

What will happen if the Department decides to remove my children?



FAMILY VIOLENCE LAW HELP

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If the Department decide that they need to take action to protect your children, they may remove your children and start legal action.

If this happens, there are time limits that say when the Department needs to start a case in the Children's Court or Youth Court.

The laws about when the Department can remove children and the time limits that apply are different in each State and Territory.



Sometimes, the Department may take legal action and go to court while your children are still in your care.

You don't have to wait until a case goes to court to speak to a lawyer. If the Department becomes involved with your family, you should get legal advice as soon as possible.

Once your case is in the Children's Court or Youth Court, the Department needs to show the court that action (for example - removing your children) was necessary to protect your children or to make sure they are properly cared for.



If your matter goes to court, it's important to try to work with the Department, even if you don't agree with the reasons they are getting involved with your family.



What types of orders can the court make?

After a matter goes to court, there are many different types of orders that the court can make. The types of Care Orders that can be made are different in each State and Territory so you should get legal advice. They can also be called Care and Protection Orders, Child Protection Orders or Protection Orders depending on which State or Territory you are in.

Care Orders can include things like:

- Orders about who makes decisions about your children's daily life and the big long-term decisions like who cares for them, where they live, where they go to school and what medical treatment they get. This could be by you, the other parent, the Department, someone else (such as a family member) or by a combination of these people.
- Orders about how much contact your children should have with you, other family members and other important people.
- Orders that return your children to your care but places your children under the 'supervision' of the Department which allows them to monitor your children's safety, welfare and wellbeing.
- Orders that you, or anyone else who is caring for your children, give promises (called 'undertakings') to the court about what you will do or not do in the future.
- Orders that you, or anyone else who is caring for you children, cannot do certain things (called 'prohibition orders').



The court can make one or many of these orders at the same time.

The court can make these orders on a temporary basis—called interim orders. The court can also make these orders as final orders. The court will say how long the order will last for - sometimes, for a short period or sometimes until your children turn 18.

In some States and Territories, the Children's Court or Youth Court can also make or change a Domestic Violence Order during a care and protection case. You can get legal advice about this.



Why does my child have a lawyer?

After a matter goes to court, the court can appoint a lawyer to represent your child in their child protection case.

- Sometimes the lawyer represents your child's best interests and makes recommendations to the court about what they think is best for them. This may be different to what your child wants.
- Sometimes, if your child is older, the lawyer has to follow what your child says and tell the court what your child wants.

The way it works depends on which State or Territory you are in, you can get legal advice about this.



Will I get my children back?

One of the most important decisions the court will make is whether or not your children can be returned to your care.

In making this decision, the court will consider whether or not you have addressed issues affecting your parenting and whether your children will be safe and properly cared for if they are returned to your care. This can include showing the court that your children will not be exposed to domestic and family violence if they come back to live with you.

The laws about when children can be returned to their family are a little bit different in each State and Territory, so you should get legal advice.

Sometimes, children are returned to live with family straight away. Sometimes, children will stay living with someone else for a short period while you meet certain goals for them to be returned. And sometimes, children stay in care until they become adults. It will depend on your situation, so you should get legal advice about your situation.





I don't want my children to go into foster care — can they stay with someone I know?

If the Department decides to remove your children from your care, you may want them to stay with a family member or friend.

That person will need to be a suitable carer and their house will need to be a safe place for your children to live.

The Department can 'assess' your family members to see whether they can be approved as your children's carers. This can sometimes take some time - so it is important that you give the Department the details of anyone in your family who you want to care for your children, as early as possible.

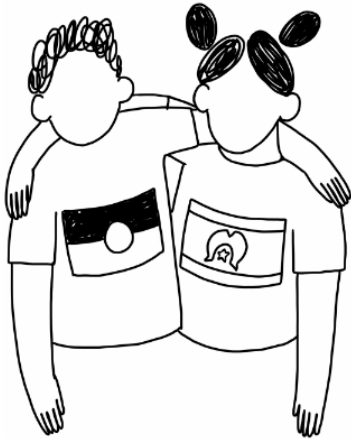
If the Department does not approve that person to be your children's carer, then it may be up to court to decide who should care for your children. Your family member or friend may need to get legal advice about their options. You should also get legal advice.

Even if you hope that your children will be returned to your care at the end of the case, it is usually a good idea to put forward family members who might be able to care for them.

This way your family members can care for your children while the court case is happening, even if your children are returned to your care later. If your children are not returned to your care, sometimes having them live with family can be a good back-up plan.



What about Aboriginal and Torres Strait Islander children?



When the Department or a court decides where your children should live, the most important consideration is about what is in your children's best interests.

However, the law also says that when Aboriginal or Torres Strait Islander children cannot live with their parents, they should be placed within their own kin, culture and community if this is possible.

Each State and Territory have slightly different laws about how this happens. You can get legal advice about what is meant to happen if your children are in care and are Aboriginal or Torres Strait Islander.