

Steps to Speaking Up



Important things to know about the
Child Protection system for parents
with disabilities in Victoria

VALID

FIN
VICTORIA



Steps to Speaking up

July 2018

About VALID

VALID is the peak organisation in the Victorian disability sector representing people with an intellectual disability. VALID is run by and for people with disability and their families. VALID has particular expertise in networking and providing information to people with disability and families across the state.

VALID is committed to the vision of an Australian nation in which people with a disability are empowered to exercise their rights – as human beings and as citizens – in accordance with the United Nations Convention on the Rights of Persons with Disabilities. VALID strives to realise its vision through a range of strategies that work to empower people with disabilities to become the leaders of their own lives.

About Family Inclusion Network Victoria (FINV)

The Family Inclusion Network Victoria (FINV) is a non-profit association run by parents and their supporters that provides help for parents and families impacted by the child protection system.

FINV works to ensure families have access to information, support and advocacy to participate in the child protection process in an empowered way and to contribute to better child protection outcomes.

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Welcome to the Steps to Speaking Up booklet

The aim of this booklet is to help you to understand how the child protection system works and how the Children's Court becomes involved. It will also give you information that helps you work with the child protection workers so that you can try to keep your family together.

Don't panic!

If child protection workers have become involved with you or a family member, don't panic. This booklet will explain what might be happening.

Get help now

We have written this booklet to help you speak up. If your child is removed from home the law says you have 12 months to show you can be a good parent. If things aren't good in your home - get help now!

The words in this resource

The government uses big words and terms all the time. The child protection and Court system is full of them. Child protection workers and court officers talk about these matters in very specific ways, so we have explained what they mean throughout the booklet. We have also included a list of words (a glossary) at the end to help you find their meanings a bit more quickly.

The information provided in this document is specific to Victoria.

What to do when child protection workers visit you

All children must be safe. Child protection workers visit you for a reason. Once a report has been made, you have to prove that your child is safe.



DO

Get help (family, friends, advocate).

Be calm and polite.

Ask to see the worker's I.D.

Ask what the concerns are and ask the worker to write them down.

Think carefully when you answer any questions.

Keep answers short.

Keep answers only about your child.

Ask workers to explain or repeat the questions if you don't understand the question.

Start keeping information and evidence together.

Ask to communicate with the worker by text message or email so you have a record of things.

Make notes on paper or on your phone.



DON'T

Don't panic.

Don't yell, swear or act angry.

Don't answer too many questions until someone is with you – it is OK to wait for them to arrive.

Don't say too much.

Do not hide your child.

Don't talk about yourself too much.

Don't talk about it all with your child.

Don't worry about who made the report to DHHS.

Don't lie – the truth will be worked out in the end and if you lie nobody will trust you.



Contact an advocate or lawyer now!

VALID

Victoria Legal Aid

03 9416 4003

1300 792 387

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Step 1

Understand child protection

What happens when child protection workers get involved?

The law says that every worker, such as nurses, doctors or support staff, must check that children are safe. They must tell child protection if they have any concerns.

Child protection system

The child protection system is the set of government rules and services that has been made to protect children and young people who are under 18 from harm. The system also encourages family stability.

Because the Victorian Government wants children to be safe, they have made laws that allow people employed as child protection workers to get involved when child abuse or other serious problems are suspected.

Child protection workers have the power to take a child away

If you have a disability and no one is helping you, the chances are high that child protection may become involved. They may put your child in care while they investigate your case. Make sure you have a list of people that could help you look after your child while they investigate, or who you would like to look after your child if child protection workers take your child away while they check that your child is safe.

Child protection workers are concerned with the questions:

- Is your child currently safe?
- Are you a protective parent?
- Do you look after your child properly?

Child protection intervention

When Child Protection has decided that a child is not safe, the Victorian Department of Health and Human Services (DHHS) can get involved to ensure your child's safety. There are a range of statutory intervention options available. Child protection authorities can decide whether to:

- Provide a referral for the family to voluntarily engage with support services (e.g., parenting classes, domestic violence services),
- Obtain an order from the Children's Court to make parents get involved with particular support services (e.g., drug and alcohol services), or
- Ask the Court to make an Order that removes a child from their home and places them in care (on a temporary, long-term or permanent care order). The most common types of care are kinship (family) care and foster care.

The main functions of the child protection system are to:

- Investigate matters where someone has said that a child is at risk of harm,
- Refer children and families to services that assist in providing the ongoing safety and wellbeing of children,
- Take matters to the Children's Court if they think a child is not safe in their family,
- Supervise children on legal orders granted by the Children's Court,
- Provide and fund accommodation services, specialist support services, and adoption and permanent care to children and adolescents in need.

Children must be safe

Protecting children means keeping children safe from violence, exploitation, abuse and neglect.

