

|  |
| --- |
| Previous Children’s Court orders |
|  |
|  |

# About this fact sheet

This fact sheet helps to explain the changes made to Children’s Court orders that took effect on 1 March 2016.

The changes were intended to reduce the time children spend in out-of-home care before permanent arrangements are in place for their care. Where possible, this is to be achieved by children returning home safely within specified timelines. Where it is not safe for a child to return home permanently, alternative ongoing care arrangements are to be found.

It is relevant to understanding orders available in Victoria before 1 March 2016 under the *Children, Youth and Families Act 2005*.

## How orders transitioned

On 1 March 2016, orders changed automatically in accordance with the transitional arrangements provided for in the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Children and families affected at the time were formally informed of the changes to come, well in advance of commencement. The table below shows what changed.

|  |  |
| --- | --- |
| Orders in place on the day the new laws came into effect that changed automatically | |
| **Previous order type** | **became** |
| Supervision order | Family preservation order |
| Supervised custody order | Family reunification order |
| Custody to Secretary order (in place less than 2 years) | Family reunification order |
| Custody to Secretary order (in place 2 years or more) | Care by Secretary order – conditions lapsed but were included in the case plan |
| Guardianship to Secretary order | Care by Secretary order |
| Long-term guardianship to Secretary order | Long-term care order |
| Orders that did not change on 1 March 2016 | |
| **Current order** | **continued** |
| Interim protection order | continued to hearing date\*\* |
| Undertaking | not affected |
| Interim accommodation order | not affected |
| Permanent care order | continued## |
| Custody to third party order | continued to end date\*\* |

\*\* These orders are no longer available but orders in place before 1 March 2016 continued until their expiry date.  
## existing permanent care order were not affected except that birth parents now need to seek leave of the Court to apply to vary or revoke the order.

## Differences between the previous and current Children's Court orders

| Previous order | Current order | Significant differences since 1 March 2016 |
| --- | --- | --- |
| **Interim  accommodation order** | **Interim accommodation order** | An interim order cannot be made if a final order can be made instead - otherwise no difference. |
| **Interim protection order**  Protection order – could be made for up to 3 months, included conditions, could not be extended. | **No equivalent** | Orders in place at commencement continued until their expiry date. |
| **Undertaking**\* | **Undertaking** | No difference. |
| **Supervision order**  Did not affect custody or guardianship of child (i.e. parental responsibility). Did not limit conditions to those supporting family preservation. | **Family preservation order** | Like a supervision order, this order aims to keep a child at home safely, the child lives with one or both parents, and parents have full parental responsibility for the child.  May include conditions to support family preservation. |
| **Custody to third party order**\*  Gave custody of the child to another person for up to 12 months, with a view to child returning to parents during the order. Could include conditions. Child Protection had no role, and the order could not be extended. Very few were made. | **No equivalent** | Orders in place before 1 March 2016 continued until their end date. Now, a family reunification order would be a suitable alternative. |
| **Supervised custody order**  Gave custody of the child to another person for up to 2 years, to be supervised by Child Protection. Could include conditions. Intended to enable reunification, could be extended every two years, need to change placement required return to court.  **Custody to Secretary order**  Gave custody of the child to Child Protection without affecting guardianship. Could be made for up to two years. Could include conditions. Intended to enable reunification. Could be extended every two years.  Children could live with parents, or in any type of care, including with long-term carers.  (aligns with family reunification order where a child had been in out-of-home care for less than two years# and family reunification was planned.) | **Family reunification order** | The aim of this order is to have children living back with their parents before they have been in out-of-home care for 12 months or (where there is compelling evidence of progress) two years#.  The department has parental responsibility for the child but parents’ agreement is needed about major long-term issues.  May include conditions to support family reunification.  If a child returns home, the order can become a family preservation order without return to court.  Where a child has been in out-of-home care for more than two years, this order is not available to the court. |
| **Custody to Secretary order**  See above  (aligns with care by Secretary order where a child had been in out-of-home care for two years or more#, or ongoing alternative care was planned.)  **Guardianship to Secretary order**  Gave custody and guardianship to Child Protection to the exclusion of all others for up to 2 years and could be extended. Could not include conditions. Suitable where reunification had not succeeded, and permanent care was planned.  Children could live with parents, or in any type of care, including with long-term carers. | **Care by Secretary order** | The aim of this order is to find a permanent or long-term carer for the child, preferably with extended family, or if not, with another family, except in exceptional circumstances.  The order is made for two years and can only be extended if a permanent care order or a long-term care order is not appropriate, or if exceptional circumstances exist.  Like the former guardianship to Secretary order, this order does not include conditions, and the department has parental responsibility for the child to the exclusion of all others.  If a child returns home, the order can become a family preservation order without return to court. |
| **Permanent care order**  Gave custody and guardianship to permanent carers to the exclusion of all others. Similar to current except: no standard condition to preserve identity and connection; no limit on or guidance about conditions; siblings unable to apply to vary; no limitation on applications by parents to revoke or vary; new protection application required if permanent carers died. | **Permanent care order** | Permanent carer parents are now required to preserve the child’s identity, connection to culture and relationships with their birth family unless court orders otherwise. When one of these orders is first made, court-ordered contact between a child and their birth parents is limited to four per year. More contact may be arranged by agreement. The child’s birth parents need to seek the leave of the Court to apply to vary or revoke the order. Siblings can apply to vary. Permanent carer confirmed as being the parents of the child.  Like the former permanent care orders, this order continues until the child’s 18th birthday, and permanent care parents have parental responsibility for the child, to the exclusion of all others.  If permanent care parents die, reverts to care by Secretary order. |
| **Long-term Guardianship to Secretary order**  Gave custody and guardianship to Child Protection to the exclusion of all others Could only made for children aged 12 or over, with their agreement, and provided there is a suitable carer. | **Long-term care order** | This order is an option for a child of any age, provided there is a suitable carer for the child and permanent care is not available.  It cannot be made if a child aged 10 or over opposes the order but does not require the child’s agreement.  Like the former long-term guardianship to Secretary order, it continues until the child’s 18th birthday and does not include conditions. The department has parental responsibility for the child, to the exclusion of all others. |

\*The Department of Health and Human Services does not supervise these orders.  
#Time in out-of-home care means the time a child has spent, cumulatively, on an order enabling placement in out-of-home care, since the first such order was made (including interim accommodation orders) during the current period of Children’s Court involvement..

To receive this publication in an accessible format email [cpmanual@dhhs.vic.gov.au](mailto:cpmanual@dhhs.vic.gov.au)  
Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.   
© State of Victoria, December 2020

Last updated December 2020