

Permanent Care Order

What are the Key Rights and Responsibilities of a Permanent Carer?

A permanent care order (PCO) usually gives you full custody and guardianship of a child. That means in that in the eyes of the law you are the parent with all rights and responsibilities in relation to the child to the exclusion of all others. You will be responsible for day-to-day care, long term decisions about education, residence, health and employment. This is called custody. You have the responsibility for the long-term welfare of the child, and all the powers, rights and duties that are vested by law or custom in the guardian of a child. This is called guardianship. You can give permission for any activity which requires parental consent and sign all documentation requiring the signature of the parent. You are the child's parents giving them opportunities and providing them with enduring relationships. In most permanent care families the children refer to the permanent carers as 'Mum' and 'Dad'. More information [here](#) from DFFH.

Custody and Guardianship

As the permanent carer, you are entitled to a copy of the PCO. A PCO usually gives you full custody and guardianship of a child. The conditions of the order amount to the rules that both the carer and birth parents need to follow while the order is in place. Other than their name remaining on the birth certificate, the birth parents are not able to exercise custody or guardianship rights. Any residual rights the birth parents may have will be set out in the conditions in the PCO. As the carer, you are entitled to a copy of the PCO.

If you have been granted joint custody or guardianship of a child under a PCO with any other person, such as your partner or spouse, and if you cannot agree on the exercise or performance of a right, power or duty vested in you as joint custodian and/or guardian of the child, either of you may apply to the Children's Court for orders regarding the exercise of the right or power or the performance of the duty that it thinks fit.

An order for joint custody and guardianship with the birth parents is rare and is usually only granted when a family placement (such as a 'kith-and-kin' arrangement where a family member is appointed as carer) has occurred.

The PCO can also give custody to carers and joint guardianship to (both) parents and carers. However, special circumstances must exist before such an order can be made and is likewise usually only granted when a 'kith-and-kin' placement has occurred.

You are the first port of call in regard to anything relating to the child and you have the right to name yourself next of kin while the PCO is in place. Only in the case of special medical procedures (such as sterilisation) will authorisation be required from a Court.

The PCO expires when the child turns 18 years of age but the close relationships last a lifetime. Under the Adoption Act 1984 (Vic), an application can be made to adopt a child over 18 years of age by a person who has "brought up, maintained and educated" a child as if that person "were the parent of that child". Birth parent consent is not required.

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Variations to a PCO

You, as well as the child, the birth parent, or the Secretary of DFFH can apply to the Children's Court to vary or revoke the PCO. As regards variation of the order, the Court may, in the best interests of the child, vary any of the conditions included in the order or add or substitute a condition but must not make any change to custody or guardianship of the child. Variations would be made where the order becomes unworkable, such as where parents/carers do not facilitate contact at the frequency stipulated, or where the contact is not supervised but there are significant concerns with such. The court order must be complied with until a variation is made. If an order doesn't provide for supervised contact, then the carer is not entitled to insist upon supervision until the order has been changed.

If the application is for the revocation of the order, the Court may revoke the order in whole or in part. If any person makes an application, you are entitled to a copy of the application and to have your say at Court. You have the right to appeal to the County Court or the Supreme Court against a PCO or the dismissal of an application for a PCO.

The Court can also consider if a party is a vexatious litigant. Someone who takes legal action only to inconvenience another party. If the court finds a party to be vexatious, they can dismiss the application, make a costs order or stop further applications without court permission. The court will look at the number of proceedings brought, their nature and ultimate result.

A child will also have separate legal representation from the age of 10 (unless they lack the maturity to do so). In exceptional circumstances, the Court may decide that it is in the best interests of a child under the age of 10 to be legally represented. More information [here](#) about legal aid and representation. More information [here](#) about community legal centres. Or contact the Law Institute [here](#) for a private lawyer referral.

What are the Child's Rights if the Permanent Carers Separate?