When someone contacts the child protection office to say that they think a child might be **at risk of harm**, some of these things might happen next:

- A child protection worker will contact or visit you and talk about what has happened, and what they think needs to be done to keep your child safe, and sort out any problems.
- The child protection worker may decide that your child is 'at risk'. If they think this, they will open a **case**.
- When a child protection worker opens (starts) a case, they must do a **case plan** for your child. The case plan is where the worker writes down what the child protection office wants to happen for your child to be safe. The plan includes the steps along the way to reach that goal.
- The child protection worker will call a meeting with you and other people that may be involved with your family, like teachers, nurses, family support workers, disability workers.
- If you are Aboriginal or Torres Strait Islander, a person from an Aboriginal Community Controlled Health Organisation will also be included in this meeting if you want.
- If the child protection worker thinks that your child is not safe with you, they can take your child away.
- If your child is taken away, then the child protection worker must make an application to the **Children's Court** within 2 days.
- The Children's Court can then make an **Order** for your child to live with a relative or foster carer for a period of time. Final decisions about what will happen for your child will not be made quickly.
- The Children's Court can also make Court Orders that require you to do some things, like going to parenting classes or not taking drugs. This can happen while your children remain in your care, or they may be things you need to do before your children are returned.
- If the child protection office and the parents can work together, there may not be any Court Orders.

Unborn Child Reports

An Unborn Child Report means that someone has contacted the child protection office while you are pregnant to say that they think that your unborn baby might not be safe. If child protection or family services workers call you while you are pregnant, you must take action.

Contact before your baby is born is very serious

If you receive contact from a **Child FIRST** provider or child protection workers before your baby is born, then it is very serious. It means that child protection workers will come and check that your baby will be safe as soon as it is born. You need to take action now to make sure that you will be allowed to take your baby home from hospital. Ask child protection what they suggest that you do and put that in your plan as well. For example, you might need to get some support and education to help you get ready to look after your baby.

Make a plan on how you will look after your baby

If an unborn baby report has been made while you are still pregnant, you need to make a plan that shows how you will look after your baby once you bring your baby home. It is important to get supports in place **BEFORE** your baby is born so you can be ready to bring your baby home from hospital. For example, maybe you might need to arrange for extra help to be available after your baby is born.

An advocate can help you to speak up about what you do well and what help you might need.

Child FIRST will help you contact good places like local Family Centres and programs such as Bumps to Bubs.

Apply for a Review of your NDIS Plan

You are allowed to apply for a review of your NDIS Plan if you have a 'change of circumstances'. Being pregnant and expecting a baby is a big change and it is OK to ask the NDIS if you can have more supports when you have the baby. If you have a Support Coordinator, they can help you.

After your baby is born

Child protection workers cannot go to the Children's Court and get Orders to make you do anything before your baby is born, but it is still very important that you get organised and show them that you are prepared to do what is necessary to keep your baby.

If child protection workers think that your newborn baby might not be safe at home with you, they can make an application to the Children's Court for Orders to say what will happen straight away and further down the track.

The Orders might say that your baby should stay in hospital for longer, or that your baby should live with you and a relative, or that you should have an assessment at a mother/baby unit, or that your baby should go into foster care.

Having supports in place can make all the difference in bringing your baby home.

Step 2

Have good things to speak about with child protection workers

When a child protection worker contacts you it is serious and so it is important to act like it is serious. Be prepared to be a good parent and be ready to show that you are a good parent.

Be a great parent

Being a great parent means your child comes first. It means doing all the things your child needs every day without excuses. It means:

- Keeping your child safe.
- Keeping dangerous things and people away from your child.
- Doing your housework everyday.
- Keeping your child happy and feeling loved.
- not yelling at your child.
- playing with them and doing fun things together that they like and are right for their age.

All parents need help at some stage. It's OK to have help. If you find it hard to do all the right things for your child, get someone to help you.

Be an organised parent

Being an organised parent means making sure you plan and do all the usual things that parents do to make sure their child is safe and well. It means:

- You and your child attend all doctors or health appointments.
- Keeping paperwork and records about your child all together in one place (e.g. in a folder or group of folders).
- Keeping a diary so you can remember what you have done and what needs to be done (use the record function on your phone if you don't like writing).

Step 3

Meeting with child protection workers

Child protection workers keep children safe. This is an important job that they take seriously.

Child protection workers have a job to do

Child protection workers don't know which children are safe, or which children are not. If they receive a report about your child the law says that they have to investigate if a child is safe and is in a stable environment. They also have to check whether the parent/s are able to care properly for a child. But be aware that whatever you tell them will be written down and might be used in Court.

Speak less and listen more

Stay calm: speak quietly, listen carefully, answer the questions but don't say too much.

It is OK to ask what the concern is - why are they visiting you?

Wait until you have support

If a child protection worker comes to visit you, ask to see the worker's identification (ID).

If you know they are coming in advance, then make sure you have someone with you when they come. It is OK for you to ask a worker to wait until you have support before you let them inside your home. This might mean booking an appointment on a different day.

Answer all questions about your child's safety

The workers have to check your child is safe, so if they ask, you might need to take your child to the door to show them your child is safe. It is also OK to make a time for them to come back when you have someone to support you. If you refuse to talk to the child protection workers, they will go to Court to force you to do so.

