

Authorised carers - sole parental responsibility

Practice

Used when a Community Services expresses interest in applying for sole parental responsibility of a child/young person in their care.

The content of this procedure is due for review and will be updated

The purpose of this procedure is to plan and support action by an authorised carer to gain sole parental responsibility for a child or young person under Chapter 8, Part 2, s.149 of the Children and Young Persons (Care and Protection) Act 1998 ('the Act'). This occurs in the context of permanency planning and assessing which legal arrangement will best support the safety, welfare and wellbeing of the child or young person.

All children need a stable foundation from which their identity, values, relationships and cultural awareness can be developed throughout childhood. For those children who are unable to live with their own parents, having another permanent place to live gives them the best possibility of growing up with a secure sense of identity.

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

Under section 149 of the Act an authorised carer who, for a continuous period of not less than 2 years, has had the care of a child or young person, for whom the Minister (either alone or with another person or persons) has parental responsibility, may apply to the Children's Court for an order awarding sole parental responsibility for the child or young person to the authorised carer, subject to this section.

The application may be made by the authorised carer and the authorised carer's partner, if the partner is consenting, and an order may be made accordingly.

An application cannot be made by a person who has the responsibility of an authorised carer solely in his or her capacity as the principal officer of a designated agency.

An application cannot be made without the consent of the person or persons who had parental responsibility for the child or young person immediately before parental responsibility was allocated to the Minister. The Children's Court must be satisfied that the consent has been properly given on an informed basis.

The Children's Court may order a person who makes an application under this section to notify those persons whom the Children's Court specifies of the making of the application.

An application that relates to a child who is not less than 12 years of age, or a young person, and who is capable of giving consent cannot be made without the consent of the child or young person. Consent is to be given in such form and manner as may be prescribed by the regulations.

If an application relates to a child who is less than 12 years of age, the principal officer of the relevant designated agency is to give the child notice of the application.

In making an order under this section for sole parental responsibility, the Children's Court may make or vary a contact order under section 86.

When can a s149 order be sought?

An authorised carer may apply for an order for sole parental responsibility for a child or young person when:

- the Minister (either alone or with another person) has parental responsibility for the child or young person, and

- the child or young person has been in the authorised carer's care for at least two years continuously (the two year period can commence prior to the proclamation of this section); and
- the authorised carer wishes to exercise sole parental responsibility, and
- the person/s who had parental responsibility for the child or young person immediately before parental responsibility was allocated to the Minister consents to the making of the order, and
- in the case of a child or young person who is 12 years or over, and is capable of giving consent, he or she has expressed a wish for the order to be made and
- the making of such an order will not compromise the child or young person's cultural links or heritage, and
- in the case of an Aboriginal or Torres Strait Islander child placed with non-Aboriginal or Torres Strait Islander carers, the application has the consent of the Minister for Community Services as well as the Minister for Aboriginal Affairs (Chapter 5, Part 2, s.78A(4)(e) of the Act).

If all these requirements cannot be met, then the order cannot be applied for.

What is the effect of a s149 order?

Jurisdiction

The order is made in the Children's Court under Chapter 8, Part 2, s.149 of the Act, with limited means for variation or rescission of the order through the Children's Court.

Legal status of the carer

Carers have full parental responsibility and day-to-day care responsibility until the child or young person reaches 18 years.

Legal status of the birth parents

The birth parents are still recognised as the birth parents under the law but they are not able to exercise parental responsibility.

Name of child

The order does not involve a change in the child's name, their birth certificate or succession rights.

Contact

Contact arrangements with birth parents, siblings and other significant persons should be included in the care plan when seeking the order. The making of the order does not require that contact be reduced. Equally, the Court can make a contact order if required, if one is not already in place.

Community Services/agency role

The role of the designated agency will be minimal following the granting of the order. However, 12-month reviews (and as required under Chapter 8, Part 2, s150 of the Act) will occur unless the person with sole parental responsibility is a relative of the child or young person. 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 before the order is made. The process for the review is described in the Casework Practice topic Placement Reviews.

Carer payments

Payments may continue according to assessed need.

Legal and other costs

Carers are responsible for the costs associated with any legal assistance they may require. Children or young people 12 years and over, and the person/s who needs to consent to the order, should be given the opportunity to receive legal advice before an application has been lodged.

When can a s149 order be varied or rescinded?