If you are going through a separation or divorce as a carer, you can request that DFFH consent to the child being included in the parenting orders pursuant to Family Court proceedings along with any other children. DFFH is not obligated to consent. A PCO can be suspended on application to a Family Law Court by a carer seeking parenting orders on terms which the parties to the proceeding have agreed, provided the prior consent of the Secretary of DFFH has been obtained. The PCO then ceases to be in force on the making of that parenting order. The child has no standing to bring an application in a Family Court. The Family Court website has useful information on the Family Court's practices and procedures and the legal processes in applying for or varying parenting orders. See [here](#).

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Disability and Special Needs

In terms of the Guardianship and Administration Act 1986 (Vic), a carer can apply to the Victorian Civil and Administrative Tribunal (VCAT) for an order appointing you as a plenary guardian in respect of a child with a disability who is in your care and who has attained the age of 18 years, or for an order to take effect upon the child attaining 18 years of age. You can continue to make decisions for the child (the represented person) about where they live or work, consent to any health care that is in their best interests, including restricting or prohibiting visits by any person. Birth parents will also have the right to apply for a plenary order so it is advisable to apply for this order while the child is in your care (PCO).

You can also apply to VCAT to be appointed as administrator which will allow you to manage the child's financial and legal affairs. More information [here](#).

Access to Child's Information

It is advisable to obtain as much information as possible about your child's history from the DFFH child protection worker prior to the PCO. A future carer would not be permitted to look at the entire DFFH file. Answers to specific questions and providing information is at the discretion of the DFFH child protection worker. The information that may be given relates to the child protection history of the child but not who reported the child protection matter and not their medical history. Should you require information relating to a medical condition of the child, you will need to apply to the relevant health department, medical facility or hospital where the child's records are kept. You are less likely to be able to access the child's family member's medical history unless a medical professional is required to obtain this information for the medical treatment of the child.

Freedom of Information

Phone: [1300 151 883](tel:1300151883) Email: foi@dffh.vic.gov.au Information: [here](#) Apply Online: [here](#)

Once a PCO is made, the case is closed by DFFH. If you require any personal information relating to the child once the case is closed, you will need to apply for this information under the Freedom of Information Act 1982. A member of the FOI team can help you make your request. The FOI officer will seek evidence of your guardianship status.

You can also apply for personal information on the child's behalf.

Once the child reaches 16 years of age, the child can make his or her own application.

In the case of further legal proceedings, should you require the full child protection file, a subpoena will need to be issued and legal assistance sought in this regard.

Death of a Permanent Carer

If there is a PCO in place appointing you and your spouse or de facto partner as joint permanent carers of the child and one of you dies, the survivor will have sole guardianship and custody of the child. If there is no survivor, you can nominate a guardian (any adult) of the child in your Will. Naming the person that you would like to be a guardian doesn't automatically establish that person's guardianship – it simply indicates to the Court what your preference is. The Court will determine whether the nominee is appropriate or not.

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The person nominated by you will need to either make, or intervene in, an application to the Family Court or Federal Circuit Court exercising Family Court jurisdiction. As the PCO is extinguished upon a carer's death, either of these Courts have jurisdiction to hear the application, and confirm the nomination. The nominated guardian should contact DFFH to advise them of his or their nomination. DFFH may be joined in the proceedings confirming the nomination or may take the matter back to the Children's Court for a new protection order or PCO if there is any concern relating to the welfare of the child.

Inheritance

Children in permanent care do not have the same automatic inheritance rights in relation to carers as their natural or adopted children. Although the carer has custody and guardianship, there are still legal ties to the birth parents, for example, the birth certificate is not changed to the carer's surname. Only natural children and legally adopted children of a deceased carer are recorded on the deceased carer's death certificate.

It is possible for the child to inherit from a carer, but a carer would need to state this in their Will. If the carer has not made provision for the child in their Will, the child has no entitlement. However, the child may have the right to claim for provision under the 'family provision' legislation in Victoria. Under this legislation, the Supreme Court may order that provision be made out of the deceased estate for the proper maintenance and support of the child, if the child can prove that the deceased had a responsibility to make provision.

The Court must have regard to factors such as the relationship between the carer and the child, any obligations of the carer to the child, the size of the estate, the age of the child, any benefits already given to the child, whether the child was wholly being maintained by the carer before the death and the basis upon which the carer had assumed responsibility of the child. This can be a very complicated area of the law and carers should seek legal advice before drafting their Wills.

