

kids in care

The Children's Court made a decision
I am unhappy about: what can I do?



Legal Aid
NEW SOUTH WALES



kids in care

4 The Children's Court made a decision I am unhappy about: what can I do?

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

- 1 Communities and Justice want to talk about my kids: what will happen?
- 2 Going to the Children's Court
- 3 Things have changed and I want my kids back: what can I do?
- 4 The Children's Court made a decision I am unhappy about: what can I do?**
- 5 What happens when my kids are in care?
- 6 Aboriginal and Torres Strait Islander children and care



What is an appeal?

An appeal means that a higher court may make a fresh decision when someone is unhappy with a decision of the Children's Court. Not all decisions can be appealed against.

Who can appeal?

Anyone who was a party to the original proceedings in the Children's Court can appeal against the decision if they are dissatisfied with the order made. If you were not a party to the proceedings, you cannot file an appeal.

When can I appeal?

You need to wait until the Children's Court case has finished and the Court has made a final order. An exception to this is if the Children's Court refuses you permission to be joined as a party to the case. If this happens you can appeal against that decision straight away without waiting for the case to finish.

It is not possible to appeal against an 'interim order' (ie, a temporary order made during the course of the Children's Court proceedings).

For example, you cannot appeal a decision:

- ▲ that your children are in need of care and protection ('establishment'),
- ▲ refusing an application for an assessment by the Children's Court Clinic,
- ▲ giving someone interim parental responsibility for your children,

- ▲ setting the amount of interim contact you will have with your children.

Where do I lodge my appeal?

To appeal against a decision of a magistrate in the Children's Court, you must lodge your appeal in the District Court.

To appeal against a decision of the President of the Children's Court, you must lodge your appeal in the Supreme Court.

In very limited situations, it is sometimes possible to apply to the Supreme Court to review a decision made by the District Court. You will need to see a lawyer to get advice about this.

What happens in an appeal

The Court hearing the appeal will take a fresh look at the whole case, and make its own decision about what final orders to make. The Court will usually have all the same evidence as the Children's Court, as well as any new evidence which it is important for the Court to consider.

What if I am unhappy with an interim order?

You cannot appeal against an interim order. Instead, there are two ways to challenge an interim order of the Children's Court:

- ▲ if circumstances have changed since the order was made, you can apply to change it by making a 'section 90' application for 'variation or rescission' of the order (see **BOOKLET 3: Things have changed and I want my kids back: what can I do?**); or

Don't leave it too late

If you want to appeal a Children's Court decision, you have 28 days from the date of the decision to lodge your appeal.

in rare cases, you may apply to the Supreme Court to change an interim order. These cases are very unusual and you should see a lawyer about whether it is possible in your case.

Can I get a lawyer?

Legal Aid NSW can sometimes help if you want to appeal to the District Court or the Supreme Court. To be granted legal aid, you will need to show that you meet Legal Aid's 'means test' (that you are within our income and assets limits), and 'merits test' (that your case has a reasonable prospect of success). If you don't 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
- ▲ Aboriginal Legal Service: **1800 733 233**
www.alsnswact.org.au
- ▲ LawAccess NSW: **1300 888 529**
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**.



© Legal Aid Commission of NSW 2020

Order brochures online at www.legalaid.nsw.gov.au/publications or email: publications@legalaid.nsw.gov.au

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

Legal Aid NSW acknowledges the prior publication, *The Children's Court, Care, My Child and Me*, from the Shoalcoast Community Legal Centre.