

# HELP! FaCS has removed my children



WHAT  
CAN I  
DO?

Information about Family and Community Services (FaCS)  
produced by the Women's Legal Service NSW



Women's Legal Service NSW acknowledges the Wongal and Burramattagal people who are the traditional owners of the land on which we work, and pays respect to their Elders past and present.

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# Introduction

This booklet has been prepared by Women's Legal Service NSW to help women and families deal with FaCS if their children are removed. 'FaCS' or Family and Community Services is the main government department in charge of keeping children safe. They used to be called DoCS (Department of Community Services).

**FaCS have the power to remove children if they think those children are at risk of serious harm and that the risk is immediate.**

The law says:

- ◆ Children have the right to be safe
- ◆ Children's basic physical and emotional needs should be met
- ◆ Children should not be physically or sexually abused or ill-treated
- ◆ Children should not be exposed to domestic violence
- ◆ Children should be adequately supervised
- ◆ Children should attend school
- ◆ If you are pregnant and doing risky things, FaCS can start preparing a case to take your child after it is born.

If these laws are not being followed, FaCS might build a case to remove your children. For example, if there is an immediate risk of a child being sexually abused, FaCS have the power to remove the child using an Emergency Care and Protection Order.

The law also says that removal of children should be a last option. See our other booklet, '**Dealing with FaCS: Top ten tips**' for more information about what FaCS should do with you before they remove your children.

FaCS have to prove to a Magistrate in the Children's Court that your child is 'at risk of serious harm'.

## **HANDY TIP!**

Using family law could help avoid FaCS involvement.

Get family law advice early if you experience family violence or separate from your partner.

# What happens when FaCS removes a child?

## 1. REMOVAL

When FaCS decides that a child is at immediate risk of serious harm they can remove the child from your care or assume the care of your child from hospital. FaCS caseworkers must give you a piece of paper called an **'Order for removal of children or young person at immediate risk of serious harm'** and must bring the case to Children's Court.

Your child will be placed in temporary care.

You should take the Order to a solicitor or support worker as soon as possible. You should also tell FaCS if there is a family member who might be able to look after the children.

FaCS have 72 hours to lodge their paperwork at the Children's Court. They must also give you a copy of the paperwork. When they give it to you (which is called 'serving it' on you) they should tell you when and where you need to go to Court.

## 2. FIRST MENTION

First mention means the first time the case is in the court.

At the first court date, the Magistrate will work out what should happen in the short term with your children. You will receive a copy of the initial report prepared by FaCS which tells you why your children have been removed from your care.

The Court will make a timetable of actions. This explains to everyone what they need to do, and by when.

## 3. ESTABLISHMENT PHASE

At the next Court date you will be asked if you agree your children needed care and protection when FaCS got involved. This is called "establishing" the matter. You can either agree or disagree with the establishment stage. If you don't agree, the Magistrate will give you a hearing date to deal with establishment. If you do agree, the matter moves to placement phase.

If there is an establishment hearing, the Court will hear evidence about whether your children were in need of care and protection when FaCS removed them.



#### **4. PLACEMENT STAGE**

After the case is established, the people involved in the case have opportunities to file evidence about placement. During the time between establishment and placement you might be ordered to do various assessments at the Children’s Court Clinic.

During the proceedings, the Court may make an Order for a Clinic Assessment. If the Court makes the Order, the Children’s Court Clinic will appoint a ‘clinician’ (usually a psychiatrist, psychologist or social worker) to assess you as a parent and your parenting capacity. They will write a report for the Court and all the people involved in the case. The Magistrate will use the report when making a decision about whether your children should go back to living with you.

FaCS will prepare a Care Plan setting out their recommendations for the future of your children.

You might be invited to attend a mediation or conference with FaCS to try to work out an agreement about your children rather than going to a final hearing in Court. If you want your children returned, you will need to show the Court that the children will be safe in your care.

#### **5. FINAL HEARING**

If you can’t come to an agreement with FaCS, the matter goes to a final hearing. At the final hearing the Magistrate will listen to everyone then make a decision about what they think is in your childrens’ best interests.

# Talk to a solicitor as soon as you can

To find a solicitor, contact the Indigenous Women's Legal Program on 1800 639 784, or call one of the other legal services listed on the back cover of this booklet.

## **Why is it important to talk to a solicitor as soon as possible?**

- ◆ They can give you advice about what you need to do
- ◆ They can talk to FaCS on your behalf and find out what's going on
- ◆ They can make sure FaCS are doing things properly
- ◆ They can refer you to services to support you through the court process and help you get your life back on track
- ◆ They can talk for you in Court and stand up for your rights.

