

Enrolment Procedures and Court Orders

Practice Note 19 | July 2011

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Some children attending a licensed children's service may be the subject of **court orders** varying **lawful authority** for that child. This advisory note discusses **lawful authority and parental responsibility** and includes information about enrolling a child with a court order.

Lawful authority/ parental responsibility

All parents have duties, powers, responsibilities and authority in relation to their children. The *Children's Services Regulations 2009* (Victorian Regulations) refer to these as **lawful authority**. **Lawful authority** is also known as **parental responsibility**.

Lawful authority includes the right to have, and make decisions about, the daily care and control of the child and responsibility for the long-term welfare of the child. It is not affected by the relationship between the parents, such as whether or not they live together or are married.

Lawful authority sits with the parents unless otherwise determined by a court. For example, a **legal guardian** is given **lawful authority** by a court order.

In some circumstances a child may be living with a **guardian** in an informal care arrangement without a court order. In these cases, the person(s) the child is living with and who has the day-to-day care and control of the child is the **guardian(s)**. This person is generally a member of the child's extended family such as grandparents, siblings, aunts and/or uncles.

What is a court order?

Court orders varying parental responsibility can be made under the *Family Law Act 1975*, the *Children, Youth and Families Act 2005* and the *Family Violence Protection Act 2008*.

A **court order** outlines the powers, duties, responsibilities or authorities of any person in relation to a child. It may take away the authority of a parent to do something, or may give it to another person.

What is shared parental responsibility?

The parents of a child automatically have **shared parental responsibility** unless a **court order** states otherwise.

Shared parental responsibility means that decisions concerning **long term issues** about the child's welfare and development must be made jointly by both parents. For example, where the child will live, their education and religious upbringing.

This does not mean, however, that both parents must be involved in every decision made about the child's day-to-day life. These decisions are generally made by the parent with whom the child is living and can be made independently.

Unless a court order states otherwise, the decision to enrol a child at a licensed children's service can be made independently by the parent the child lives with.

Enrolling a child in a licensed children's service

The person(s) who has lawful authority for a child (parent(s), legal guardian(s) or guardian(s)) can enrol a child at a children's service, complete the enrolment form and sign the relevant authorisations pursuant to regulations 31(d), 31(f) and 31(g).

If there are any court orders in place relating to the powers, duties, responsibilities or authorities of any person(s) in relation to the child or access to the child, the proprietor of the service (service owner, primary nominee or any person who manages and controls the service) must ensure the details of the court order are recorded in the child's enrolment record pursuant to regulation 31(e) for licensed children's services.

The proprietor should be familiar with any court orders and abide by them as they relate to the provision of care and education of the child at the service. They should also ensure all staff members are aware of any conditions specified in the court order.

It is recommended that the proprietor seek independent legal advice if they do not understand the order as it applies to the service and the child or have any questions.

What if the person(s) enrolling the child does not disclose that there is an existing court order or refuses to provide an authenticated court order?

If the service is not told about an existing court order and/or shown an authenticated court order, they cannot be held responsible for any actions taken by staff members that are contrary to that order.

What if the person(s) enrolling the child refuse, or is unable to provide the contact details for any other person(s) who has lawful authority?

The service should advise the person(s) enrolling the child that refusal or inability to provide the details of any other person(s) with lawful authority in relation to the child, if known, **does not negate the lawful authority of the other person(s)** unless there is a court order to the contrary and this is provided to the service.

What if a child is living with guardian(s) in an informal care arrangement without a court order?

In these circumstances, **each guardian** may provide an appropriately signed informal carer's statutory declaration to the service. The Statutory Declaration for Informal Relative Carers Victoria booklet, including the statutory declaration form, can be downloaded from the Commission for Children and Young People website at www.ccyp.vic.gov.au/childsafetycommissioner/publications/parents_resources.htm.

The statutory declaration form may also be used by **guardians** who are not relatives, such as a significant friend or a person within the child's extended social network.

The declaration does not change the person(s) who have **lawful authority** in relation to a child. This remains with the parent(s) or legal guardian(s).

What if there is a dispute between the parent(s) or guardian(s) regarding the contents of a court order?

It is not the role of the service or the Department to mediate such a dispute. This is a matter to be resolved by the parents, their lawyers and/or the court. The service may wish to seek independent legal advice regarding their roles and responsibilities under the court order.

Can a licensed children's service share information about a child with both parents or guardians?

Yes unless there are court orders to the contrary.

Summary

When enrolling a child at a licensed children's service:

- ask the parent(s) or guardian(s) if there are any court orders in place if the section of the enrolment record relating to court orders has not been completed;
- ensure the details of any court orders are recorded on the child's enrolment form;
- ensure, if possible, that the details of any other person who has lawful authority in relation to the child are recorded on the enrolment form;
- ensure all staff members responsible for the care of the child are aware of any conditions specified in the court order;
- share and exchange information with both parents about their child, unless there is a court order to the contrary;
- try not to mediate in any dispute between the parent(s) and/or guardian(s) about the content and application of the court order; and
- consider seeking independent legal advice if the order as it applies to the service and the child is not clear.