Control your emotions

Having child protection workers in your life can make you angry and feel like yelling at workers and family. Or, it might make you sad and not want to talk to anyone. But, working well with people is the only way you will keep your children or have them returned to you.

Questions to ask the child protection worker

- What do the child protection workers think are the problems?
- What do they need to see, or what do you need to do?
- What help is available to you?
- Who can make decisions about what will happen with your children?

Make notes and keep records

Make a diary in a note book and write down the date that workers visited or phoned you. Write down what happened or record your thoughts on your phone. You should do this **every** time you speak to a child protection worker or other service provider (such as Child FIRST or a disability service provider).

Ask all workers to write short notes of what happened today (write the date) in your note book. Do this every time you see any worker.

Always talk about how you care for your child

Child protection workers, nurses and case workers always write notes in a file. They can use these notes in court.

Sometimes workers ask questions that prompt you to give answers that might make it sound that your child is not always safe. Always think about your child when you answer questions and only talk about the care of your child.

Going to meetings with child protection workers or other children's services.

Here are some tips to help you prepare for the meeting:

- Be ready to take notes - or have someone come with you to take notes.
- Be ready to show what you do well and what help you have. Ask the person running the meeting when you will be allowed to do this. You can ask either at the beginning when they are saying what will happen at the meeting and when they ask towards the end if there is anything else anyone wants to say.
- Make a list of points to help you speak (record them on your phone if you don't like writing and reading).
- Listen to what is being said and only speak about the topic of conversation.
- Know if you are getting stressed and have a plan to calm yourself down.

Step 4

Identify the issues and concerns

It is very important that you understand what the child protection workers are concerned about.

Ask questions

It is good to ask questions and to know what is happening. You are allowed to ask questions. The child protection workers must answer your questions honestly and tell you what information they are using about you and your child.

Write notes

Write down what the child protection workers are saying. What issues and concerns have been raised?

Once you have written the problems and concerns down in your own words, then you can work out what to do next.

Things to think about

- Is your child in danger of being harmed or unwell in your care?
- What do you need to change so that your child will not be in danger of harm?
- What can you do to show the child protection workers and the Court that you are a “good enough parent” and that your child should remain in your care?

Do you agree with what the child protection workers are saying?

If you agree with the issue or concerns that the child protection workers have identified, then you need to take action and make a plan on what you can do to solve the problem.

 See [Step 5 – Find support on page 14](#).

If you do not agree with the issue or concerns that the child protection workers have identified, then the next action is to collect the evidence (proof) to show that the issue is not true.

 See [Step 9– Get good evidence \(proof\) and information on page 24](#).

Step 5

Find support

All parents need help sometimes

It is okay to ask for help. Every good parent gets help. Think about what would help to give your child the best life.

Work out who can help you. Choose people that you trust and who will not make the situation worse. The people you trust will:

- Respect you.
- Listen to you.
- Support you.
- Care about you.
- Help you to make decisions for yourself.
- Stand by you.

People who can help you

Different people might be able to help in different ways. Someone who can take good notes might be very helpful. Some people who might help are:

- Family.
- Friends.
- Partner.
- Advocate – advocacy supports you to stand up for your rights. An advocate can help you by listening to you, supporting you to speak up and finding information to help you make choices.
- Support workers from a family service or disability organisation.
- Doctor, counsellor, occupational therapist (OT) or therapist.

Support can help you overcome problems

Be honest, if you know there is a concern - it is better to get help to fix it than trying to hide the problem. Good things to try if you have a problem are:

- Get help early. Don't wait for child protection to tell you there is a problem.
- Don't wait for child protection to do everything for you.
- Ask questions.
- Go to appointments.
- Follow up what is happening.
- Be reliable. Don't make promises you can't keep – if you say you are going to go to an appointment or going to do something – do it.
- If a qualified worker tells you to do something - do it.
- Keep records and notes of what workers say and do.

Have other places your child can be safe

Have a list of people that you would like to look after your child if you are not able to. If child protection place your child with someone else be careful not to be angry with the person looking after your child - you might need their help later on.

If you are Aboriginal or Torres Strait Islander, there are some specific cultural needs/ processes that DHHS have to respect and adhere to. You can talk to Victorian Aboriginal Child Care Agency (VACCA) about this by calling 03 9287 8800.

Places to get support with common problems

Parents can contact these organisations to get help for a range of problems.

Advocacy

VALID

03 9416 4003

office@valid.org.au

FIN Victoria

info@finvic.org.au

www.facebook.com/finvictoria

You can also search online for an advocacy service in your area.

Anger management

Ask your doctor for a referral to a counsellor.

Safe Steps family violence response centre

1800 015 188

www.safesteps.org.au

Domestic Violence Resource Centre Victoria (DVRCV)

www.dvrcv.org.au/talk-someone/victorian-services

Babysitting or respite with safe people

mychild.gov.au

If you leave your child(ren) with other people, make sure they are safe people. Gentle, watchful, helpful and caring.

