns 18.

- revoke (cancel) the order and seek no new order if all has been going well and no more Department involvement is needed.
- revoke (cancel) the order and replace it with another order. In this case it may seek:
 - to replace it with a long term order such as a protection order (until 18) or a protection order (special guardianship) if it thinks all has not been going well and that long term arrangements are in the best interests of the child or young person, or
 - a protection order (supervision) if all has been going well and it thinks that Departmental supervision is all that is needed.

What is a protection order (until 18)?

With a protection order (until 18) the CEO of the Department has parental responsibility until the child or young person turns 18. This means the Department is in charge of deciding where the child lives and other important decisions. The Department usually seek this order when it decides long term arrangements would be in the best interests of the child.

There are no 'conditions' on this order.

The Department's written proposal for court will set out contact arrangements and in some cases what a parent should do to achieve more contact or unsupervised contact.

While this order is in place, a child or young person can be returned to the care of one or both parents. However, this does not happen often.

What is a protection order (special guardianship)?

With this order the carers become the special guardians and are given parental responsibility of the child or young person until they turn 18, the order is revoked (cancelled), or an adoption order is made. This means the carers and not you or the Department will be responsible for day to day and long term decisions for your child. The Department is no longer formally involved with your child.

These orders have been introduced to provide children in long term placement with secure and stable care while maintaining the child or young person's relationship with their family and other people important to them.

Are there conditions on a protection order (special guardianship)?

A condition about contact between the child and another person, for example, a parent, can be included when the order is made, or an application can be made later to add a contact condition.

The order may include conditions that the special guardian must follow for an Aboriginal child, Torres Strait Islander child or child of a culturally or linguistically diverse background about things that could be included in a cultural support plan. A cultural support plan for a child is a plan that contains arrangements for developing and maintaining the child's connection with the culture and traditions of the child's family or community.

There are no other conditions that can be included.

After a protection application (special guardianship) is made you can apply to:

- add or change a contact condition, or
- apply to revoke (or cancel) the order.

You should get legal advice before making an application.

The court can also order the Department to make special payments to the special guardian to help look after the child or young person.

Who can apply for a protection order (special guardianship)?

The Department can apply for a protection order (special guardianship) at any time.

A long term carer of a child can make an application to cancel a protection order (time-limited) or protection order (until 18) and replace it with a protection order (special guardianship). An application can be made by the carer where the child has, for at least the two years immediately before the application is made, both been in their

care and on a protection order (time-limited) or protection order (until 18).

Does a magistrate have to make the protection order asked for by the Department?

No, it depends on what the magistrate thinks is in the best interests of the child or young person.

For example, the Department may seek a protection order (time limited) but the court could make a protection order (until 18), or the Department may seek a protection order (time limited) but the court may make a protection order (supervision).

Can a parent apply to cancel a protection order?

A parent (or any party to the original proceedings) can apply to cancel or revoke a protection order. You should get legal advice before doing this.

The court, if it is satisfied it is in the best interests of the child, can confirm the order, cancel the order or cancel the order and replace it with another protection order. Usually you have to show some change in circumstances or that some new factor has arisen since the order you want to cancel was made to get the court's permission to go ahead with your application.

Where can I get more information?

- Contact Children's Court (Protection) Services at Legal Aid WA on (08) 9218 0160. This is a specialist service to assist parents to respond to applications by the Department for protection orders.
- Contact Legal Aid WA's Infoline on 1300 650 579 for information and referral. There are other infosheets that may help: *Preparing for a final hearing in a protection and care case in the Children's Court of WA*, *Representing yourself in a final hearing in a protection and*

care case in the Children's Court of WA, and Grandparents –protection and care (grandchildren).

- Go to the [Children's Court of WA](https://www.childrenscourt.wa.gov.au/) website for information on the court process and forms you might need.
- For general information, see the [Department of Communities \(Child Protection\)](https://www.childrenscourt.wa.gov.au/) website. A fact sheet on special guardianship is available.
- For more information on the court process see the Legal Aid WA website under the heading *Find Legal Answers >Child Protection*.

- You can read an online copy of the *Children and Community Services Act 2004* (WA) which sets out the law for protection and care matters at the Parliamentary Counsel's Office website at:

https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a9243.html.

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