

# Legal Information

In this chapter you'll find legal information about some things that often concern young parents. It covers your rights & responsibilities as a parent. Because some young parents have contact with Child, Youth and Family, you'll find information here that will help you to understand what's going on. This chapter also covers the legal protection available to you & your child if you experience domestic or family violence. You'll also find out about legal aid & how to get in contact with a lawyer.



## Guardianship

A guardian is someone the law has given all the duties, rights, responsibilities & powers involved in bringing up that child. A guardian's responsibilities to a child include providing day-to-day care for the child, contributing to the child's development as a person, & helping making the big decisions in a child's life.

If you are the birth mother of a child, then you are automatically a guardian of that child. It doesn't matter how old you are when your child is born. The birth father is a guardian as well if any of the following situations apply:

- you were married, or in a civil union, with him any time between when the baby was conceived & when it was born
- you were living together when the baby was born & the baby was conceived before 1 July 2005
- you were living together at any time between when the baby was conceived & was born, & the baby was conceived after 1 July 2005
- he is recorded as the father on a birth certificate made after 1 July 2005.

It is possible to have other people appointed as guardians by applying to the Family Court. A birth father can apply to be made a guardian if none of the situations above apply. You can apply to have a new partner made a guardian if he or she has

been helping provide the day-to-day care for your child for at least one year. However the Court will only appoint additional guardians if it decides that this is in the best interests of the child.

**Guardians make the important decisions concerning the care of a child.** This includes decisions such as a child's education, religion, name, medical treatment, or where a child should live. If there's more than one guardian, all guardians need to be consulted on important decisions regardless of who the child lives with. The Court can resolve disputes between guardians. Guardianship lasts until a child turns 18. If your child is adopted, the adoptive parents become the guardians & the birth parents are no longer guardians.

## *Day-to-day care*

Guardians have responsibility for the day-to-day care of a child. If the child's father is not a guardian then this responsibility is yours alone as the child's mother & natural guardian. If you are both guardians but living separately then you will need to come to a parenting agreement regarding how you will ensure the consistent day-to-day care of your child. You can work out the details of this parenting agreement between yourselves, but if you need some help the Family Court will provide free counselling to help you work it out together. If you can't work it out or you want to make the agreement legally enforceable then you can apply to the Court for a Parenting Order. You'll need to get a lawyer to do this.

## *Contact*

Contact is the term given to an arrangement for the person not providing the day-to-day care of a child to see or spend time with that child. It used to be known as access. Contact arrangements will most often be made with a child's father where he does not live with the mother & does not share the daily care of the child. Contact arrangements will spell out the how & when & where details & will be included in a Parenting Order. It is best to use a lawyer to help sort out these arrangements.

## *Paternity*

Paternity is the legal term for fatherhood. Paternity can be established in the following ways:

- where the child's mother & father were married when the child was born or within 10 months of the child being born
  - where the father is named on the birth certificate
  - where the child's father has signed an acknowledgement of paternity, which is also signed by the mother
  - where the Court has declared a man the father of a child
- Paternity & guardianship are not the same things – a man can be declared father of a child without becoming a guardian.

You may or may not be interested in establishing the paternity of your child. However, if you're receiving a Domestic Purposes Benefit, Work and Income will deduct money from that benefit

for each child for whom paternity is not established (currently \$28 per week). Paternity is necessary to get child support payments from a child's father. Exceptions to the deduction rule are where the child was conceived through rape or Work and Income agree that it's not possible to identify the father. When you start working and no longer get a benefit, then the money paid by the father as child support will go directly to you. This means that in the long term, you will have more money to provide for your child if paternity is established.



## *Getting paternity established*

**Unless you were married when the child was born, the father's name will not automatically appear on the birth certificate. A father can personally sign the birth registration form when the child is born, or the birth certificate can be changed to include the father's name, if the father agrees after you have already registered the birth.**

Contact Births, Deaths  
& Marriages to get the  
forms to do this  
0800 22-52-52

**The father can also acknowledge paternity by signing a declaration saying that he's the father of your baby. This won't affect the birth certificate but will satisfy Work & Income's requirements. You don't have to sign the declaration at the same time if you don't want to see him.**

If the baby's father refuses to acknowledge paternity, you can make an application for a Paternity Order in the Family Court. You will need a lawyer to help you do this. The Court

will consider factors such as the likely dates of sex compared with the date of birth, whether or not you had sex with anyone else about that time, & whether the alleged father has acknowledged paternity verbally or through his actions. The Court can recommend that the alleged father undergo a blood or DNA test. The test is not compulsory. However the Court can make an order for paternity even if the alleged father refuses testing, but the Court feels other standards of reasonable proof have been reached. It's important to know that an application for paternity should be made before the child turns 6 years old, because after that age it will be very difficult, if not impossible, to obtain a Paternity Order.

