

SECTION 90 – EXPLAINED SIMPLY (NSW CARE & PROTECTION ACT)

A Resource for Parents written by Family Inclusion Strategies Hunter Peer Parent Expert

A **Section 90** is an application to the Children's Court to **change an existing final order** about a child in out-of-home care (OOHC).

It is basically a legal way of saying:

"Things have changed. Can we look at the orders again?"

Parents, family members, DCJ, or any "significant person" can apply – but most Section 90s are lodged by **parents seeking restoration** after final orders have already been made.

Get Legal Advice Early (Even If DCJ Says They Agree)

Before applying for a Section 90, it's important to **get legal advice as early as possible**.

Even if:

- your caseworker says they "support" restoration
- DCJ tells you they "agree in principle"
- things feel positive or informal

You should still contact Legal Aid or ALS the early intervention unit

<https://www.legalaid.nsw.gov.au/my-problem-is-about/my-family-or-relationship/parenting/enforcing-parenting-arrangements/early-intervention-unit#accordion-46060071e8-item-a7b9d66f4e>

<https://www.alsnswact.org.au/care>

Why this matters:

- Verbal support from a caseworker is **not binding**
- DCJ's position can change once an application is filed
- A Section 90 must meet a **legal threshold**, not just a caseworker's view
- Poorly prepared applications can be refused before the Court even hears the case
- Timing, evidence, and wording are critical

Legal advice early can help you:

- ✓ Decide *when* to apply
- ✓ Work out if your changes meet the "significant change" test

- ✓ Identify gaps in evidence before filing
- ✓ Build a clear restoration or connection plan
- ✓ Avoid applying too early and being knocked back

Don't wait for DCJ to tell you it's time.

Get legal advice first – then decide your next step with proper support.

.When Can a Section 90 Be Used?

You can apply for a Section 90 when you want to change final orders such as:

- long-term care orders
- guardianship orders
- allocation of parental responsibility
- contact/family time rules
- restoration decisions

A Section 90 is used when something **significant has changed** since the last order was made.

.The Key Test: "Significant Change in Circumstances"

Before the Court even looks at the case, you must show **there has been a significant change in circumstances** since the last order.

Examples of changes that may be considered significant:

- Completing detox/rehab and maintaining sobriety
- Leaving a violent or unsafe relationship
- Stable housing
- Stable income
- Mental health treatment and stability
- Consistent therapy
- Stronger parenting capacity
- New support systems
- Cultural/kinship supports in place
- Re-establishing safe routines and stability

It doesn't have to be "perfect change," but it does need to be **real, ongoing, and meaningful**.

. What the Court Looks At

After the "significant change" test, the Court looks at whether changing the order is **in the child's best interests**.

They look at:

- ✓ **How long the child has been in care**
- ✓ **Their attachment to carers**

- ✓ Their relationship with you
- ✓ Their age and developmental needs
- ✓ What the child says (their wishes)
- ✓ Your progress and stability
- ✓ Safety (now and long-term)
- ✓ Supports around you
- ✓ Cultural identity and connection
- ✓ Whether a realistic restoration plan exists

The Court must balance the child's **need for safety, stability, and connection**. This is not fair for parents, it's what we fight against. Evidence matters. Don't be disheartened by what they look at, you can fight this, reach out and build your support network

.Does a Section 90 Mean Automatic Restoration?

No.

The Court can:

1. **Reopen the case and move towards restoration**
2. **Increase or change family time**
3. **Order a transition plan**
4. **Change parental responsibility**
5. **Keep the child where they are**
6. **Refuse the application entirely**

A Section 90 is a **window of opportunity**, not a guarantee.

. When a Section 90 Is More Likely to Succeed

You have a stronger chance when:

- You have been consistently safe and stable for a good amount of time
- You have evidence of change (letters, reports, clean tests, programs, therapy records)
- You have strong support networks
- You have stable housing
- You can show understanding of past concerns
- You can demonstrate how your child's needs will be met
- You've maintained connection through family time
- Your lawyer prepares a strong, clear case plan

.When a Section 90 Is Harder

It can be more difficult if:

- Your child has been in long-term placement for years
- They are strongly attached to their carers
- They are older and don't want to come home
- You cannot show documented change
- You're still in crisis or unsafe relationships
- There is high risk with little evidence of progress

This doesn't mean "don't try" – but it means the evidence matters.

. How Long After Final Orders Can You Apply?

There is **no set waiting period** written in the Act.

BUT lawyers generally advise waiting until you can show:

- **real, consistent change**
- **at least several months of stability**
- **documented evidence**

Applying too early can be rejected.

. Evidence Parents Can Use in a Section 90

Good supporting evidence includes:

- GP letters
- Drug tests
- Rehab completion + aftercare
- Counselling/therapy attendance
- Parenting programs
- Domestic violence safety plans
- Housing agreements
- Employment/study records
- Support letters from services
- Cultural support/kinship plans
- Character references
- Reports showing insight + growth

The more **consistent and grounded** the evidence, the better.

. How Section 90s Help Even if Restoration Isn't Possible

Even if full restoration isn't possible, a Section 90 can still be used to:

- increase family time
- improve communication
- strengthen cultural connection
- get sibling contact
- get updates and involvement
- create meaningful involvement in the child's life

Section 90 is not “all or nothing.”

10. Does DCJ have to agree with restoration for the section 90 to go ahead.

No.

A Section 90 is an application **to the Children’s Court**, not a request that needs DCJ’s permission.

If you meet the legal threshold, **the Court can hear it whether DCJ agrees or not.**

DCJ can: support or oppose however **they do not control whether you’re allowed to apply.**

More info <https://www.womensjusticenetwork.org.au/wp-content/uploads/2023/07/s90-guide.pdf>

<https://www.legalaid.nsw.gov.au/ways-to-get-help/publications-and-resources/kids-in-care/booklet-03-things-have-changed-and-i-want-my-kids-back>

“DCJ didn’t support my Section 90. They said it was ‘too soon’ and that my child was settled. But settled doesn’t mean healed, and it doesn’t mean my role as a parent disappears. Filing wasn’t about fighting carers or undoing stability – it was about making sure my child didn’t lose connection to me just because time passed. The Court needed to hear that my life had changed, even if DCJ didn’t want to say it had.”

“Filing a Section 90 wasn’t about suddenly thinking everything was perfect. It was about knowing that my life didn’t look anything like it did when my kids were removed. Back then I was surviving. Now I was stable. I had housing, support, counselling, routines. I had done the work quietly for a long time. Filing felt scary because it meant putting myself back under the system’s microscope, but not filing felt like accepting that nothing I did would ever matter. I realised if I didn’t ask the Court to look again, the answer would always be no.”

Remember, your role as a parent is enduring, and your connection with your children is invaluable.

Contact Information:

- Email: contact@finclusionh.org
- Support: 1300 942 598
parentpeersnewcastle@gmail.com
- Website: <https://finclusionh.org>

