

# Legal Orders used in Child Protection.

## An information sheet for the public.

DISABILITY, CHILD, YOUTH AND FAMILY SERVICES

### What legislation protects children in Tasmania?

The *Children, Young Persons and Their Families Act 1997* sets out the legal framework and the responsibilities of government, non-government services, the wider community and families in relation to the care and protection of children. Children are also protected from harm through the *Family Violence Act 2004*. Children and young people are also entitled to the protection afforded to all other members of the community.

The *Children, Young Persons and Their Families Act 1997* (the Act) provides the legal mandate for the statutory Child Protection Service in the Department of Health and Human Services to receive and assess notifications where people are concerned about the safety or wellbeing of children

### What is the Object of this legislation?

The Object of the Act is 'to provide for the care and protection of children in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential.'

The Object is supported by a set of Principles that guide how the Act is carried out in practice. These Principles provide a number of key messages which stress the involvement of the whole community in the protection of children from abuse and neglect. These Principles include:

- The importance of strengthening and supporting families in their primary responsibility for the care and protection of children,
- The importance of the community in helping this to happen,
- The involvement of families, neighbourhoods, government and non-government services working together to build a child-safe community,
- The involvement of the Aboriginal community in assisting Aboriginal children and families, and
- The use of legal orders as a last resort.

### When is a legal order necessary?

If a notification is made to Child Protection Services and the assessment is made that there is no other way of being sure that a child is safe from harm or risk, the legal powers given through the Act to Child Protection Workers may have to be used. This may be necessary for a number of reasons, including:

Parents or carers will not even allow Child Protection Workers to enter their home and discuss the matter or see the child

A criminal act may have been committed and the child needs urgent protection

Parents or caregivers refuse to allow the child to be taken for a medical or other assessment

Parents or carers are unable to provide their permission for the child to be assessed due to substance abuse, mental health issues etc

The child is in need of short or long term care and protection due to the future risk to them.

## **What powers do Child Protection Workers have?**

On rare occasions, Child Protection Workers may have to take immediate action to protect a child in an emergency. The police may also provide assistance in these circumstances. The child may be in need of an urgent assessment to determine whether he or she has been harmed or to assess the impact.

Sometimes children need to be placed somewhere away from their home if it is not considered safe for them to stay there. When this is the situation, Child Protection Workers will explain to the parents the reasons for this decision and try to gain their agreement to the assessment and or the placement. If it is possible and considered safe, children will be placed with people they know and trust.

However, if the parent does not agree, the law gives Child Protection Workers the power through a Warrant from the Court to remove the child for the purposes of assessment or placement. A child placed away from the home at this emergency stage is described as being in the short-term custody of the Secretary of DHHS.

The maximum time that a child can be placed in the short-term custody of the Secretary (under section 21 of the Act) is 120 hours (5 days). Any extension beyond that time is a decision of the Court.

## **What is the first order the Court can make?**

If the risk issues have not been resolved and the judgement made by Child Protection staff using the Tasmanian Risk Framework (TRF) indicates that further assessment is required and the family is not able to grant permission for this, an application will be made to the Magistrate's Court (Children's Division) for an Assessment Order.

Assessment Orders are generally granted initially for 4 weeks. During this time, specialist assessments may be carried out with children and parents, case conferences and family meetings may be called, reports will be put together, referrals to support services may be made and plans developed to address the issues of concern. Wherever possible, Child Protection Services will be working towards withdrawing from the life of the family – as long as the risk and safety issues have been dealt with.

## **Can an Assessment Order be extended?**

If the risk and safety issues have not been addressed and the assessment at the conclusion of the first Assessment Order indicates that there is ongoing risk, Child Protection Services may have to return to Court with an application for an extension to the Assessment Order. The Act allows for an extension of another 4 weeks, unless a Family Group Conference is to be called. In this case, an extension of 8 weeks is permitted.