## **What will a solicitor ask you?**

- ◆ Did FaCS give you any paperwork? If you have it with you, your solicitor can explain what it means to you
- ◆ When do you need to go to Court?
- ◆ What was happening before FaCS came into your life?

## **Will I have a solicitor in Court?**

- ◆ For the first court date, you will usually use the Legal Aid duty solicitor.  
If you can't find the duty solicitor, ask around. There is no shame in asking.
- ◆ Make sure you write down your solicitor's name!

SOLICITOR NAME:

ORGANISATION:

PHONE NUMBER:

There are useful phone numbers on the back cover of this booklet.  
USE THEM!

# Kinship care

## **Can someone in your family care for your child?**

Ask family members. If you can't find anyone straight away, keep looking. It might be an Auntie or cousin, or someone you don't see much but who would be a good carer.

Give FaCS the details of the family member so that they can be assessed as carers.

You should do this as quickly as possible. If someone in your family is already an authorised carer, FaCS may be able to place your children with them right away.

## **What should FaCS do next?**

FaCS will do a criminal history check, check their house out and find out who else lives there. Keep asking FaCS if they have done this or ask your solicitor to make sure it gets done.

## **Kinship care is law!**

The law says FaCS must try to place your children with a family member, and if not a family member then a member of your kinship group. If FaCS can't find someone related, they have to place your children with an Aboriginal carer.

FaCS have to prepare a Care and Cultural Plan and they must consult family and community.

If one of the parents is not Aboriginal, the child might be placed with a non-Aboriginal carer. The child must still have contact with his or her Aboriginal family, community and culture. The same applies for the non-Aboriginal family, community and culture if the child is placed in an Aboriginal family.

## **HANDY TIP!**

Give FaCS details of family members who could potentially be carers so that they can be urgently assessed to look after your children. See if the family member can come to the next Court date.

# What must FaCS do before Court?

The FaCS caseworker has 72 hours after they remove the child to file papers at the Children’s Court. The court has to list the case as soon as possible.

The FaCS caseworker must give you this paperwork. You will hear the paperwork called “Bundle 1”.

## What is in Bundle 1?

- ◆ Where and when the first mention at the Children’s Court will be.
- ◆ Why the child has been removed.
- ◆ What evidence FaCS have that the child was at risk.
- ◆ There might also be medical reports or reports from other people and organisations like teachers and doctors.
- ◆ A list of what FaCS have done with the parents to improve the safety situation for the child or children.
- ◆ There might also be a report about the parent/s, made by FaCS.
- ◆ The Bundle will also include the application to the Children’s Court which says what FaCS would like to do with the child now and in the future.

The Magistrate at the Children’s Court has to decide two things:

1. Whether FaCS has proved that your child needs care and protection (establishment phase).
2. What needs to happen to keep your children safe and where your children will live (placement phase).

## HANDY TIP!

Take your paperwork to your solicitor or support worker. Make sure they explain everything so you understand what FaCS has said and what they want to do with your child.



# Going to the Children's Court for the first mention

First mention means the first time the case is in court.

## **When you get to court, find the duty solicitor**

If you don't have a solicitor yet or your solicitor cannot be there on the first court date, find the Duty Solicitor. They can help you. If you are not sure who they are, ask someone who works at the court. No shame in asking.

Show them your paperwork and ask them to explain what is happening. Tell them what you want to happen. Ask them to speak for you in the Court.

At the first mention the Magistrate is told about the Application and about:

- ◆ Where the child is living
- ◆ Who is caring for them
- ◆ Whether the application is being opposed by the parents.

The Magistrate will decide who has the temporary power to make decisions about the child. This is called temporary parental responsibility for the child. This power will usually be given to FaCS.

The Magistrate will make directions or orders about what happens next, who has to file documents and when you need to come back to Court.

## **HANDY TIPS!**

- ◆ The Children's Court is very busy so you may wait a long time.
- ◆ Take food, water and a support person with you.
- ◆ Take your FaCS paperwork.
- ◆ Be patient and stay calm. Try not to be rude or aggressive.
- ◆ You need to keep in contact with your solicitor and work with them to make sure your child is safe.

# Establishment

After the 'first mention', the next time the matter is in Court, the Magistrate is likely to ask whether you agree that your children were in need of care and protection at the time that FaCS removed them. This is called 'establishment'.

If you agree to establishment, the case moves onto the next stage, known as the placement phase. A parent can agree to establishment on a 'without admissions' basis. This means you can agree the child was in need of care and protection without accepting that the evidence given by FaCS is true. You should definitely make sure you have legal advice before the Court considers this stage of the case.

