

# kids in care

Things have changed and I want my kids back: what can I do?



Legal Aid  
NEW SOUTH WALES

# kids in care

## 3 Things have changed and I want my kids back: what can I do?

There are six booklets in the **kids in care** series available from **Legal Aid NSW**.

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## The Court has made care orders about my kids, what can I do?

If you think things have changed since the Children's Court made orders, you can make an application to the Children's Court for the orders to be changed ('variation') or cancelled ('rescission'). These are called 'section 90' applications. This is different from an 'appeal' – for information on appeals see **BOOKLET 4: The Children's Court made a decision I am unhappy about: what can I do?**

A 'variation' or 'rescission' application can be made by anyone who was involved in the original case, the child or young person, or anyone with a sufficient interest in the child's welfare.

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

### The first step: asking for 'leave'

Before you can ask the Court to change or cancel an order, you have to ask the Court to agree to hear the application. This is called 'seeking leave'.

- ▲ The magistrate will only agree to hear the application if he or she thinks that there have been significant changes since the orders were made.
- ▲ However, a 'significant change in circumstances' is not enough to guarantee that permission will be given.

The magistrate will also need to consider:

- ▲ The wishes of the children and how important these views are (this is often based on their age);
- ▲ How long the children have been with their current carers and how stable these arrangements are;
- ▲ If the magistrate thinks the current arrangements are stable, then they have to decide what the least intrusive (or disruptive) thing to do is;

The magistrate also has to look at:

- ▲ The age of the children;
- ▲ What orders you are asking the Court for;

## Has there been a 'significant change in circumstances'?

The Children's Court will not consider changing an order unless there has been a 'significant change in circumstances'. The Court will look back at the problems that led to the original orders being made and will decide whether things have changed enough to justify changing or cancelling the orders.

- ▲ Your plans for the children;
- ▲ Whether you have an 'arguable' case to ask for things to change;
- ▲ Any court ordered reports.

Sometimes, even if there have been big changes, these other things might mean that the magistrate does not give permission.

### What do I have to do to get leave?

If you want to apply for leave to change or cancel an order, you will need to file a section 90 application and an 'affidavit'. The affidavit is your evidence about the significant change in circumstances since the final orders were made, and why you say that the Court should give you leave. It is important that you see a lawyer to help you prepare these documents.

### What happens if leave is granted?

If the Children's Court gives you permission to bring the application, then the next stage will be for the magistrate to decide whether or not the final orders should actually be changed or cancelled.

Before changing or cancelling the orders, the magistrate will consider all of the circumstances including:

- ▲ your children's ages,
- ▲ your children's wishes,
- ▲ how long your children have been in their current placement,

- ▲ your children's relationship with you and the other people important to them, including their current carers,
- ▲ your capacity to care for your children, and
- ▲ the psychological effect on your children of changing their current care arrangements.

### What kind of evidence do I need?

The magistrate will consider what has happened since the orders were made, and what changes you have made.

You will need to set out in your affidavit the reasons why the magistrate should make the orders you are seeking, including:

- ▲ what you have done differently since your children were removed from your care,
- ▲ how your children have been doing since they were removed,
- ▲ what contact you have had with your children, and
- ▲ what your plans are for the children if the Court makes the orders you are seeking.

Your case might be helped by evidence from people or organisations you have been working with to address your previous child protection issues, such as:

- ▲ letters from doctors, counsellors or social workers about how well you are doing, including how often you have been attending these services,
- ▲ certificates from parenting classes you have attended, and
- ▲ certificates for any drug or alcohol treatment programs you have completed.

Sometimes the people who provide these letters or certificates may be asked to give evidence in the proceedings.

### Will I have to go to a hearing?

You will be given a chance to go to a confidential meeting called an 'alternative dispute resolution' or 'dispute resolution conference' to see if you can reach agreement with Communities and Justice and the other parties about your children.

If all the parties cannot reach agreement, then there will need to be a hearing. You and the other parties will need to give evidence, and everyone will have a chance to tell the magistrate

what they say should happen. The magistrate will then make the decision which the magistrate believes is in the best interests of your children.

For more information about hearings and agreements, see **BOOKLET 2: Going to the Children's Court.**

### Can I get a lawyer?

Legal Aid NSW may be able to help you make a section 90 application. To be granted legal aid, you will need to show that you meet Legal Aid's 'means test' (that you are within the income and assets limits), and Legal Aid's 'merits test' (that your case has a reasonable prospect of success). If you do not qualify for legal aid, you may choose to pay a lawyer privately to represent you, or represent yourself.

#### More information and help

- ▲ Legal Aid NSW Family Law Intervention Unit:  
**1800 551 589**  
[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)
- ▲ Aboriginal Legal Service:  
**1800 733 233**  
[www.alsnswact.org.au](http://www.alsnswact.org.au)
- ▲ LawAccess NSW:  
**1300 888 529**  
[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change. For more information contact LawAccess NSW on **1300 888 529**.



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For more information about Legal Aid NSW Services:



### Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.



If you find it hard to hear or speak, call the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit **[www.relayservice.gov.au](http://www.relayservice.gov.au)**

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