

In this booklet we use the term “FaCS” (Family and Community Services) instead of the familiar ‘DoCS’ (Department of Community Services) because the department changed its name in 2012.

What does the Law say about Caring for Children?

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 shouldn’t be exposed to domestic violence that will put the child at risk of serious physical or emotional harm
- Children must be adequately supervised
- Children must go to school from 6 years – 17 years (or finish Year 10)
- If you are pregnant and doing risky things that may harm your baby, FaCS can start preparing a case to take your child after it is born. The law says you should work with support services to minimise or eliminate the risk factors.

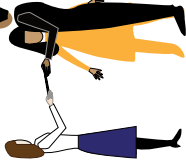
FaCs caseworkers have to prove to a Magistrate in the Children’s Court that your child is at ‘risk of serious harm’. **An investigation can result in the immediate removal of your child.**

What happens when a child is removed by FaCS?

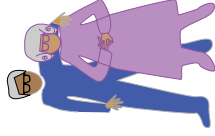


FaCS Caseworker

When a FaCS caseworker removes a child they must take the case to court and give the parents the court papers.



- * Make sure you go to court.
- * Take the FaCS paperwork to a solicitor as soon as possible. Ask them to explain your rights as a parent and what you need to do at the Children's Court.



- * Tell the FaCS caseworker if there is a family member who could look after the child. This is Kinship Care.

If you can't think of anyone to help you, call a solicitor. There are some numbers at the back of this book.

A different solicitor will represent your child.

Child

FaCS places the child in a temporary placement.

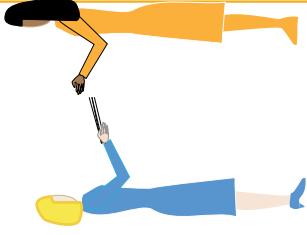
The child might not attend the Children's Court.



A Solicitor will represent the child at court.

FaCS caseworkers have 72 hours to lodge their paperwork at the Children's Court.

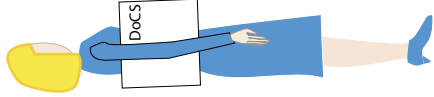
They then have to serve you with the court papers. You might hear the papers called a Bundle 1.



The FaCS caseworker must tell the parent when to go to the Children's Court. They should also give you the court papers called a "Bundle 1". This explains why the child was removed.

CHILDREN'S COURT

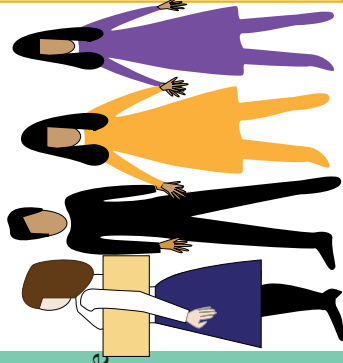
- * The FaCS case worker shows the Magistrate the reason why they removed the child.
- * The parent/s can tell the Magistrate their point of view and what they think should happen to the child.
- * The Magistrate will then decide what is the best thing for the child.



- * It is important that the **parents stay calm at court** and **have a support person** and have good communication with the FaCS case worker.

Remember FaCS record EVERYTHING!

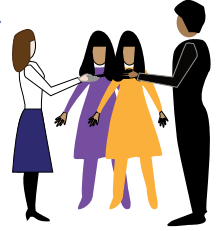
You might have to go back to court a few times.





Get a solicitor or a support person to help you ASAP.

There are some phone numbers at the back of this book.



Why is it important to talk to a solicitor ASAP?

- They can give you advice about what you need to do.
- They can talk to the FaCS solicitor for you.
- They can make sure FaCS is doing things properly.
- They can refer you to support services to support you through this and to help 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? The solicitor will explain what it means for you.
- When do you need to go to court?
- What was happening before FaCS came?
- There will be more questions but these are the main ones.

Will I have a solicitor in court?

- There will be a Duty Solicitor when you have to go to court for the first time. They can help you. If you are not sure who they are, ask someone who works there. No shame in asking.



Record your Solicitor's name and number

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2 Tell FaCS if there is someone in your family who can care for your child. This is Kinship Care.



Can someone in your family care for your child?

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

What should FaCS do?

FaCS will do a criminal history check and check their house out to see if there is enough room for your child as well. Keep asking FaCS if they have done this or ask your solicitor to make sure they have done it.