The PCO does not affect the inheritance rights of the child. The child can continue to inherit from his or her birth parents.

Nomination of Child as Superannuation Beneficiary

Under superannuation laws, if a member dies, the superannuation death benefits are usually payable dependants. The child under a PCO may fall in to the category of a dependant as he or she is financially dependent on the deceased. If a carer does not make a beneficiary nomination, or does not include the child in the beneficiary nomination, the fund Trustee (assuming the Trustee has discretion under the terms of your Fund) may on the basis of the dependent relationship, make a payment to the child, depending upon the claims and needs of your other dependants. You may also consider nominating the child as a beneficiary of any life insurance policies.

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Passports

Before a passport may be issued to a child under Australian law, it is a requirement that the written consent of all people with parental responsibility for the child is obtained. Even though a Permanent Care Order (PCO) has been made, the PCO does not extinguish parental responsibility of the birth parents for the purposes of a passport application. However the Australian Passport Determination 2005 provides that the Minister for Foreign Affairs will issue a passport without parental consent where special circumstances exist. Special circumstances include where “an order of a State or Territory Court, made under a child welfare law, grants parental responsibility or guardianship of the child to a person other than a parent of the child”. This determination allows you, as the carer, to apply for the passport and for it to be issued even if the birth parent does not consent. The application will need to be accompanied by a number of documents including:

- the child’s birth certificate (which must be obtained from the Registry of Births, Deaths and Marriages)
- proof of citizenship
- a copy of the original PCO, preferably, signed and sealed (stamped by the Court). The Court will provide this upon request.
- If you have not obtained consent from the birth parents for the passport application, you are required to provide a statement (Form B10) in as much detail as possible outlining why parental consent has not been obtained. Please note, the Foster Care Association Victoria recommend that even though you have parental responsibility you should select the ‘NO’ option when responding to the question asking if you are the parents of the child. Commonwealth legislation (which dictates Passports and Family Law processes), allows for the biological parents to retain parental responsibility regardless of an order of permanency being made. See their information [here](#).

It is recommended that the application be lodged at the Australian Passport Office in Melbourne rather than at a local post office.

There is no guarantee that an application lodged under special circumstances will result in the issue of a passport and the application fee is generally not refunded. However, it is unusual for the passport office to decline an application to permanent carers who have provided a copy of the PCO. For further information, see [here](#) for government advice on applying for a passport.

Additional information about parental responsibility and consent is available [here](#).

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What Evidence of Australian Citizenship is Required for a Passport Application?

Children born in Australia after 20 August 1986 are not automatically granted Australian citizenship unless one of the birth parents was an Australian citizen or permanent resident at the time of their birth. Evidence of Australian citizenship can be either birth parent's full Birth Certificate (where the parent is born before 20 August 1986), either birth parent's Australian passport (issued before the child's 2 birth), or a permanent residency status or Citizenship Certificate issued to the child or either birth parent (before the child's birth).

If the child's birth parent was born in Australia after 20 August 1986, evidence of one of their birth parent's (the child's grandparent) Australian citizenship will need to be presented.

Where the child and the relevant Child Welfare or Protective Agency do not have access to the birth parent's documents, or obtaining evidence of citizenship is complex, a request can be made to the Department of Immigration and Citizenship (Home Affairs) for evidence of the child's citizenship. Application forms are available [here](#). As a permanent carer, you can sign the forms. A Statutory Declaration is often required when the birth parent's documents are not available.

Change of Name

The PCO doesn't automatically affect the child's name or birth certificate, although change of name is possible. While a child can use their permanent care family name informally, when it comes to things like school, Centrelink and passports, authorities will only recognise the legal name on a birth certificate. For some families this is confusing or distressing and a change of name is warranted.

Child's wishes considered

Before making any decision about a change of name, it is essential that parents consider the wishes and interests of their child; a child 12 years and older must give their consent in order to submit an application for name change. A name change does not affect other conditions in a PCO. It is not intended to exclude or erase birth family.