There are limited circumstances under which an application for the variation or rescission of a s149 order can be made. An application to vary or rescind an order can only be brought:

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

If the principal officer of the designated agency consents to the application, the agency must provide the Children's Court with a report that includes information on:

- the age of the child or young person
- the wishes of the child or young person and the weight to be given to those wishes
- the length of time the child or young person has been in the care of the present care givers
- the strength of the child or young person's attachments to the birth parents and the present care givers
- the capacity of the birth parents to provide an adequate standard of care for the child or young person
- the risk to the child or young person of psychological harm if present care arrangements are varied or rescinded.

Research indicates that many children in care benefit from a secure long term legal order that endorses the carer's commitment to them until they reach 18 years. However, they may not need or want the lifelong cutting of legal ties to their birth parents and other family members, as well as a change to their Birth Certificate and name that an adoption order brings.

For an authorised carer, the granting of a s149 order allows them to exercise full parental responsibility, take long term decisions with confidence and reach their own conclusions regarding the best interests of the child or young person (Beek & Schofield 2002).

For birth parents, consenting to a s149 order allows them to be a party to the decision on where their child will grow up and be still recognised by law as the parents even though they are no longer exercising any parental responsibility.

21. Review the legal status of the child or young person placed in long-term care

It is not necessary to wait for the child or young person to be in the placement for two years before the case plan goal and objectives reflect the intention of the carers to seek a s149 order.

21.1 During the case plan review, discuss the child or young person's needs in terms of their long-term legal status with the child or young person, their parents and the carer.

Completed by: CW

21.2 Advise the carer of the conditions by which they are able to apply to the Children's Court for sole parental responsibility.

Completed by: CW

22. Respond to the carer's expressed interest in applying for sole parental responsibility

22.1 Check the carer's current authorisation status and conduct probity checks if this has not occurred within the preceding 12 months.

Completed by: Carers CW & C/YP CW

22.2 Discuss with the carer household what the s149 order would mean for them. Carers should be provided with support and information to assist them to understand the long-term commitment to the child or young person implicit in the making of an order under s149.

Completed by: Carers CW & C/YP CW

22.3 If the carer is seeking sole parental responsibility for an Aboriginal or Torres Strait Islander child or young person:

inform them of the requirements of the Act with regard to granting sole parental responsibility to a non-indigenous carer. This 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 Chapter 5, Part 2, s78A (4) of the Act.

Completed by: Carers CW & C/YP CW

22.4 Discuss the need to obtain consents from:

- the person or persons who previously had parental responsibility for the child or young person immediately before parental responsibility was allocated to the Minister. (See Chapter 8, Part 2, s149(4) of the Act), and the child or young person if they are aged 12 years or over.

Completed by: Carers CW & C/YP CW

22.5 Inform the carer of the limited variation and rescission provisions allowed under Chapter 8, Part 2, s149A of the Act.

Completed by: Carers CW & C/YP CW

22.6 Inform the carer of the likelihood of Community Services supporting or not supporting the application.

Completed by: Carers CW & C/YP CW

22.7 Recommend that the carer seek independent legal advice. See: Information sheet for carers: [Gaining sole parental responsibility of a child or young person in care](#)

Completed by: Carers CW & C/YP CW

23. Inform child or young person of the carer's interest in applying for sole parental responsibility

23.1 Explain to the child or young person what the order would mean.

Completed by: Carers CW & C/YP CW

23.2 Inform the child or young person of the limited variation and rescission provisions allowed under Chapter 8, Part 2, s.149A of the Act.

Completed by: Carers CW & C/YP CW

23.3 Ascertain their views and record their views on file.

Completed by: Carers CW & C/YP CW

23.4 Identify what strategies need to be in place to enable the participation of the child or young person in the decision making process.

Completed by: Carers CW & C/YP CW

23.5 Recommend/arrange independent legal advice for the child or young person if aged 12 or over. See: Information sheet for children and young people: What it means if your foster carer applies for 'sole parental responsibility' for you.

Completed by: Carers CW & C/YP CW

24. Informing the parents

A s149 order cannot proceed without the consent of the parents or the person or persons who had parental responsibility for the child or young person immediately before parental responsibility was allocated to the Minister. If the individual/s 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 without the consent of a parent or guardian.

24.1 Discuss the implications of such an order with the parents or person previously responsible for the child.

Completed by: CW

24.2 Discuss the requirements for consent under Chapter 8, Part 2, s.149(4) of the Act

Completed by: CW

24.3 If the child or young person is Aboriginal or Torres Strait Islander, inform parents that a non-indigenous carer gaining sole parental responsibility 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 Chapter 5, Part 2, s.78A (4) of the Act.