Disability supports

National Disability Insurance Scheme (NDIS)

1800 800 110

www.ndis.gov.au

Drug and alcohol counsellor

www.directline.org.au

Financial counselling

www.financialcounsellingaustralia.org.au/corporate/find-a-counsellor

Finding a lawyer to help

Legal AID Victoria

1300 792 387

www.fclc.org.au/find_a_community_legal_centre

Law Institute of Victoria

03 9607 9311

www.liv.asn.au

Federation of Community Legal Centres (Victoria)

03 9652 1500

www.fclc.org.au

Maternal and Child Health

Contact your local council for a Maternal and Child Health nurse. You might be put in touch with 'Enhanced support', who are very helpful.

Parenting

Ask your Maternal and Child Health nurse for parenting help and training in your area.

Raising Children Network

raisingchildren.net.au/resources/resources_for_parents_carers.html

Sexual abuse

Centre Against Sexual Assault (CASA)

www.sacl.com.au/links/victorian-centres-against-sexual-assault/

Stress

Ask your doctor to refer you to a counsellor.

Step 6

Decide on your goals

What is your goal?

What do you want to happen? Make sure your goal or goals are clear. It is OK to have more than one goal.

.....
.....

Write down why you want it to happen.

.....
.....

What help do you need to achieve your goal?

Think about the things you can do that will help you the most to achieve your goal. Sometimes there might be a lot of things to do so it is good to think about working on the most important things first.

Who do you need to work with to achieve your goal?

.....
.....

Who can help?

.....
.....

What organisations can help?

.....
.....

Children must be safe

It is the parents' job to make sure children are safe and have a good life. Children need a safe home, safe food, safe people, safe play and lots of activities to help their brain and body grow.

Everybody in the world agrees that children should be safe. The United Nations says that families are the best place for children to grow up and so families should be helped to stay together. It also says it shouldn't matter if a parent or child has a disability, families are still the best place.

Because the Australian and Victorian Governments want children to be safe, they have made laws that allow child protection workers to get involved when concerns about a child have been reported.

The law in Victoria says that what is best for the child is the most important thing, and that we need to protect children from harm.

It also says that families are important for children and they should be kept together whenever possible. The law says that we should promote strong and positive relationships between children and their parents.

The law also says that if a child is taken away from his or her family then we should still think about ways that we can bring the family back together. This means thinking about how the child and their family can always have contact with each other.

Step 7

Make a plan to solve the issues and concerns

Make a plan first

We often make a plan before we do something. A plan tells us about things we are going to do and reminds us to do them.

Some concerns you will have will be big and some will be small. You need to be ready to work on both types of problems. There might be lots of little problems you have to work on but don't forget your main goal.

Work out a plan for each concern

Your plan might include a list of the people who can help you, or actions you will take to help yourself. The plan will also say how this will solve the problem or issue that the child protection workers have identified.

The plan will say how you will find supports – in the family, in the community, in the welfare system, in the disability system.

You are entitled to receive support and services

Child protection has the responsibility to help you find services to help you to keep your child or have your child returned. You should ask your worker what services they are going to help you work with.

An example of a support plan

What is the problem?	How will this be addressed?	What support is available?	When / how often?
Day to day care of my child.	Help from my mother or other family member.	Parenting care: feeding, bathing, changing nappies, washing clothes, health appointments, cuddles and attention.	Full-time – 24/7 for the first x months.
Monitoring baby's health & feeding. Supporting parent's best care of baby.	Enhanced Maternal and Child Health. Doctor. Family support worker.	Support parents to engage with services. Help with information, advice & practical support.	Depending on what is required.
Support for my disability.	Through my NDIS plan.	Support with activities of daily living. Support with employment.	7 days per week. Urgent NDIS plan review due to change in circumstances may be needed.
Advocacy support.	Through advocacy agency.	Advocate.	Available on phone, regular meetings.
Emotional support.		Counsellor. Friends.	

Step 8

Speak up for yourself and your family

Self-advocacy is:

- Speaking up for yourself
- Having your say
- Making your own decisions and choices
- Asking questions
- Telling people what you want to happen

Being a strong self-advocate can help you to:

- Feel good about yourself
- Speak up about your problems
- Be responsible for your own decisions
- Understand what is happening
- Have the life you want
- Protect your rights, your child's rights, and your family's rights

There are three ways people try to speak up – passive, aggressive or assertive. Two of these ways are bad, and one is good.

 **Passive** means not sticking up for yourself and allowing yourself to be bullied. When you are passive, things can happen to you that you have no control over. This is not good.

 **Aggressive** means pushing your views too hard, being too strong, shouting at people and bullying people. This is not good.

 **Assertive** means sticking up for yourself, listening to other people and understanding their worries, respecting other people's views, opinions and feelings, and getting your point across without being a bully. Speaking up assertively is normally the best way to speak up for yourself.

Understand advocacy and self-advocacy

What is advocacy?

Advocacy supports you to stand up for your rights. An advocate can help you by listening to you, supporting you to speak up and finding information to help you make choices.

What is self-advocacy?

Self-advocacy is speaking up for yourself and your family.