Birth parents consent

Children who have entered their family through permanent care may have their name changed with the consent of the birth parents. This is done through application to the Victorian Registry of Births, Deaths and Marriages (BDM) by completion of the Application to register a name change (child under 18 years) form and submitting it with payment to BDM. In addition to the proof of identity documents required you need to include a copy of the permanent care order. See [here](#).

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Without birth parents consent

Some permanent care parents may have been advised that it is not possible to change the surname of children in their families subject to a PCO. In fact, birth parent consent is not required for permanent care parents to submit an application for name change. There is no assurance that any application will be granted but permanent carers are eligible to apply.

Under section 321 of the Children, Youth and Families Act 2005 permanent care parents become the child's legal guardians once a PCO is finalised in the Victorian Children's Court. The Act states that: "a permanent care order grants custody and guardianship to the person(s) named in the order to the exclusion of all others".

Under section 26 of the Victorian Births, Deaths and Marriages Act 1996, guardians are eligible to apply for a change of name where the birth parents have not been able to exercise their parental responsibilities, as follows: "Application to register change of child's name ... If the parents of a child are dead, cannot be found, or for some other reason ... cannot exercise their parental responsibilities to a child, the child's guardian may apply for registration of a change of the child's name".

Thus, permanent care parents are eligible to apply for a change of name to children under 18, with the consent of their child. Applications are granted at the discretion of BDM.

The application and afterwards

As with applications for change of name with consent, application is through completion of the online form [here](#).

Applications must be submitted with an upload of:

- a complete copy of the PCO (not the certificate)
- a letter outlining the reasons for the request for change
- payment to BDM.

You will be notified of any original documents to submit by mail.

If you prefer to submit these to the BDM in person, you can visit a Justice Service Centre in various locations. Find them [here](#). You may experience a long wait.

Applications for a change of name generally take 12 weeks.

If your application is successful, a revised birth certificate will be issued and sent to you.

This does not remove the birth parents' names from the certificate but simply adds the child's permanent care family name as their current, legal name. This permanent care family name can then be used for all legal forms and applications.

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Financial Responsibility and Assistance

You will have financial responsibility for the child but financial assistance is available to help with some expenses. Supports for home based carers are outlined in the Victorian government guide for carers. See "Financial supports for home based carers" and "Care allowances" document links on the "Supports for home based carers" website page [here](#). Information is also available on the PCA Families website. There are a variety of services to support parents and carers, including Child Care Subsidy, DFFH Carer Allowance, Family Tax Benefits, parent payments and Health Care Cards. These are outlined on the PCA Families website Flexible Funding page [here](#). You may also be entitled to claim non parent support [here](#).

Parental Leave

Every decision relating to the child is to be made consistently with the objects, provisions and principles provided for in the Children Youth and Families Act 2005 (Vic) (CYFA), and where appropriate, the United Nations Convention on the Rights of the Child 1989 (CROC). The Paid Parental Leave Act 2010 (Cth) (PPL Act) establishes a federal government-funded paid parental leave scheme. Under the scheme, eligible persons are entitled to receive parental leave pay. To be eligible, a person must be the primary carer of a newborn or recently adopted child, among satisfying other criteria.

Although permanent care parents may meet the eligibility criteria set out in the PPL Act, including being a child's primary carer, unfortunately you are not eligible to receive parental leave pay for a child that has joined your family through Permanent Care. Despite the requirement to remain at home for 12 months once the child is placed in your care under a PCO the 'exceptional circumstances' provisions of the Paid Parental Leave Rules 2010 (PPL Rules) specifically exclude carers who take on the care of a child where that child was 'entrusted to the care of the person, or to the care of the person's partner, under a decision by a State or Territory child protection agency under legislation dealing with child protection in the State or Territory'.

Complaints

You can make a complaint to DFFH [here](#) and can do so by phone, email or online. In the event you have made a complaint to DFFH and you are not happy with the outcome, you can proceed with your complaint to the Victorian Ombudsman. You can lodge a complaint online [here](#) or call (03) 9613 6222 or toll free (regional only) on 1800 806 314. Please note that complaints generally have to be submitted in writing.

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