

Out-of-Home Care Sole Parental Responsibility

In March 2004, new legislation was introduced allowing authorised carers to apply for sole parental responsibility for children and young people in their care.

A carer can now apply to the Children's Court for a Sole Parental Responsibility Order. This is also known as a Section 149 Order because it was introduced under Section 149 of the Children and Young Persons (Care and Protection) Act 1998.

BENEFITS FOR A CHILD OR YOUNG PERSON

Children need a stable foundation to develop their identity, values, relationships and cultural awareness throughout childhood. For children who are unable to live with their own parents, having another permanent place to live gives them the best opportunity to grow up with a secure sense of identity.

A long-term legal order that endorses a carer's commitment can increase a child's or young person's sense of stability. It offers an alternative to adoption, as it reduces the involvement of DoCS and the designated agency, but does not involve the lifelong cutting of legal ties to birth parents and other family members.

BENEFITS FOR CARERS

Sole parental responsibility gives a carer all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children. The carer can make long-term decisions for the child or young person and reach their own conclusions regarding their best interests. They can do this without having to 'check back' with DoCS or the fostering agency.

However, the carer will need to understand that it is still important to preserve the child's name, identity, language and cultural and religious ties as far as possible.

Implications For Birth Parents

Consenting to a Section 149 Order ensures that birth parents are a party to the decision on where their child will grow up. They are

still recognised by law as the parents even though they are no longer exercising parental responsibility.

Unlike adoption, sole parental responsibility means that the child keeps their name and identity.

Applying For an Order

An authorised carer can apply for sole parental responsibility if:

- the child or young person has been in their care for a continuous period of two years, and
- the Minister for Community Services currently has sole, or aspects of, parental responsibility, and
- the parent/s (or the person who had responsibility for the child before they came into care) give consent to the authorised carer having full parental responsibility, and
- the child or young person consents to the application (if aged 12 years or older), and
- the order complements the child's identity, cultural and religious background.

IMPORTANT ISSUES

The Child's or Young Person's View

The child or young person will need assistance and time to understand what a Section 149 Order means. In particular, they will need to understand that, once the order is made they will legally 'belong' with the carer's family until they grow up. However, this does not change the importance of their birth family. Before they can reach this understanding they will need support and assistance to help them to think through their past and to manage their feelings about current relationships with birth family members. A good understanding of their background and 'life story', will help children understand what the change will mean, and whether they wish to consent to the order.

key features

- A long term order intended to last until the child or young person is 18 years old
- Gives the carer full parental responsibility
- Requires the consent of birth parents and the child (if over 12 years of age).
- Foster carers, not caseworkers, make the application
- Cannot be varied or cancelled easily

"A long-term commitment by a carer can increase a child's or young person's sense of stability..."



Consent

An application cannot go ahead without the consent of key parties. This means that agreement needs to be reached by all about what is best for the child and everyone needs to be committed to the case plan.

The process of reaching agreement requires the participation of all parties and takes time to plan. It is not necessary to wait for the child or young person to be in the placement for two years before sole parental responsibility can be discussed at a case planning meeting.

It is important to note that if a parent or guardian who is required to consent cannot be located, or refuses to consent, an application for the order cannot be made. This is because the Children's Court has no power to dispense with the consent of a parent or guardian.

Legal Advice

When considering whether to apply for sole parental responsibility it is recommended that the carer seek independent legal advice and that the child or young person involved should have separate independent legal advice.

Contact

After a Sole Parental Responsibility Order is made, the carer is responsible for planning and implementing contact arrangements with birth parents, siblings and other people who are significant to the child. Clearly, this means appropriate communication will need to have been established with parents and others before the order is applied for.

Making an order will not automatically affect the frequency and type of contact a child has, because contact arrangements should always be based on the needs of the child, rather than on legal status.

A contact plan can be included in the proposed care plan when the order is sought. The Court can make a contact order if required when a Section 149 Order is made, or it may vary an existing contact order. It is important to remember however, that contact plans should as far as possible allow for flexibility as the child or young person's needs change over time. As children and young people gain independence they will have a greater say in the frequency and type of contact they have.

ARRANGEMENTS FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND YOUNG PEOPLE

Granting sole parental responsibility to a non-indigenous carer can only be considered when there is clear evidence that the child's cultural links and heritage will not be compromised.

In addition to the approval of the child's family and community, the consent of both the Minister for Community Services and the Minister for Aboriginal Affairs is a mandatory requirement in these situations as detailed in Section 78A (4) of the Act.

The intention of the order is to provide the child with a greater sense of stability and security in their placement with the carer. It is not a cutting of ties to their birth family, community and culture.

THE ROLE OF DOCS OR THE DESIGNATED AGENCY ONCE THE ORDER IS MADE

The role of DoCS or the designated agency supervising the placement will be minimal following the granting of a Section 149 Order.

If the order is made to a non-relative of the child then the placement is still subject to review requirements under the Act. Involvement may also be needed to assist with contact or arrangements for financial assistance. These matters should be set out in the approved case plan and discussed with the parties when the application is being prepared.

Once the order has been made the parties may still contact DoCS or the supervising agency should the need arise.

ELIGIBILITY FOR CARER PAYMENTS

Carer payments can continue after a Section 149 Order is made, but they will be subject to review. DoCS will assess the carer's financial capacity to meet the child's needs, and determine the appropriate type and level of payment.

COSTS ASSOCIATED WITH APPLYING FOR THE ORDER

The carer as the applicant is responsible for costs associated with legal assistance they may require to prepare and lodge the application.

Children or young people aged 12 years and over, and the others who need to consent to the order, will be assisted to obtain independent legal advice should they wish to, before an application is lodged.

CHANGING OR CANCELLING A SECTION 149 ORDER

Because a Section 149 Order is intended to be permanent, there are limited circumstances under which an application to change or cancel the order can be made. Such an application can only be made:

- with the leave of the Children's Court, and
- with the consent of the principal officer of the agency that last supervised the placement.

If the principal officer of the designated agency consents to the application, the agency must provide the Children's Court with a detailed report.

If you have questions about information in this fact sheet or require additional information, speak with your existing DoCS contacts, or your agency caseworker.

www.community.nsw.gov.au