If you agree to the case being 'established', the proceedings will move on to the 'placement phase', which involves making decisions about the future care of your children.

If you do not agree, the Magistrate will give you a date for an establishment hearing.

At the establishment hearing, it will be up to FaCS to prove that your children were in need of care and protection when they were removed.

Children can be in need of care and protection for many different reasons. Here are some examples:

- ◆ You or the other parent isn't available to care for the children
- ◆ The children's basic needs aren't being met (i.e. food and clothing)
- ◆ The children are being exposed to domestic violence
- ◆ The children have been sexually or physically abused
- ◆ The children are missing too much school
- ◆ Or because more than one of these reasons exist.

# Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) means a way of resolving issues other than by a court making the decision.

The Magistrate might decide to refer your case to a Dispute Resolution Conference at the Children's Court or to a mediation at Legal Aid NSW.

If you are in the Nowra and Ulladulla area, the Magistrate might refer you to a care circle.

Some advantages of using Alternative Dispute Resolution are they can:

- ◆ Help resolve the cases quickly
- ◆ Help involve family networks
- ◆ Help make plans that everyone supports.

The Children's Court reviews any agreements to make sure they are in the best interests of your child.

## **HANDY TIP!**

Ask your solicitor about Alternative Dispute Resolution and whether you could use this process.



# What is a care plan?

A Care Plan is a plan of who is going to be looking after the children and where they will be staying, plus who is responsible for them.

After FaCS applies to the Children's Court for an Order for the removal of a child from his or her parents, FaCS have to submit a Care Plan to court.

The Care Plan is prepared by a FaCS child protection caseworker and/or the manager after speaking with parents and others. It includes a Case Plan. A Case Plan records important decisions and actions that are agreed to be taken to meet the safety and welfare needs of the child. Case plans require regular assessment of the circumstances and needs of the child.

The Care Plan is delivered to everyone involved before the final hearing.

The Care Plan will contain:

- ◆ Who will have parental responsibility.
- ◆ The kind of placement proposed for the child.
- ◆ Whether returning the children to their family (called 'restoration') is a realistic possibility.
- ◆ Any temporary arrangements for the child before permanent placement.
- ◆ Arrangements for contact with you or other family members.

## **PERMANENT PLACEMENT PRINCIPLES**

These principles set out the preferred order for the permanent placement of a child or young person:

- I. Returning them to their family (restoration)
- II. Guardianship by a relative, kin or other suitable person
- III. Adoption (does NOT apply to Aboriginal children)
- IV. Parental responsibility to the Minister for Family and Community Services (FaCS) and placement in foster care.

The principles provide a guide for casework and decisions by the Children's Court. FaCS must demonstrate to the Court that it has considered each of the placement options.

# What are contact orders?

A Contact Order says how often and for how long the parents can see their child while the court case is going on.

Without an order, contact between the parents and child will be up to FaCS to decide. Your solicitor can explain this to you.

**Direct contact:** Can involve face-to-face meetings which can be supervised or unsupervised. Supervised contact is more likely to occur if the child is under 5 years of age or where there are concerns for the child's safety.

**Indirect contact:** Can occur through letters, phone calls or emails. Photos, special things that remind you of your child, and life story books can also be forms of contact.

Contact with your child helps them remember who they are and what their culture is.

If there is a restoration plan, the parent must maintain contact before the children are returned.

## Contact mediations

Contact mediations are a useful way of resolving problems about contact. If final orders are made that say what contact you can have with your children, and you want to increase that contact, then get legal advice about Alternative Dispute Resolution mechanisms as a way of trying to increase your contact.

## HANDY TIPS!

When you are visiting your child remember:

- ◆ Never discuss the court case with them.
- ◆ Take your child's toys, food and drink when visiting.
- ◆ Your behaviour is being watched and possibly recorded if there is supervised contact.
- ◆ Write in your diary what happened, what was talked about with FaCS workers and when your next visit will be.
- ◆ Never miss a visit without good reason and tell FaCS if you can't make it.

# What is a restoration plan?

This is a Care Plan that outlines what you need to do or changes that must happen in your home-life before your children can go home with you. These changes are sometimes referred to as outcomes or goals. Sometimes you will be asked to give 'undertakings' to meet goals. The undertakings are promises you make to the Court.

## What should you do if there is a restoration plan?

- ◆ Make sure you get a copy of this plan.
- ◆ Make sure that you understand what the plan says.
- ◆ Make sure your ideas are considered when making the plan and the plan is realistic.
- ◆ Get advice from a solicitor about the plan.