To speak up for yourself and your family you need to be prepared, be organised, be ready to talk about what you do well, know how to talk to professionals and child protection workers, including knowing how to act in a meeting.

To be a good self-advocate, you need to build up the six powers of self-advocacy.

The six powers of self-advocacy

These personal powers are a bit like batteries. You need them to get started and to keep going when you are having problems.

The 6 powers of strong self-advocacy are:

1. Self-expression – expressing your feelings and asserting your opinions.
2. Self-determination – making decisions for yourself and planning your own life.
3. Self-development – having goals and dreams and trying to achieve them.
4. Self-reliance – doing things for yourself whenever you can but not being afraid to ask for help.
5. Self-confidence – a feeling of trust in your abilities, qualities and judgement.
6. Self-esteem – feeling good about yourself, being proud of yourself

Step 9

Get good evidence (proof) and information

Information

Information is very important when you are dealing with the child protection system because this is what decisions are based on. It is important that all the information that the child protection system has about you and your child is correct.

Write everything down

You can give child protection information about your family and what you are doing and have done to help your child and to be a good parent. It is good to give them this information in writing – email is a good way – as this means that it will go on your case file.

You can ask the child protection workers to talk to people who you trust and who will support you to do the things you need to do help you keep your child or have him/her come back home. Send them an email later so that they have this in writing

You can also ask people who have worked with you to write reports and you can send these to the child protection workers as well.

Remember to keep copies of all the information that you give child protection workers and to make notes of the phone calls and meetings that you have. In case plan meetings, and other meetings with your child's worker you can talk with him or her about them and your lawyer can use these notes in Court to tell your side of the story.

Understand the facts and reasons

If your child might be or has been removed from your care, you need to have ALL the facts about why this has happened. If your child has been removed, child protection workers will have written a Disposition Report for the Court. Your lawyer should be given a copy of the report in the week before the hearing. The Disposition Report will say what child protection says is the problem, what they say has happened and list the Orders that they want the Court to make. It might include some of their evidence like reports from professionals who have worked with you and your child.

You have the right to see information about you

If you think that what workers say about you is wrong, or only tells half the story, you have the right to the information they have on file to back up what they are saying. This means you have the right to ask for a copy of the information (although some things might be confidential), Child protection workers are also required to tell the Court in the Disposition Report the good things about you and the supports you have to help you with looking after your child. If they have not done this, talk to your lawyer about what they have left out of the Report.

Confidentiality

Confidentiality means keeping information private to the person it is about. Sometimes child protection workers will not tell you (the parent) something because they are keeping this private for your child.

Remember also that the Court can only make an Order to remove your child if she or he is “at unacceptable risk of harm” and that Child Protection must show the Court that they have provided you with services to help you keep your child safe.

Evidence (proof)

Evidence is facts or information that shows if a belief or suggestion is true or valid. Evidence might be:

- Writing down what happened.
- Asking other people to write down what they think happened.
- Photos and videos.
- Reports from professionals (e.g. health & education).
- Research reports.

Evidence can be documents and reports or letters written by professionals who are helping you to address the DHHS concerns. For example, if DHHS want you to have an NDIS plan in place to provide you with support and education, a report or letter from the NDIS could be used as evidence that you are getting the assistance that DHHS wants you to get. Similarly, if DHHS want you to be assisted with parenting skills or financial management skills, letters from a parenting skills course or financial counsellor can be good evidence that you are doing what DHHS wants you to do.

Collecting evidence

If you do not agree with the issue or concerns that the child protection workers have identified, then the next action is to collect the evidence to show that the issue is true or not true.

Example of collection of evidence

Some people find it helpful to make a chart about their evidence. This helps them to find the right point to make when talking in meetings or talking to lawyers.

Start with a list of what you want your evidence to prove

Parent intends to prove:

I have a safe and stable home

I can look after my child’s development, health, wellbeing, physical and emotional safety. This may include extra support services and other family support.

My child has a connection/bond to me.

Fill out a ‘Relevant points table’

This table should cover all the main areas for giving a child a good life such as safety, health, learning, relationships and stability:

In the first column write down what Child Protection have said.

In the second column write down what you think is best for your child and what Child Protection have said.

In the third column list what evidence you have to support what you say.

Child Protection have said/done	What is best for the child and different perceptions of the situation	The evidence
Child’s need for stability: Parent has to have other people care for your child.	Child has a stable home with supportive adults. The best option available is to be at home.	Psychologist report. Support workers. Photos.
Attachment & bonding.	Parent has attended all access visits.	
	Child enjoys access with her mother.	Your note book.
	Child wants to return to her mother.	Psychologist/social worker report

Step 10

Understand the different Court systems

VCAT

Victorian Civil & Administrative Tribunal (VCAT) is like a Court but is not as formal. If you do not agree with the case plan for your child and it has been reviewed by a more senior person in Child Protection, you can go to VCAT and ask them to change the plan. Like the Children's Court, VCAT is separate from DHHS and does not always agree with Child Protection.