Kinship Care is the law.

You will also hear it called 'Aboriginal and Torres Strait Islander Placement Principles'.

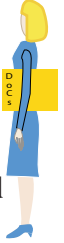
It says that FaCS have to try to place your child with your extended family or kinship group as recognised by the Aboriginal community. If that's not possible then with someone else in their community or another Aboriginal family.

If one parent is not Aboriginal then the child might be placed with a non-Aboriginal carer. The child still needs to be able to have contact with his or her Aboriginal family, community and culture.

Helpful Tips

Tell FaCS and give them the details of the family member so that they can be urgently assessed as carers. They will need to fill out a form. Ask FaCS for the form. See if that person can come to court.

3 What do FaCS have to do before court?



The FaCS caseworker has 72 hours after they remove the child to bring the case to Children’s Court. The case worker has to:

Prepare their report

Attach supporting documents

File the application in the Children’s Court

The FaCS caseworker has to **serve** this paperwork on the parent/s. You will hear this called a “Bundle 1”.

What is in the Bundle 1?

Where and when the first mention at the Children’s Court will be.

The reason why they removed the child.

What evidence they have that the child was at risk.

What things they have done working with the parents to improve things.

They might have a report about the parent/s.

Plus the application to the Children’s Court to say what they would like to do with the child now. **The Magistrate at the Children’s Court has to decide whether FaCS have proved that the child is**

‘in need of care and protection’ (usually called ‘establishment’) and ‘what needs to happen to keep the child safe’ (usually called

‘placement’).

Helpful Tips

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

It is very important that you stay calm with FaCS.

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

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

Find the Duty Solicitor.

If you don't have a solicitor yet, find the Duty Solicitor. They can help you. If you are not sure who they are ask someone that works there. No shame in asking.

Show them the papers from FaCS. Ask them to explain what is happening. Tell them what you want to happen. Ask them to speak for you in the Court.

The Magistrate reads the information, listens to both sides and decides what is best for the child. The Solicitor will explain what you have to do next. You may have to go back to court a few more times.

Helpful Tips

The Children's Court is very busy so you might have to wait a long time.

Take some food and water with you.

Take a support person.

Take your FaCS paperwork.

Take a book or magazine to read.

Be patient.

STAY CALM

Don't be rude or aggressive to the FaCS caseworker.

You need to keep good communication with them. You need to work with them to make sure your child is safe and well looked after. Ask your solicitor if you don't understand what is happening.

5 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 ADR are they can:

Help resolve the cases quickly

Help involve family networks

Help make plans that everyone supports.

The Childrens Court reviews any agreements to make sure they are in the best interest of your child.

Helpful Tips:

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

6 What is a Care Plan?

A Care Plan is a plan of who is going to be looking after the child 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 has to submit a Care Plan to court.

The Care Plan is prepared by a FaCS child protection caseworker, and/or manager after speaking with the parents and others. It includes a Case Plan.

The Care Plan is served on all of the parties before the final hearing.

A Care Plan could say that any other person other than the parents are to have parental responsibility (decision making).

FaCS can include adoption as a recommendation. This is particularly important when the child is removed at birth from the mother.

What has to be included in the Care Plan?

Who will have parental responsibility.

The kind of placement proposed for the child.

Whether restoration is a realistic possibility.

Any temporary arrangements for the child before permanent placement.

Contact arrangements.

Helpul Tips

Do not sign paperwork without getting legal advice first.

What happens after the first mention?

First mention at the Childrens Court

The Magistrate will decide what is best for the child. It might be:

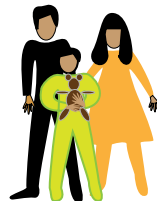
- * The child can go home

or

- * The magistrate makes an Assessment Order.

or

- * FaCS will look after the child and do a Care Plan.



Assessment Order

This is someone to check you out as a parent.

It is normally the Psychologist from the Children's Court Clinic, not FaCS.

Talk to your Solicitor about this.

Care Plan

FaCS will look after the child and do a Care Plan. This involves:

- *The background story.

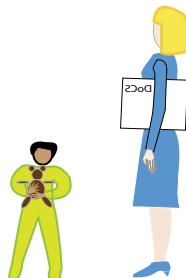
- * Who will look after the child.

