

# Child Protection



The *Family Law Act* (1975) operates across Australia and provides guidance to the Family Courts and to all of us about how to make decisions about children after separation and divorce by their parents.

The child protection law is slightly different in each state, and provides a system to protect all children under 18 years old from the risk of abuse or neglect whether their parents are separated or not.

In Victoria, child protection is administered by the Department of Human Services (DHS).

DHS investigates allegations that a child is at risk of harm and in need of protection. This expression is often shortened to “at risk”. The harm is not just physical injury but can include mental harm, and any behaviour that has a bad effect on children’s development. DHS can apply to the Children’s Court for a Protection Order for a child “at risk”.

## When is a child in need of protection?

If any of these grounds exist:

### Abandonment

The parents have abandoned the child, and they cannot be found, and no other suitable person can be found to care for the child.

### Death or incapacity

The child’s parents have died or become incapacitated and there is no other person willing to care for the child.

### Physical abuse

The child has suffered or is likely to suffer significant harm as a result of physical injury and the child’s parents have not protected, or are unlikely to protect the child from harm.

### Sexual abuse

The child has suffered or is likely to suffer significant harm as a result of sexual abuse and the child’s parents have not protected or are unlikely to protect the child from harm.

### Psychological abuse

The child has suffered or is likely to suffer emotional or psychological harm such that the child’s emotional or intellectual development is or is likely to be significantly damaged and the child’s parents have not protected or are unlikely to protect the child from harm.

### Neglect

The child’s physical development or health has been or is likely to be significantly damaged, and the child’s parents have not provided or allowed the provision of basic care or effective medical surgical or other remedial care.

## How does DHS protect children from harm?

Any person can report to DHS if they believe that any child is at risk.

Some people **must** inform DHS if they are aware that a child is at risk, such as doctors, nurses and teachers. This obligation to inform overrides their duty of confidentiality.

DHS investigates allegations that a child is at risk.

Sometimes DHS will decide that a child can be adequately protected from the risk of harm if the parents or carers of the child engage with support service agencies. The services provided can include direct financial material support. They can include counselling to deal with drug and alcohol problems. They can include learning programs to help parents and carers to better understand child development.

DHS usually holds a meeting with the parents or carers of the child to request that they agree to certain conditions that will address any risk factors. If later it becomes clear that the risk of harm to the child is reduced by the action taken, DHS might decide to close the case.

A support program called **Child FIRST (Child and Family Information, Referral and Support Team)** operates to refer a child and a child’s family to a Family Service agency for support. This option would be chosen where the family is in need of support, but only if the child’s immediate safety is not compromised.

The providers of the service are also obliged to inform DHS if children are at risk. The children’s progress and the way that parents and carers take up the support and assistance that is offered to them, is monitored by the Family Service agency for the **Child FIRST** program.



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## How does the Children's Court protect children from harm?

Instead of closing the case, DHS might decide to apply to the Children's Court for a Magistrate to decide if a child is at risk of harm and in need of court protection.

When Magistrates consider if a child is at risk they must balance a number of factors. One factor is the importance of protecting children from harm and interfering only as far as necessary to protect the child from harm. Another factor is the importance of strengthening family relationships. Another important factor to take into account is the wishes of the child.

Your case might be referred to a dispute resolution conference. Grandparents can attend these conferences. If the case does not settle by agreement it might be heard by a Magistrate.

## What the Children's Court Magistrate can do

Sometimes Magistrates will accept an undertaking (or promise) from the parents or carers of the child that they will accept support from DHS and make the necessary changes in order to provide the child with adequate care and protection from harm.

The Magistrate can make a range of Orders. You can be ordered to accept some level of involvement in your family life by DHS, such as supervision and support by DHS.

**Guardianship** means the responsibility of a parent for the care and protection of a child, and includes making long-term decisions about things like education, health needs and religious and cultural upbringing. A Magistrate can appoint a parent or carer to be a Guardian.

One person can have guardianship of a child and the right to make decisions related to care and protection of the child, while at the same time another person has the day to day responsibilities of caring for the child. The Magistrate can order that guardianship of the child stay with the parents of the child, or be transferred to another person, such as a member of the family, or to DHS.

## What can you do if a Protection Application is made for your grandchild?

The Child Protection Application often starts suddenly, and then takes a long time to resolve.

You might be given a single page document, or maybe a telephone call, that tells you that you should go to the Children's Court the next day. Sometimes you are not informed at all, if DHS does not know that you have a significant role in the child's care.

It is a mistake to think that it is not necessary to go to court in the early stages because the case will be put off. That is because while the case is progressing over a period of weeks and months, there might be another application for an Interim (short-term) Accommodation Order. This means an argument about where the child will live until the case is decided.

When you go to the Children's Court there might be attempts to reach a settlement. The case can wait many hours before it is heard by the Magistrate, and often the case will be put off for many weeks. It takes a long time because sometimes expert psychological and medical evaluations are needed to help the Magistrate decide the case.

If you are a grandparent of a child and have a significant role in the child's life, you can ask permission

to be involved in the case. You should ask for an interpreter. Not all grandparents will have access to a free lawyer.

Do not wait for the parents of the child to take action. The parents might have their own difficulties that prevent them from advocating effectively for their child. Your presence at the court case is not as a supporter for your own child, but as someone who can provide important information to the court about your grandchild's needs.

Children over seven years old will be provided with their own separate lawyer, who acts on the child's instructions and who should not just put forward a view about what is in the child's **best interests**. This is an important difference between the Family Courts and the Children's Court.

**"Best interests"** is a special term that is often used in cases involving children. It means that when making decisions about children the court must give utmost importance to whatever arrangements are best for the safety, care, welfare and development of the children. This is known in English as "arrangements in the **best interests** of the child".

Be prepared to explain to the court what kind of support and help you can offer to protect children from harm. You can offer a lot. If you can provide safety, stability and the ability to minimise any disruption to your grandchild's life, this is a significant contribution that you can make, and the Magistrate should be made aware of it.

Think about how you can help to protect children from harm, rather than winning or losing the case.

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