Child protection system

Child protection workers investigate concerns about a child's safety. They make the initial decision whether a child may be at risk and whether to get involved. Child protection workers can decide whether to open a case and collect information and evidence. They can decide whether to make an application for Orders in the Children's Court and suggest what Orders need to be made.

Children's Court

In Court there are lots of rules about how talking and arguments must be done. Therefore, all the talking is done by lawyers. Lawyers will represent the child protection authorities and a lawyer will represent the parent.

A judge or magistrate can make an Order that instructs parents to get involved with particular support services. The judge or magistrate can also make the decision to remove your child from the care of their parent and place your child in out-of-home care.

Who makes the decisions?

The Children's Court is where the legal decisions are made about whether a child is removed from the parent's care and whether a parent must participate in specific programs.

The judge or magistrate listens to what the child protection lawyers say, and then listens to your lawyers. Once they have listened to both sides, they make a decision. This decision is a legal decision.

Step 11

Speak up if you don't agree with decisions or evidence

There are two ways to speak up about Child Protection evidence and decisions that you do not agree with. It is a good idea to get advice from your lawyer before you decide to do either of these things.

Internal review and VCAT

You can request a review of a **case planning decision**. Tell the child protection worker which decision they have made that you do not agree with. Tell them what decision you think they should have made and why you think this would be best for your child. Ask the worker or other helper such as an advocate to write this down and submit this as a request to have your case reviewed. If you are not happy with the review you can apply to VCAT. Get your evidence ready so you can prove your point. Sometimes it is difficult to know whether it is better to go to VCAT or to the Children's Court. Ask your lawyer for advice on this.

At the Court with the help of your lawyer

Tell your lawyer. Show your lawyer why you disagree with the child protection position. Give them a copy of your evidence. Ask your lawyer to contest the decision in court.

Step 12

Learn about the Children's Court

Children's Court

The Children's Court is the legal place where proceedings relating to the care and protection of children under the age of 17 take place.

The Children's Court is concerned with the questions: Are you an adequate parent? What actions need to be taken to improve the parent's capacity and ensure your child's safety?

The Children's Court has the ability to make a range of different Orders (in terms of length of time, who has responsibility/guardianship) to allow sufficient time, where appropriate, for interventions to be put in place to help parents to meet their parental obligations.

In determining matters, the Children's Court weighs up the evidence on the balance of probabilities. A key consideration is that decision-making should be guided by what is in your child's best interests.

The Court does not always agree with child protection workers

Remember that the Court may have a different view from what child protection authorities think. After listening to the evidence, the judge might not agree with the recommendation from child protection that your child should be taken away.

When should I get a lawyer?

If you have been advised that child protection authorities have made an application to the Children's Court, then you will need help from lawyer.

Lawyers do all the talking at Court

You are not allowed to speak to the judge or the child protection workers in Court. The lawyers do all the talking. Calling out or disagreeing with the lawyers in Court is a bad idea.

Sometimes you will need to talk to the Court, to explain things or to give reasons for why things have or have not happened. Your lawyer will help with this. Don't be worried about talking to your lawyer about talking to the court. It is part of their role to help you understand how and why you might need to talk to the Court.

The Court makes the final decision

The final decision belongs to the Court. Child protection will give their information and evidence to their lawyer, you will give your information and evidence to your lawyer. The lawyers give the information to the judge who makes the decision.

You may go to Court many times

If you are in the child protection system, you may need to go to Court many times. Sometimes, no decision will be made at a Court hearing.

Tips on being in Court and how to behave

Going to Court is very serious. It is a good idea to think about what is going to happen before you get there. For example, you might need to be ready to hear some things you do not like when you are in Court.

- Prepare for going to Court - know where it is, how to get there and what time to be there.
- Be clean and tidy – look like you are ready to take good care of your child.
- Wear good clothes.
- Talk to your lawyer and find out where you will meet them.
- Ask what do you need to bring with you - do you need to bring your evidence chart or any evidence with you? (see section on evidence).
- Bring someone who can help you to be calm and to speak up.
- Do not bring too many people with you.
- Do not yell or swear at Court. Even in the waiting areas - the judge or child protection workers might hear you and think you would behave like that near your child.

Court Orders

The Children's Court can issue Orders to:

- Make parents be involved with particular support services (e.g., drug and alcohol services).
- Remove your child from the care of their parent and place your child in out-of-home care. This could be for a short time (a few weeks or months), a long time (up to two years) or permanently (until your child is 18). The two most common types of placement are kinship (family) and foster care.



See: [Children's Court Orders services.dhhs.vic.gov.au/child-protection-orders](https://services.dhhs.vic.gov.au/child-protection-orders)

Temporary Assessment Order

Child protection workers from the Department of Health and Human Services (DHHS) have applied to the Children's Court for a Temporary Assessment Order to allow them to investigate a report that your child is at risk of harm.

Interim Accommodation Orders

Interim Accommodation Orders are interim (short term) measures put in place to address interim safety concerns. Conditions are included that may assist to address safety concerns.

Family Preservation Orders

Family Preservation Orders place children in the daily care of the parent(s). DHHS have responsibility for supervision of your children so DHHS will want to check up on children that are on Family Preservation Orders with a

parent. A Family Preservation Order can be put in place for 12 months and then extended for a further 12 months.

Family Preservation Orders can only run for a maximum of 24 months (two years). The conditions attached to Family Preservation Orders must be capable of being achieved and they must promote the continued care of your child(ren) by the parent (you).

Family Reunification Orders

Family Reunification Orders give the DHHS the parental responsibility of your child(ren). Parents do however keep their responsibility for major, long term issues and decisions. If a Family Reunification Order is in place it means the DHHS generally think that when their concerns are addressed, your child(ren) should return to the parent (you).

DHHS decide where your child(ren) live for the duration of the Family Reunification Orders. Your family members should be considered

before other carers are considered for placement of your children.

A Family Reunification Order can be put in place for 12 months, but the first 12 months will take into account any prior Interim Accommodation Orders or Family Preservation Order if one has been in place. So, if an Interim Accommodation Order or Family Preservation Order has been in place for say 3 months, the first Family Reunification Order can only be made for a further 9 months.

The first Family Reunification Order can be extended for a further 12 months if there is evidence that reunification with a parent can occur during the second 12-month period. You should ask to be given a copy of the DHHS Reunification Plan.

If at the end of a Family Reunification Order, DHHS says reunification can occur because safety concerns have been addressed, the Family Reunification Orders can be converted to a Family Preservation Order. If the safety concerns for your children have not been addressed, and your children have been in Out of Home Care with an order in place (e.g. an Interim Accommodation Orders or Family Preservation Order then a Family Reunification Order for 24 months, the DHHS can apply for a Care-by-Secretary Order.

Care by Secretary Order (CBSO)

A Care By Secretary Order remains in place for a period of two years. The duration of a Care By Secretary Order is not negotiable and so cannot be changed. Under a Care By Secretary Order, DHHS has total parental responsibility for your child(ren). No conditions can attach to the Care By Secretary Order, and DHHS have control of where your child(ren) live.

If parents address DHHS concerns (solve problems) while a Care By Secretary Order is in place, DHHS can ask the Secretary to file a direction with the Court that turns the Care By Secretary Order into a Family Preservation Order. If this happens conditions can (then) also be included in the Family Preservation Order.

Long-term Care Order

A Long-term Care Order gives DHHS parental responsibility and remains in place until your child(ren) turn 18 or marry.

Permanent Care Order

The Court has found proposed permanent carers suitable to have parental responsibility for your child to the exclusion of all others, including the Secretary of DHHS. Under this order the carers are the permanent care parents of your child, and have all the duties, powers, responsibilities and authority that parents have in relation to your child until your child's 18th birthday. The order will usually include conditions.

Undertakings

Undertakings are a promise to the Court that you will do certain things - for example, a parent might be asked to engage with support services or attend certain types of counselling. If a parent promises to do something (undertakes to do something) and this does not happen, DHHS may make an application for a different type of Order.

A Rescission Order

An Order that sets aside an agreement that was entered into mistakenly, due to factors such as misrepresentation or undue influence. It's like undoing, or taking back a wrong decision that happened earlier.

A Variation Order

An Order that changes a previous Order or legal document.

Case-Plan Review

You can request that DHHS do an internal review of the case-plan (Case-Plan Review) that is in place for your child(ren). For example, this might happen if your children are in Out of Home Care and DHHS say they will seek a Care by Secretary Order (CBSO), and you want the DHHS to reconsider this decision.

It is best to apply for a Case-Plan Review after you have solved (most of) DHHS' concerns. For example, if you are going well with the

counselling and education programs that DHHS say you need to complete, you could request a review of the case-plan to have your children returned to you on a Family Preservation Order. If you have a lawyer or advocate assisting you, ask them to draft the request for review for you, or, get them to help you to draft the request for a case plan review.

Reunification Plan

If your child(ren) are in Out of Home Care on a Family Reunification Order, you should ask to be given a copy of the Reunification Plan that the DHHS have in place to return your child(ren) to your care. If you have agreed to a Family Reunification Order, the DHHS should support that Order with a structured plan to return your child(ren). The Reunification Plan should increase your contact over time with your child(ren) – progressing toward their return to you.

Government language

The **United Nations Convention on the Rights of Persons with Disabilities** says;

Parties shall ensure that a child shall not be separated from his or her parents against their will except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

The **United Nations Convention on the Rights of the Child** says;

Parties shall ensure that a child shall not be separated from his or her parents against their will except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of a child by the parents or one where the parents are living separately, and a decision must be made as to the child's place of residence.

The **United Nations Universal Declaration of Human Rights** says;

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding... should be afforded the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life.'

The **Children Youth and Families Act 2005 (Vic)** says;

The Children Youth and Families Act (CY&F Act) gives power to the DHHS to make applications to the Court for orders for children. It also gives the Courts power to make decisions about children, when DHHS make an application for an order for children. Sometimes DHHS and the Court agree about orders for children, but also sometimes DHHS and the Court don't agree about orders for children. Because both the Charter and the CY&F Act are Victorian Acts (written law in Victoria), the CY&F Act must be interpreted whilst thinking about the human rights (and responsibilities) that are written in the Charter.