There are occasions when the Court has to adjourn the proceedings in relation to an Assessment Order for example, when a parent is unable to attend or a critical report has not been submitted. In this case, the Magistrate is permitted to grant an adjournment for up to 14 days. An adjournment is only permitted once in any proceedings.

This means that a child may be in the custody of the Secretary for up to 15 weeks from the point when a Warrant was used to remove the child to a safe place in the emergency situation to the end date of an extended Assessment Order.

## **Can an Assessment Order be opposed?**

YES - parents and other caregivers can disagree with the application for an Assessment Order. There are a number of ways in which this could be resolved, including negotiation or mediation between all parties or through a hearing in which the Court will decide what is best for the child.

It may be necessary for an Interim Assessment Order to be in place to ensure that arrangements which have been put in place to keep the child safe continue while the legal issues are sorted out. The Court will grant this Interim Assessment Order.

## **What happens for the family when a child is on an Assessment Order?**

The focus during the Assessment Order phase is to find solutions to the problems that have put the child at risk in the first place. The intention is to reinforce the strengths in the family, address the issues and create a safe environment for the child to return to the family or for all involvement by Child Protection Services to cease because the family is coping and the child is safe.

This might mean, for example, that parents attend parenting support groups, or that the child is given appropriate therapy, or that a particular behaviour or attitude that is damaging the child is recognised and altered. In all situations the reasons for Child Protection having concerns should be openly discussed so that parents, family and community members can actively participate in finding solutions.

## **Does an Assessment Order take guardianship away from parents?**

NO – An Assessment Order is, as its name indicates, for the purposes of assessment. It may contain conditions including where the child will live, what the parents or carers are expected to do, what specialist appointments are to be made and kept and who will have custody (ie responsibility for the day to day care) of the child during that period.

## **Can the child remain with their parents?**

YES – if it is considered safe for the child to stay at home with their parents, this can be part of the Assessment Order conditions. In these cases, both custody and guardianship of the child remain unchanged, but the Court will have imposed some other requirements on the family to ensure that the risk identified through the initial assessment is being addressed in very practical ways.

## **Can the Assessment Order be revoked?**

YES – any legal protective order can come to an end before its expiry date (ie be revoked) if the situation has changed sufficiently for Child Protection Services to make the assessment that the child is no longer at risk of either immediate danger or future harm. To revoke the order, an application must be made to the Court and the Magistrate would grant the revocation based on the evidence presented by the Child Protection Worker and the family.

## **What about when an Assessment Order ends?**

This will depend on the risk assessment made at that point. If the situation has changed since the start of the order to the point where Child Protection Services are no longer concerned, the order could lapse at the date it

is due to expire. The family should be aware that this is happening and plans would have been made to return the child to their care and any other support arrangements would have been tested and proven effective.

## **What if the child is still considered to be at risk?**

After the period of the Assessment Order/s, a further risk assessment will take place and, if the child is considered to be in need of longer term care and protection, Child Protection will apply to the Court for a Care and Protection Order.

## **What is the difference between an Assessment Order and a Care and Protection Order?**

While the focus under an Assessment Order is to get really clear about what current and future risk the child is experiencing, and the case plan is directed towards reunification, wherever possible, the decision to apply for a Care and Protection Order is based on a judgement that the child is now in need of longer term stability, care and protection.

This is the point when consideration is given to who should assume responsibility for both the custody and the guardianship of the child. In some cases the custody of the child may remain with the Secretary (with day to day care provided by foster carers) but the guardianship remains with the parents. In other cases, the guardianship may be transferred from the parents to the Secretary with the day to day care (custody) being with a relative. The Act is very flexible in order to allow the Magistrate to make an order that meets the needs of each child.

## **How long is a Care and Protection Order?**

The first Care and Protection Order is generally for up to 12 months. This can be extended for up to a further 2 years the order can place the child under the guardianship of the Secretary until he or she is 18 years old.