

Custody to Secretary Order – information for parents



The magistrate at the Children's Court has made a custody to Secretary order in relation to your child. This means the magistrate has granted the Secretary to the Department of Human Services (the department) sole custody of your child because your child needs protection. For the length of the order, the Secretary has the power to make day-to-day decisions about the care of your child, such as where your child will live, with whom, and what activities they will undertake. Legal guardianship of your child remains with you. This means that you make long-term decisions for your child, for example about their education or medical needs.

The Children's Court may include any condition on the custody to Secretary order that it considers to be in the best interests or wellbeing of your child, including conditions about access to your child.

How long does the custody to Secretary order last?

Custody to Secretary orders may be initially made for up to 12 months; however, the order may be extended if the worker makes an application to the court because the difficulties that led to the order being made have not been worked out within the period of the order.

Your child may stay under a custody to Secretary order if the court is satisfied that extending the order is in the best interests of your child.

If you do not agree with the application to extend the order, you can go to court and challenge the application. You should seek legal advice about this (see section below). If the Children's Court decides to extend the order and you are unhappy with this decision, you can appeal to the County Court.

Where will my child live?

If your child has been living away from home while the court has made its decision, they will usually stay there until a longer-term place to live can be arranged. This may be with another family member or friend (this would require some assessment and checks) or some other suitable accommodation. When two or more children from the same family are admitted to the custody of the department, every effort will be made to keep them together. If the problems that led to the order being made are successfully worked out, then your child may return to live with you before the order ends.

Can I see my child?

It is very important for you to keep in touch with your child. Immediate and longer-term arrangements for contact with your child can be made with the worker. If you have any difficulties keeping the arrangements made for you to see your child, talk to the worker so that new arrangements can be made.

What does the Child Protection worker do?

The Child Protection worker will work with you and your child to make important decisions about your child such as:

- the changes needed for your child to return home safely
- where your child will live in the meantime
- what contact your child will have with you and other family members
- what kind of support would help your family to be able to care for your child.

Smaller decisions, like what time your child will go to bed, will be made by the people looking after them.



What is the best interests case planning process?

You are very important in your child's life and should be actively involved in planning for their future.

The Child Protection worker will work with you and your child to make a plan for your child's long-term safety, wellbeing and development.

A best interests planning meeting will be held within six weeks of an order being made by the court. This meeting will talk about the things that need to happen to ensure your child's longer-term safety and development. It will also make sure that everyone involved knows what needs to be done and who is to do it.

You and your child can be involved in this meeting and you may bring someone for support if you wish. This may be a friend or family member, a lawyer, or a worker from a community agency or group with whom you are involved.

If you have difficulty understanding English, you can ask to have an interpreter at the meeting to help you make your views known and to understand what is being decided.

The aim of the meeting is for everyone to reach an agreement about what needs to be done to help your child. If you do not want to attend the best interests case planning meeting, you can still be involved by telling the Child Protection worker what you think would be best for your child. If agreement is not reached, the person running the meeting, a senior departmental worker, will make the decisions.

You will be given a written copy of your child's best interests plan.

What if I disagree with the best interests plan?

If you disagree with the decisions made about your child, you should talk about this with the Child Protection worker. If, after talking to the worker, you still do not agree, you can ask for the decisions to be reviewed by a senior regional officer with responsibility to hear reviews. To do this you must write, or get someone to help you write, to the senior regional officer. Where you have exhausted all avenues of appeal within the department and are still dissatisfied with the decision, you can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a further and final

review. Contact your Child Protection worker or VCAT for an application form. VCAT's telephone number is (03) **9628 9755**.

Can a custody to Secretary order be revoked (cancelled) or varied?

You, your child or the worker can apply to the Children's Court to revoke (cancel) the Custody to Secretary Order if the situation has changed and your child is no longer at risk.

An application to vary (change) any conditions of the order can also be made by you, your child or the worker.

Can I appeal against a custody to Secretary order being made?

If you think the order is unfair, you have the right to appeal to a higher court, called the County Court.

Appeal forms are available from your nearest Children's Court, any Magistrate's Court or the County Court. It is best to seek the help of a lawyer if you decide to appeal to the County Court.

Where can I get legal advice?

Enquiries about legal assistance may be made to:

- the lawyer who represented you at court
- a local lawyer (listed under 'Solicitors' in the *Yellow Pages*)
- Victoria Legal Aid, Melbourne, telephone (03) **9269 0234**
- The Law Institute of Victoria, telephone (03) **9607 9311**
- The Aboriginal Legal Services Co-op, telephone (03) **9419 3888**
- a local community legal service.

For further information, contact your regional Department of Human Services office.

Contact information

The Child Protection worker's name is:

Their Department of Human Services office is:

Their contact number is: