

# Legal Answers for Permanent Care Families

## Fact Sheet 1: Now that I have a Permanent Care Order (PCO), what do I need to know?

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### Can I call myself a 'Parent'?

Yes you can. Child welfare law defines a parent in relation to a child to include a person who has custody of the child. It is also common in most permanent care families that the children refer to the permanent carers as 'mum' and 'dad'.

A PCO usually gives you *full custody and guardianship* of a child. This means that you will have all the rights and responsibilities of a parent in relation to the child to the exclusion of all other persons. Other than their name remaining on the birth certificate, the birth parents are not able to exercise custody or guardianship rights. Any residual rights the birth parents *may* have will be set out in the conditions in the PCO.

If you have been granted *joint custody or guardianship* of a child under a PCO with any other person, such as your partner or spouse, and if you cannot agree on the exercise or performance of a right, power or duty vested in you as joint custodian and/or guardian of the child, either of you may apply to the Children's Court for orders regarding the exercise of the right or power or the performance of the duty that it thinks fit.

An order for *joint custody and guardianship* with the birth parents is rare and is usually only granted when a family placement (such as a 'kith-and-kin' placement where a family member is appointed as carer) has occurred.

The PCO can also give *custody to carers and joint guardianship to (both) parents and carers*. However, special circumstances must exist before such an order can be made and is likewise usually only granted when a 'kith-and-kin' placement has occurred.

### What are some of the key rights and responsibilities that I have?

As the carer, you are entitled to a copy of the PCO. The conditions of the order amount to the rules that both the carer and parents need to follow whilst the order is in place.

You have the right to have the daily care and control of the child and the right and responsibility to make decisions concerning the daily care and control of the child. This is called *custody*.

You have the responsibility for the long-term welfare of the child, and all the powers, rights and duties that are vested by law or custom in the guardian of a child. This is called *guardianship*. In this respect, you have the right and responsibility to decide on long term matters such as health, education, religion and living arrangements of the child to the exclusion of all others.

You can give permission for any activity which requires parental consent and sign all documentation requiring the signature of the parent.

You are the first port of call in regard to anything relating to the child and you have the right to name yourself next of kin of the child while the PCO is in place.

Only in the case of special medical procedures (such as sterilisation) will authorisation be required from a Court.

As with birth or adopted children, you have the right to appoint a guardian for the child in your Will. Naming the person that you would like to be a guardian doesn't automatically establish that person's guardianship – it simply indicates to the Court what your preference is.

[See Fact Sheet 5](#)

If you are going through a separation or divorce as a carer, you have a right to request that the Department of Human Services (DHS) consent to the child being included in the parenting orders pursuant to Family Court proceedings along with any other children. DHS is not obligated to provide this consent.

[See Fact Sheet 6](#)

You have the right to apply to the Registry of Births, Deaths and Marriages to change the name of the child but you may need to obtain the consent of the birth parents.

See link:

[http://www.pcafamilies.org.au/uploaded-files/Application-for-Change-of-Name-for-children-in-Permanent-Care-families-FINAL\\_1384309836.pdf](http://www.pcafamilies.org.au/uploaded-files/Application-for-Change-of-Name-for-children-in-Permanent-Care-families-FINAL_1384309836.pdf)

You have the right to appeal to the County Court or the Supreme Court against a PCO or the dismissal of an application for a PCO.

## **Can the PCO be varied (changed) or revoked (cancelled)?**

You, as well as the child, the birth parent, or the Secretary of DHS can apply to the Children's Court to vary or revoke the PCO.

As regards variation of the order, the Court may, if satisfied that it is in the best interests of the child to do so, vary any of the conditions included in the order or add or substitute a condition but must not make any change in relation to who has custody or guardianship of the child.

If the application is for the revocation of the order, the Court may revoke the order in whole or in part.

If any person makes an application, you are entitled to be given a copy of the application and to have your say at Court.

See [Fact Sheet 3](#) for further information regarding a change to PCO.

## **Can I have access to information relating to the child?**

Once a PCO is made, the case is closed by DHS. If you require any personal information relating to the child once the case is closed, you will need to apply for this information from the Freedom of Information (FOI) Officer at DHS.

All FOI requests are subject to Section 33 (1) of the *Freedom of Information Act 1982*, which exempts from disclosure any document (or part thereof) that would unreasonably disclose information relating to the personal affairs of another person.

The FOI officer will seek evidence of your guardianship status. The FOI officer is required to apply their discretion in terms of s33(1).

You can also apply for personal information from DHS on the child's behalf. Once the child reaches 16 years of age, the child can make his or her own application.

You will not be able to access any information relating to who reported a child protection matter to DHS regarding the child.

In practice, it is advisable to obtain as much information as possible in relation to the history of the child from the DHS case worker *prior* to obtaining the PCO. The future carer is not permitted to look at the entire DHS file, but may obtain answers to specific questions prior to becoming a permanent carer. Provision of information is at the discretion of the DHS case worker.

The information DHS may provide relates to the child protection history of the child, not the child's medical history.

Should you require information relating to a medical condition of the child prior to the child being in your care, you will need to apply to the relevant health department, medical facility or hospital where the child's records are kept.

You are less likely to be able to access the child's family member's medical history. However, the s33 (1) exemption does not apply if a medical professional is required to obtain this information for the appropriate medical treatment of the child.

To request information from DHS, you can apply to the FOI Team at DHS to help you make your request.

Tel: (03) 9096 8449 or 1300 650 172.

Web: <http://www.dhs.vic.gov.au/for-individuals/applying-for-documents-and-records/freedom-of-information/freedom-of-information-frequently-asked-questions>

In the case of further legal proceedings, should you require the full child protection file, a subpoena will need to be issued during the proceedings for the production of the file. It is important to obtain legal assistance in this regard.

## **What financial and other support is available to me?**

### **Carer Reimbursement**

Once the PCO is granted, you are entitled to apply for fortnightly carer reimbursement. This reimbursement is not considered as a source of income for the purposes of annual tax returns, Family Tax Benefit or Child Support. You can contact DHS Caregiver Reimbursement Helpdesk on 1300 552 319 for reimbursement advice and assistance.

### **Centrelink Benefits**

You are eligible to apply for the same Centrelink benefits as a birth parent and you may qualify for federal funding support.

For further information, go to <http://www.humanservices.gov.au/customer/subjects/support-for-non-parent-carers>.

## Child Support

You may also be entitled to claim child support from the birth 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>.

## Children with disabilities

Funding for carers of children with intellectual, physical, sensory, cognitive and neurological disabilities through DHS Victoria remains once a PCO has been granted.

## Ongoing Assistance

Before obtaining the PCO, it is advisable to discuss whether ongoing assistance is available. DHS will close the case once a PCO has been made, but other placement agencies *may* provide ongoing assistance.

## Complaints

In the event you have made a complaint to DHS and you are not happy with the outcome, you can proceed with your complaint to the Victorian Ombudsman. You can call (03) 9613 6222 or toll free (regional areas only) on 1800 806 314. Please note that complaints generally have to be submitted in writing.

For more information go to <https://www.ombudsman.vic.gov.au/Complaints>

## Post Placement

Post placement support services are also offered by Permanent Care and Adoptive Families (Vic) Inc, Tel: (03) 9020 1833 and the Mirabel Foundation, Tel: (03) 9527 9422.



**About these fact sheets**

This fact sheet was produced as part of Legal Answers For Permanent Care Families, a joint project of Peninsula Community Legal Centre Inc. and Permanent Care and Adoptive Families Inc. Project Worker – Saskia Rijfkoegel. April 2014.

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