If you're a child's mother & aged under 16, it's possible for anyone having custody of you (e.g. parent/caregiver) to make an application for a Paternity Order on your behalf. If you give your consent in writing, a social worker could make the application on your behalf. A father can apply to the High Court for a declaration of paternity.

**If you are under 16 & trying to get paternity established, will criminal proceedings be started against the baby's father because you had sex before you were 16?**

If the baby's father is under 17, & you had sex willingly, it is unlikely that Police Youth Aid would feel it was in the best interests of either of you to charge him with an offence. However, if he is over 17, he could be charged because it's a criminal offence to have sex with a female under 16 years of age, even if you were willing. The Police are more likely to prosecute if there is a larger age gap & they think you may have been pressured into sex. If you didn't have sex willingly or you were forced into having sex, the man committed an extremely serious crime (called rape) & you may want to talk to someone you trust about this.

## child youth and family

**'Child, Youth and Family' (also known as CYF) is the Department for Child, Youth and Family Services. It's the government department responsible for making sure children & young people between 0 & 17 years are safe & not having problems in their families. The department has two main aims: to assist families to find appropriate ways to care for their young people; & to provide care & protection for children where their families are unable to do so.**

CYF may be of assistance if you don't know how you'll be able to care for your child. The aim of CYF is to keep the child within the family whenever possible. They can organise a Family Group Conference (FGC) to discuss care arrangements with you & your family. CYF should try & assist you to keep your baby or to keep in touch with your baby. They may suggest placing your baby in a long-term fostering arrangement, preferably with another family member. If you are Maori, they can talk to you about the option of a whangai relationship. If you are the baby's guardian, any decisions made at a Family Group Conference or in conjunction with CYF will need your agreement.

However, if you neglect, ill-treat or abandon your baby, or are proved to be unfit through a physical or mental disability to care for your child, the Family Court could make an order saying your agreement is not needed. This is very rare & the Court would only do this if you have been offered support & are still not able to care for your child with the extra support.

Anyone may contact CYF or the Police if they believe that a child or young person is, or is likely to be, harmed (physically, emotionally or sexually), ill-treated, abused, neglected or deprived. Usually health information is private, but some pregnancy services may decide to contact CYF if they are caring for a pregnant teenager under 16 & think you or your baby may be in need of care & protection. You are entitled to ask health providers at any time what their policy is about passing information to CYF.

**If you're having contact with CYF & are having any difficulties understanding what is happening or feel that you're not being listened to, you might find that an advocate is useful. An advocate is someone who represents you & who can support you. For contacts, call your local Citizens Advice Bureau or local Community Law Centre.**

## *Legal protection from domestic violence*

**The law provides everyone with protection from violence & abuse. Physical & sexual violence are criminal acts for which a violent person will be arrested, charged & get a criminal conviction & sentenced if found guilty. If you or your child is assaulted in some way by anyone, either call the Police immediately or make a later complaint at a Police station.**

There is also legal protection against 'family violence' or 'domestic violence'. If someone who you are in a domestic

relationship with is using psychological abuse or physical violence or sexual violence against you or your child, you can apply to the Court for the extra legal safeguard of a Protection Order.

## domestic violence IS

**Physical abuse** - Any form of contact or assault that is meant to hurt or injure; for example, hitting, kicking, pushing, being hit by an object.

**Sexual abuse** - Any form of sexual contact without consent; for example, rape or being forced to watch pornographic videos.

**Psychological abuse** - Any form of verbal abuse, intimidation, harassment, damage to property, including threats of physical abuse, sexual abuse, or psychological abuse. Examples of psychological abuse include saying, 'If you leave me, I'll kill you', or 'Do that again & the kid will get it', or 'You'd better do it or I'll give you a hiding', or making a lot of phone calls to you that make you scared, or constantly putting you down or doing things to you to upset or disturb you.

**Psychological abuse of children** - If a person allows a child to see physical, sexual or psychological abuse to another person or puts a child at risk of seeing or hearing abuse, this is also considered psychological abuse.

You can get protection  
from anyone over 17  
that you're in a 'domestic  
relationship' with

You can be in a domestic relationship with a partner, a family member, someone you share a household with, or someone you have a close personal relationship with.

### A partner

is someone who you are, or have been, married to; someone who you are living with, or have lived with in a de facto relationship, including lesbian & gay relationships, & someone who you have had a child with.

### A family member

is a person who you are related to by blood, marriage or adoption, or who is a part of your whanau or other culturally recognised family group.

### Someone you share a household with

might be your landlord if you are boarding, or your flatmates in a shared living arrangement.

### To work out if you have a close personal relationship with another person,

take into account the nature & intensity of the relationship, that is, the time spent together, the place where the time is spent, & what you do during that time. How long you have known the person should also be considered. A close personal relationship does not have to be a sexual relationship. Examples of domestic relationships are: married & unmarried couples, gay & lesbian couples, children & parents, relatives, flatmates & boarders, guardians.

**Protection Orders can only apply to someone who is over 17 (or who is 16 & been married). You can't get a Protection Order against someone who is under 16 because they are legally considered a child. If you're in a domestic relationship with someone aged under 17 & they are being abusive to you or your child, call a domestic violence agency & your local Community Law Centre to talk about what is going on & to get legal information.**

The Court can make a Protection Order if it's satisfied that there has been domestic violence & that the Order is needed to protect you & your child, or someone else connected to you. ***If you make a request for a Protection Order, you are called the 'Applicant'. The person who you seek protection from is called the 'Respondent'.***

A Protection Order includes non-violence conditions **that apply in every case. The non-violence conditions are that the Respondent MUST NOT: physically, psychologically or sexually abuse or threaten you or anyone else protected by the Order; damage, or threaten to damage, your property; encourage anyone else to do these things.**

A Protection Order also includes the following non-contact conditions, **unless you have expressly agreed to live with the Respondent. The non-contact conditions will take effect again automatically if you withdraw your consent to living together. The non-contact conditions are that the Respondent MUST NOT: go to your home or workplace or onto your property unless you expressly consent; intimidate or harass you or your child; hang around your neighbourhood or workplace; follow you; try to stop you or your child from coming or going; phone, write, fax or email you except as reasonably necessary in an emergency.**

When a Protection Order is made, it will have a standard condition that the Respondent must hand in any firearms license & weapons to the Police. A Protection Order will usually require a Respondent to attend a course about living without violence. You can also apply to attend a free support course that can help you take control of your situation & recover from living with violence. There are also courses made especially for children, to help them to recover from the effects of violence.

A Protection Order can cover you, your child or children & any other person in a domestic relationship with you, if the Respondent has behaved abusively to that person because of your relationship with that person. For example, this might include a new boyfriend or girlfriend, your flatmates or your family. The Protection Order can also protect you from other people that the Respondent has encouraged to be abusive to you or your child.

To enforce a Protection Order you need to call the Police if the Respondent has breached one of the conditions described above. **The Police can arrest a person who they suspect has committed a breach of an Order. In deciding whether to do so, they will consider your safety, the seriousness of the offence, & the length of time since the last offence occurred. If the Respondent breaches the Protection Order he/she can be imprisoned for up to 6 months & fined up to \$5,000. Multiple offences can result in imprisonment of up to 2 years.**

**To get a Protection Order you will need to complete an application form & provide evidence about why you need protection in a sworn statement called an affidavit.**

## The Family Court has application forms

It can be a difficult form to fill in & needs an affidavit to go with it, so it's best to get someone to help you. A lawyer can prepare the application for you. If you're on a low income, ask your lawyer whether you're eligible for legal aid to pay for any legal costs.