## What does the restoration plan include?

- A. Changes you have to make before FaCS believes that it's safe for your child to return home.
- B. Any services that are arranged by FaCS or the Children's Court to help you.
- C. How long you will be required to follow this plan. Remember the time limit given is only an estimate. If you need more time, FaCS may extend the time for you, provided that you are making great progress.

## What if you can't complete the Restoration Plan?

If you are not meeting the goals of the plan, FaCS might work with you to make changes the plan. If the plan is not completed, or you do not do what you said you would do, FaCS may decide to ask the Court for Orders that the Minister gets Parental Responsibility for your children. This could mean that FaCS have care of your children until they reach 18 years of age.

# Back to Court for Final Orders

## The Final Hearing

If you haven't been able to work out an agreement with FaCS, about where your children will live, either at a mediation or through case meetings, then your case will go to a final hearing in the Children's Court.

At the final hearing, the Magistrate will decide what placement option is in the best interests of your children.

### **IMPORTANT THINGS TO REMEMBER FOR THE FINAL HEARING:**

- ◆ FaCS always have their own solicitor and the child will also be represented by a solicitor.
- ◆ You should get your own solicitor for the hearing.
- ◆ You should only represent yourself as a last resort. The law is complicated.
- ◆ Preparation is very important. The Court papers must be carefully prepared and will be carefully looked at by the Magistrate.
- ◆ If the Magistrate is going to place your children back at home with you, you must show that you are a changed person who is fully responsible for yourself and you must be ready for full responsibility for your children.

# After Final Orders

What can you do to try and get your children back after the Final Orders?

There are a couple of ways this can happen:

## 1. You can appeal against the decision of the Children's Court

**What is an Appeal?** An appeal means that a higher court may make a different decision when someone is unhappy with a decision of the Children's Court. Not all decisions can be appealed so you should check with a solicitor before you lodge an appeal.

You have to do this quickly – **before 28 days** after the final order. Ask your solicitor for advice about whether you have good reasons to appeal.

## 2. You can apply for a 'Section 90'

You can apply to the Children's Court to change or cancel a care order.

This can be done at any time, but you must be able to prove to the Children's Court that things have changed enough for your child to be safe with you.

**Annual reviews:** There should be a review of your child's placement at least every year by FaCS or the NGO supervising the placement.

As part of the review there should be a visit to the child and carers to check on the welfare and needs of the child.

### HANDY TIP!

Get legal advice before filing a Section 90 application or appealing a decision of the Children's Court.



# FaCS contact diary

Use these pages to keep notes about every meeting, visit and conversation you have with a FaCS caseworker.

DATE

TIME

WHERE

WHO WAS THERE

WHAT HAPPENED, WHAT WAS SAID

TO DO FOR NEXT MEETING

NEXT MEETING DATE

TIME

WHERE

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NEXT MEETING DATE

TIME

WHERE

# Services I am working with

Use this page for details of services, support programs and any other courses you are working with.

NAME OF SERVICE

CONTACT NAME

NUMBER

NAME OF SERVICE

CONTACT NAME

NUMBER

NAME OF SERVICE

CONTACT NAME

NUMBER

NAME OF SERVICE

CONTACT NAME

NUMBER

NAME OF SERVICE

CONTACT NAME

NUMBER

# Support Services

## **Indigenous Women's Legal Contact Line**

at Women's Legal Service NSW provides free legal advice for and by Aboriginal Women: call 1800 639 784 or (02) 8745 6988

## **Legal Aid NSW:** Call 1300 888 529

or 1300 889 529 if you are hearing/speech impaired.

## **Wirringa Baiya Aboriginal Women's Legal Centre:**

call 1800 686 587 or (02) 9569 3847

## **Aboriginal Legal Service:** 1800 733 233

Care and protection service: (02) 8836 3444

Family service: (02) 8836 3440

## **Aboriginal Counselling Services:** (02) 4731 2555 or 0410 539 905

## **FaCS have their own complaints unit:**

If you have a complaint about FaCS, speak to your caseworker or their manager. If you are still not happy, call the Complaints Unit. They will let you know what they are going to do with your complaint, and when.

Call 1800 000 164 between 9am–4.30pm, Monday to Friday.

Or you can email [complaints@community.nsw.gov.au](mailto:complaints@community.nsw.gov.au)

There are more contact options online at

<http://www.community.nsw.gov.au/about-us/contact-us/client-complaints>

**NSW Ombudsman:** If you are not happy with how FaCS have dealt with your complaint, you can also complain to the NSW Ombudsman.

Call 1800 451 524 or (02) 9286 1000