Completed by: CW

24.4 Inform them about the limited variation and rescission provisions allowed under Chapter 8, Part 2, s.149A of the Act.

Completed by: CW

24.5 Recommend that they seek independent legal advice.

Completed by: CW

24.6 Advise the Community Services office with case management responsibility for the child or young person of the parents' willingness/unwillingness to consent to such an order. See: Information sheet for the family of a child or young person in care: Carers gaining sole parental responsibility of a child or young person in care

Completed by: CW

25. Case planning

Carers, the child or young person and their parents need to participate in the process for this permanent placement option to be successfully planned and implemented.

25.1 Convene a case meeting to review the case plan goal. If certain parties do not wish to attend a case meeting, their views should be sought beforehand and presented at the meeting.

Completed by: CW

25.2 If all parties support an application for sole parental responsibility, prepare Care Plan which includes the permanency plan (being sole parental responsibility), a long-term contact plan, financial support and cultural issues.

Completed by: CW

25.3 Determine if any other orders are required, or need to be rescinded.

Completed by: CW

25.4 Submit the Care Plan to the Manager, Casework for approval.

Important note: In making a s149 order, the Children's Court may make or vary a contact order made under s.86. Contact plans should as far as possible allow for flexibility as the child or young person's needs change over time. As young people gain independence they will have a greater say in the frequency and type of contact they have. See Care Plans

Completed by: CW

Approval by: MCW

25.5 If the child or young person is Aboriginal or Torres Strait Islander and sole parental responsibility is being considered by a non-indigenous carer:

Ministerial approval must be obtained prior to the application being made to the court. The caseworker must prepare a report for submission to the Director, Child and Family which details the following:

- Whether the child or young person identifies as an Aboriginal or Torres Strait Islander and the wishes of the child or young person (as expressed during conversations with the child or young person).
- Whether reunion of the child or young person with his or her family or Aboriginal or Torres Strait Islander community is or is not in the best interests of the child or young person.
- Consultation with a local community-based and relevant Aboriginal or Torres Strait Islander organisation and the local Aboriginal or Torres Strait Islander community.
- The basis on which the proposed placement is considered to be culturally appropriate.
- Arrangements for maintaining continuing contact between the child or young person and his or her Aboriginal or Torres Strait Islander family, community and culture.

The Director, Child and Family will prepare a Submission to the Minister and accompanying correspondence to the Minister for Aboriginal Affairs and forward the submission to the Director, Adoptions and Permanent Care.

Completed by: CW

Approval by: DCF, Minister

26. Provide support for the carer's application to the Children's Court

26.1 With the carer, inform the child or young person that the carer wishes to proceed with making the application.

Completed by: CW

26.2 Gain informed consent from the child or young person if aged 12 or over.

Completed by: CW

26.3 Gain informed consent from the parent or person/s who previously had parental responsibility. Use the following form: Informed Consent of Parent or Person Responsible (Form No. 19)

Completed by: CW

26.4 Provide the consents and the approved Care Plan to the carer.

Completed by: CW

26.5 The carer, as the applicant, must lodge the application, the supporting affidavit, the required consent/s and the Care Plan with the Children's Court Registrar.

Completed by: Carer

26.6 The caseworker is to obtain from the carer a copy of all documentation filed in court and forward it to the Care Litigation Team, Community Services Legal Services, together with instructions. Children's Court Procedures - Application for Sole Parental Responsibility (Form No. 4), Affidavit (Form No. 16)

Completed by: CW

27. Support child and carer through the court process

The court serves the Notice of Listing of Application for Sole Parental Responsibility to all parties (carer, parents, child or young person, Community Services).

27.1 The caseworker for the child should explain the Notice to the child or young person (as required by Chapter 8, Part 2, s149 (6) of the Act) and ensure that they have a copy.

Completed by: CW

27.2 The caseworker continues to provide instructions to the Care Litigation Team, Legal Services during the conduct of the application.

Completed by: CW

28. Community Service responsibilities after a s149 order is made

28.1 The Manager Casework ensures that the child or young person, the carer, parents and other family members where relevant, are given a copy of the s149 order.

Completed by: MCW

28.2 Review the case plan and make any necessary amendments to reflect the final order.

Completed by: CW

28.3 Give copies of the case plan to the child or young person, the carer, the parents, and other family members where relevant.

Completed by: CW

28.4 Determine what, if any support and/or monitoring is required for the ongoing placement as per the Case planning and review procedure

Completed by: CW