- * When you can see the child.

- *Who else can support the child.

- * The child can say what they would like.

The Care Plan becomes part of the Care Plan.



Restoration must be considered if it's a realistic possibility.

7 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 proceeding.

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

Contact:

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

Contact:

Can occur through letters, phone calls or emails. Photographs, mementos and life story books can also be forms of contact.

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

If there is a restoration plan then the parent must maintain contact before the restoration.

Helpul 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 recorded.

Record 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 outlines what you need to do or changes that have to happen in your home life before your child can go home with you.

These changes are sometimes referred to as outcomes or goals.



The law says FaCS must assess whether restoration is a realistic possibility as part of making a permanent plan for your child.

What should you do if there is going to be a Restoration plan?

1. Make sure that you get a copy of this plan
2. Make sure that you understand what the document says!
3. Make sure your ideas are considered when making the plan.

What does the Restoration Plan include?

1. Changes you have to make before FaCS believes that its safe for your child to return home.
2. Any services that are arranged by FaCS or the Children's Court to assist you.
3. How long you will be required to fulfil 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.

Helpful Tips

What if you can't complete the Restoration Plan?

If the plan is not working for you, FaCS might work with you to make changes. If the plan is not completed or you don't abide by one of the undertakings in the plan, FaCS may decide to go back to court for an order for parental responsibility so someone could care for your child until they reach 18 years of age.

9 Back to the Children's Court for Final Orders

The Hearing.

At the hearing the Magistrate decides if there is enough information to make a final decision. This is called a final order.

The Magistrate may make an interim care order. Ask your solicitor to explain this to you.

Important things to consider

1. FaCS always have their own solicitor
2. Children will also be represented by a solicitor provided by Legal Aid.
3. You should get your own solicitor for the hearing. See Legal Aid or ALS.
4. If you represent yourself this should be a last resort. The law is complex.
5. Preparation is important for the hearing.

You have to show that you are a changed person who is fully responsible for yourself and be ready for full responsibility for your child.

Helpful Tips

You have to build the evidence.

That is why you should have a solicitor.

Contact Legal Aid or ALS about getting a solicitor if you don't already have one

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After the Final Orders.

What can parents do to try and get their children back after the final orders? Ask your solicitor how you can do this.

There are a couple of ways that this can happen:

1. You can appeal to the District Court against the decision of the Children's Court.
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. Applying for a section 90. You can apply to the Children's Court to vary or rescind a care order. This can be done 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.

Helpful Tips

YOU CAN make an Application to have your matter re-opened and re-examined.
But you must demonstrate to the Court you have made big enough changes in your life.
Contact your solicitor for advice.

Diary of Visit or Meetings with FaCS caseworker

Date:..... Time:.....

Where:.....

Who was there:.....

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What happened or was said:.....

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Do you have anything for the next meeting?

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Next appointment or visit.....

Where:..... Time:.....

Handy Contacts

The Indigenous Women's Legal Contact Line at Women's Legal Services

Toll-free line staffed by Aboriginal women. Provides free legal advice to Aboriginal women.
Call 1800 639 784 (rural) or SYDNEY (02) 8745 6988

Legal Aid NSW

Call Law Access for Legal Aid NSW

LAW ACCESS

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 - Care and Protection Law Practice

Call 1800 733 233

Arrunga Gibalee Aboriginal Counselling Service (Part of Relationships Australia)

Call 1300 364 277 (provides free counselling)

Law Society Pro Bono Scheme

Call (02) 9926 0364

FaCS have their own complaints unit.

If you have a complaint about FaCS speak to your caseworker or their manager. Then if you are still not happy ring the Complaints Unit, they will listen to your complaint and often able to resolve the issue promptly on the phone. If not, they will refer it to the right person. They will let you know what they are going to do with your complaint and the time frames for getting back to you.

Phone –1800 000 164 to talk directly with one of the Complaints Officers. You can contact the office between 9am and 4.30pm Monday to Friday.

Fax – print and complete the complaint form and fax it to 9716 2126. The form can be downloaded from

Mail – :

Reply Paid 63437 Complaints Unit, Community Services
Locked Bag 4028, ASHFIELD NSW 2131
Email – Complaints@community.nsw.gov.au

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