

Things have changed and I want my kids back: what can I do?



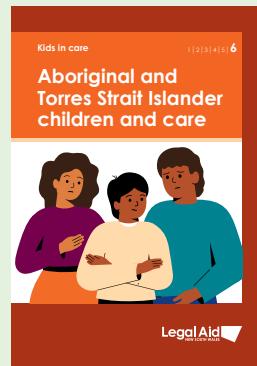
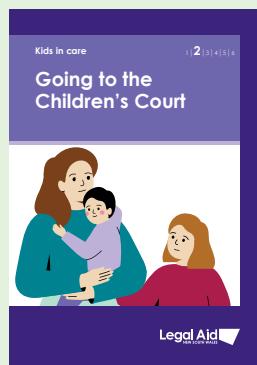
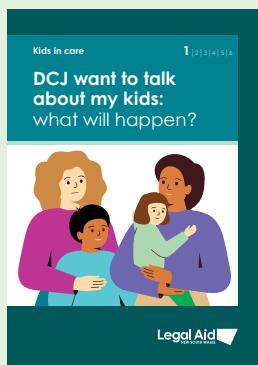
Kids in care

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

- 1 DCJ 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



The Children's Court has made orders about my kids: can I get them changed?

If you think things have changed since the Children's Court made orders, you can ask the court for the orders to be changed or cancelled.

This is called a section 90 application and can be made by anyone with an interest in your child's welfare including you. If someone else makes a section 90 application, you will get a copy of the application.

A section 90 application is different from an appeal. For information on appeals see **Booklet 4: The Children's Court made a decision I am unhappy about: what can I do?**

The court will not change or cancel orders without very good reasons. This is because final orders should mean stable and secure arrangements for children for the long term. It is up to the person who makes the application to prove to the court that there has been a significant change of circumstances since the final orders were made.

You should get legal advice before you make a section 90 application or if someone has made a section 90 application about your child.

A lawyer from Legal Aid NSW or the Aboriginal Legal Service (ALS) may be able to help you with your section 90 application. See page 6: **How do I get legal help?**

Going to court

Before you can make an application asking the court to change or cancel an order, you must ask the court for permission. This is called asking the court for leave.

The magistrate will only agree to hear the application if they think there has been a significant change in circumstances since the orders were made.

To decide this, the magistrate will look at the reasons your children were removed and will decide whether things have changed enough to consider changing the orders.

The magistrate must consider the best interests of children as the most important consideration and so in some cases, even if there have been big changes, the magistrate will not give leave. If the court does not give leave, this will mean the end of the court matter.

How do I get leave?

If you want to apply for leave to change or cancel an order, you will need to file a section 90 application and an affidavit. The affidavit is your written evidence about the significant change in circumstances since the final orders were made, and why you say that the court should give you leave. Your lawyer can help you with these documents.

What kind of evidence do I need?

In the affidavit, you should include things like:

- what you have done differently since your children were removed from your care
- how your children have been doing since they were removed
- what contact you have had with your children, and
- what your plans are for the children if the court makes the orders you are seeking.

Your case might be helped by evidence from people or organisations you have been working with to address the reasons the children were removed.



What happens if leave is granted?

If the court gives you leave, the magistrate will work out what the best next steps are for your matter. This could include orders for a care plan, a dispute resolution conference (DRC) or an assessment report. See **Booklet 2: Going to the Children's Court**.

If there is no agreement about what should happen for your children, then there will be a hearing for the magistrate to decide.

How do I get legal help?

Tell your caseworker you want legal advice. They can complete a referral for you to Legal Aid NSW or the Aboriginal Legal Service and a lawyer will call you about your case. You can also call the numbers below to make an appointment for legal advice.

LawAccess NSW

LawAccess NSW is a free information service run by Legal Aid NSW. They provide legal information and referrals for people with a legal problem in NSW.

If you need personalised advice or representation from a family lawyer, LawAccess NSW can make an appointment for you with a Legal Aid NSW lawyer if your circumstances and legal issue meet our criteria. If a Legal Aid NSW lawyer isn't able to help, they might refer you to another legal service, like a community legal centre or the Aboriginal Legal Service.

Click on the Chat with us button at www.legalaid.nsw.gov.au or call **1300 888 529** from 9am to 5pm, Monday to Friday (excluding public holidays).

Aboriginal Legal Service

Call **1800 733 233** for family matters or visit www.alsnswact.org.au/care

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**.

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Order brochures online at: www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources

For more information, visit: www.legalaid.nsw.gov.au

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.

Do you find it hard to hear or speak?



If you are deaf, or have a hearing or speech impairment, contact us through the [National Relay Service \(NRS\)](#). Ask for LawAccess NSW on **1300 888 529**.



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