The Charter of Human Rights and Responsibilities Act 2006 (Vic) says;

The Charter of Human Rights and Responsibilities Act (the Charter) is Victorian Legislation (written law) that says that people in Victoria have a number (20) of basic human rights. The Charter says that the Courts have to interpret other legislation (written law) in line with the basic human rights. This also requires public authorities, like the DHHS, to comply with the human rights given by the Charter. By

making public authorities think about human rights, the Charter makes government offices accountable (responsible) for human rights. The Charter enables Victorians to challenge laws and decisions that potentially impact on their human rights. The Charter balances basic human rights with responsibilities (it is the Charter of Human Rights and Responsibilities Act), so sometimes basic human rights are impacted if a person is not acting responsibly.

Consenting to Court Orders

Sometimes when the Children’s Court makes an Order, you will be asked to sign that you consent to (agree with and promise to follow the rules in) the Order.

Be very careful about consenting to an Order

It is very important that you tell your lawyer whether or not you agree with the conditions contained in a proposed Order and if you agree or not with the reasons DHHS say the Order is needed.

Do not agree to consent to Orders because you are stressed or just want to get out of Court.

Decisions by agreement must be true

Sometimes parents feel they have to agree with everything the child protection workers want. It is OK to say that you don’t agree. If this happens, then talk to your lawyer about contesting in court.

Try and get some legal advice as soon as you can.

Glossary

List of words

At risk of harm means the child or young person has a high chance of being harmed, due to identified concerns for their safety, welfare, or well-being.

Applications are requests issued by child protection workers from DHHS. The decision about Applications are made by the Court, where they can be applied, revoked, or varied.

Best interests means that everything that you, child protection and the Court do must be to give your child a good life.

A Care Application is when a child protection worker applies to the Children's Court for a child to be removed from their home/parents.

The **Child FIRST** teams provide a 'one-stop' intake service to DHHS services for vulnerable children, young people and their families.

The **Children's Court** is a specialist court dealing with cases involving children and young people. This includes a family division, and a criminal division.

The **child protection system** is a service targeting children and young people at risk of harm, including where families are unwilling or unable to protect them. It can investigate relevant matters, refer children and families to services, take cases to Children's Court, supervise children according to legal Orders, as well as provide accommodation and support services.

A **child protection worker** is someone who works with vulnerable children and families. This can include case management, assessing reports, and community outreach.

A **case** is when workers from DHHS believe a child or young person is at risk of harm, and they want the court to ensure that somebody is protecting them adequately.

A **case plan** is a high level, easy to read plan, which includes the objectives of the case, as well as all the significant decisions relating to the present and future care needs of the child or young person.

Confidentiality means keeping information private to the person it is about. Sometimes child protection workers will not tell you (the parent) something because they are keeping this private for the child.

A **Hearing** is a proceeding / meeting before a Court or Tribunal (e.g. VCAT) to collect the facts about an event or problem.

A **Conciliation Hearing** aims to help all parties reach an agreement, through compromising and having a practical approach.

A **Contested Hearing** happens when the court deals with issues where there is dispute between the parties. This includes presenting evidence, calling witnesses, and having the Court make their decision.

A **Disposition Report** is a report written by child protection workers that says what they think is the problem and lists what Orders they want the Court to make. Your lawyer should be given a copy of the report a week before the hearing.

Orders are legal instructions from the Court to do something

A **Discharge planning meeting** is a meeting that is held with you before you leave hospital with your baby. All relevant professionals and family members will discuss the best way of supporting you and your baby to come home.

A **family led discussion** is a process where different members of the family can lead the discussion around how best to care for the relevant children and young people, with key professional practitioners guiding the discussion.

Proceedings means the process the Court goes through to determine what, if any Orders are to be given in relation to the protection of the child or young person.

Substantiation is when a DHHS worker believes that child abuse or neglect has occurred. This does not mean it has been proved in a court of law.

People with disability have the right to be parents

Everyone has the right to be the best parent they can be. This includes people with disability.

The Australian and Victorian Governments agree that people with disability have the right to be parents. This means that children should only be taken from their parents if it is the best thing for the child.

All the important documents on the rights of people with disability, including the Victorian Charter of Human Rights and Responsibilities and the UN Convention on the Rights of Persons with Disabilities, say that families are important and should be protected. They also talk about how parents and children with a disability should get the help they need to keep their family together.

It is not true that children are not safe if they have parents with disability.

It is not true that people with disability are not as good at being parents as people without disability.

When you are a parent with disability it is important to think about how your disability might impact on your child. It is also important to think about supports and strategies that will make sure your child is safe.

It is also OK to think and say that while the rights and needs of children are the highest priority, the rights of parents should not be forgotten.

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The Steps to Speaking Up booklet will continue to be updated and improved. More information will be added in the future.

We welcome feedback and suggestions about the booklet, which can be sent to david.petherick@valid.org.au.



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