

# Legal Answers for Permanent Care Families

## Fact Sheet 6: Other Legal Issues

---

### How do I apply for a passport for the child?

Before a passport may be issued to a child under Australian law, it is a requirement that the written consent of all people with parental responsibility for the child is obtained. Even though a Permanent Care Order (PCO) has been made, the PCO does not extinguish parental responsibility of the birth parents for the purposes of a passport application.

However the *Australian Passport Determination 2005* provides that the Minister for Foreign Affairs will issue a passport without parental consent where special circumstances exist. Special circumstances include where “an order of a State or Territory Court, made under a child welfare law, grants parental responsibility or guardianship of the child to a person other than a parent of the child”.

This determination allows you, as the carer, to apply for the passport and for it to be issued even if the birth parent does not consent.

The application will need to be accompanied by a number of documents including the child’s birth certificate (which must be obtained from the Registry of Births, Deaths and Marriages), and proof of citizenship.

You will also need to provide a copy of the original PCO with the passport application. Preferably, the PCO should be signed and sealed (stamped by the Court). The Court will provide this upon request.

If you have not obtained consent from the birth parents for the passport application, you are required to provide a statement (Form B10) in as much detail as possible outlining why parental consent has not been obtained.

It is recommended that the application be lodged at the Australian Passport Office in Melbourne rather than at a local post office.

There is no guarantee that an application lodged under special circumstances will result in the issue of a passport and the application fee is generally not refunded. However, it is unusual for the passport office to decline an application to permanent carers who have provided a copy of the PCO.

For further information, see: <https://www.passports.gov.au/Web/Newppt/ApplyingU18.aspx>

### What evidence of Australian citizenship is required for a passport application?

Children born in Australia after 20 August 1986 are not automatically granted Australian citizenship unless one of the birth parents was an Australian citizen or permanent resident at the time of their birth.

Evidence of Australian citizenship can be either birth parent’s full Birth Certificate (where the parent is born before 20 August 1986), either birth parent’s Australian passport (issued before the child’s

birth), or a permanent residency status or Citizenship Certificate issued to the child or either birth parent (before the child's birth).

If the child's birth parent was born in Australia after 20 August 1986, evidence of one of their birth parent's (the child's grandparent) Australian citizenship will need to be presented.

Where the child and the relevant Child Welfare or Protective Agency do not have access to the birth parent's documents, or obtaining evidence of citizenship is complex, a request can be made to the Department of Immigration and Citizenship (DIAC) for evidence of the child's citizenship. Application forms are available from the DIAC website. As a permanent carer, you can sign the forms. A Statutory Declaration is often required when the birth parent's documents are not available.

## **Can I apply to change the child's name?**

You have the right to apply to the Victorian Registry of Births, Deaths and Marriages to change the child's name.

See link to factsheet:

[http://www.pcafamilies.org.au/uploaded-files/Application-for-Change-of-Name-for-children-in-Permanent-Care-families-FINAL\\_1425427836.pdf](http://www.pcafamilies.org.au/uploaded-files/Application-for-Change-of-Name-for-children-in-Permanent-Care-families-FINAL_1425427836.pdf)

## **What happens when carers separate?**

The Family Law Courts do not get involved with an application to change or cancel Children's Court Orders.

Family Court proceedings commence if spouses or de facto partners separate and require orders to regulate parental contact and care arrangements in relation to children.

A Permanent Care Order can be suspended on the making of an application in the Family Court by a carer seeking parenting orders on terms which the parties to the proceeding have agreed, *provided* the prior consent of the Secretary of DHS has been obtained. The PCO then ceases to be in force on the making of that parenting order in the Family Court.

Birth parents are still recognised as having 'parental responsibility' for the child in terms of the Family Law Act, but they are not able to exercise any aspect of this that a parenting order confers solely on others.

You should seek legal advice to establish whether these provisions apply in your particular case. You will be responsible for any expense associated with obtaining legal assistance.

The Family Court website has useful information on the Family Court's practices and procedures should you wish to understand the legal process involved in applying for or varying parenting orders.

See link:

<http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Children%27s+Matters/Children+and+separation>

## What if the child in permanent care has disabilities or special needs and remains dependent as an adult?

The PCO only lasts until the child in your care turns 18 years.

In terms of the *Guardianship and Administration Act 1986 (Vic)*, you, as carer, can apply to the Victorian Civil and Administrative Tribunal (VCAT) for an order appointing you as a plenary guardian in respect of a child with a disability who is in your care and who has attained the age of 18 years, or for an order to take effect upon the child attaining the age of 18 years.

This means you can continue to make decisions for the child (known as the represented person) including

- where and with whom the child lives, whether permanently or temporarily;
- whether the child should or should not be permitted to work;
- consent to any health care that is in the best interests of the child;
- restricting or prohibiting visits by any person if you reasonably believe that the visits would not be in the interests of the child.

Note that the birth parent will also have the right to apply for a plenary order so it is advisable to apply for this order while the child is in your care in terms of the PCO.

You can also apply to VCAT to be appointed as administrator which will allow you to manage the child's financial and legal affairs.

See link: <http://www.vcat.vic.gov.au/disputes/guardians-administrators/Array/guardianship-and-administration-act-1986-applications>

## Can an adult child be adopted by the carer?

In terms of the *Adoption Act 1984 (Vic)*, an application can be made for the adoption of a child over the age of 18 years by a person who has "brought up, maintained and educated" a child as if that person "were the parent of that child". There is no need to obtain the consent from the child's birth parents.



### 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.

### 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. Peninsula Community Legal Centre and 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.