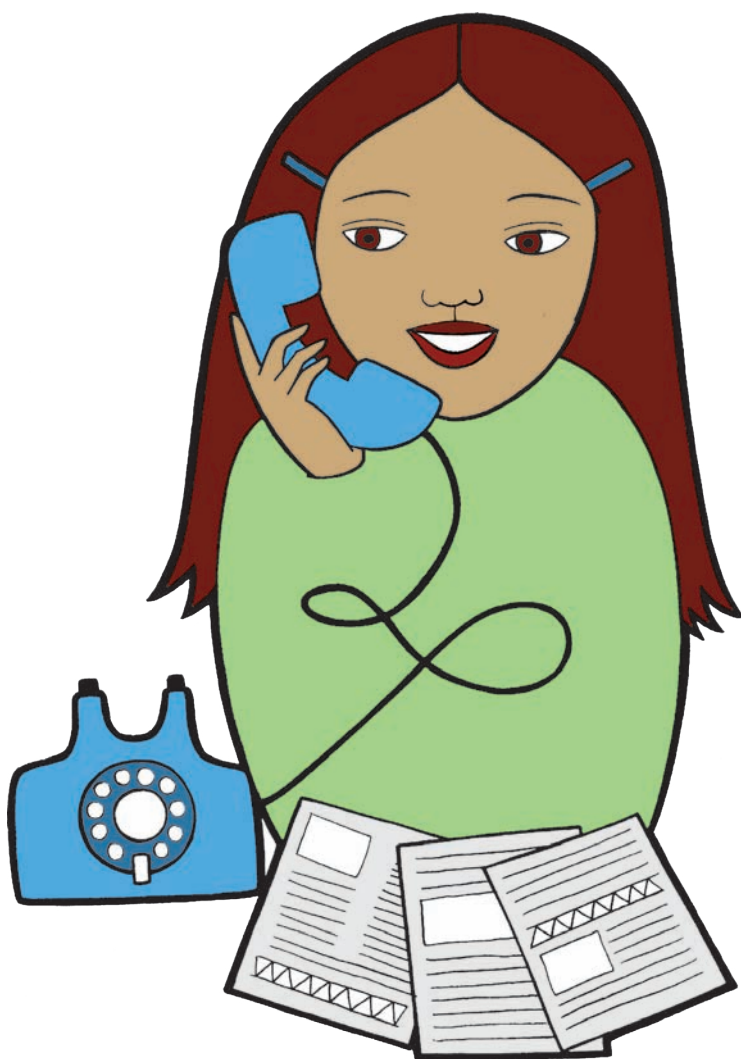
The Court will be looking for evidence that the Respondent has physically, sexually or psychologically abused you or your child & that making the Order is necessary to protect you or your child. Doctors' reports of any injuries caused by physical abuse or photographs of injuries are examples of good evidence to support your application. Explaining why you believe the Respondent is likely to abuse or harass you again will help the Court to understand the need for the Order.

**If your situation is urgent, you can apply for a 'without notice' Protection Order, which means a temporary Order will be granted immediately & without notifying the Respondent first. To apply without notice, you must show that any delay in making the Order would result in harm or undue hardship to you or your child. The temporary Order lasts 3 months, after which the Respondent will have the chance to defend the granting of the Order. Unless the Respondent is successful, a permanent Protection Order will be granted without further application. A permanent Protection Order only ends if either the Applicant or the Respondent make an application to the Court & the Court is satisfied that it's safe to end it. The Court may need to be satisfied that any children involved will be safe if the Orders are discharged.**

An application made 'on notice' means that the Respondent is advised that you have applied for an Order before the Court considers your application. The respondent is entitled to appear in Court to defend it.

If you are aged under 17 & have never been married you will need a 'Representative' to apply for a Protection Order on your behalf.

'Representative' means a guardian or other adult chosen by you to apply on your behalf. It should be someone who knows you and/or has a duty or commitment to help you. **Your Representative will need to apply to the Court for permission to be your Representative at the same time as he/she applies for the Protection Order on your behalf.** This is a separate form & your Representative will need to explain his/her relationship to you & why he/she wants to be your Representative. This situation will last until you turn 17 (or marry before then), or the Court ends it. It will be easiest to use a lawyer if you need a Representative & you will probably be entitled to legal aid to pay the legal costs.



Usually a Representative will be acting according to your wishes. However, it's possible for someone to apply to get a Protection Order for you if you're under 17. It's up to the Court to decide whether the Order should be granted or not. The Court can also appoint someone to be your Representative if they think that you need an Order. This isn't common & the Court will take your wishes into account.

If you want to stay in the house you are living in with the Respondent, or you want to leave but need to take furniture with you, you can apply for a Property Order at the same time as a Protection Order.

The Court will make a Property Order if it's satisfied that the Order is necessary for your protection or is in the best interests of your child. There are different types of Orders covering different situations. It's helpful to get a lawyer to prepare the applications for Property Orders. You're not able to apply for these orders until you've turned 17. Nor can a Representative apply on your behalf.

**An Occupation Order - entitles you to live in a specified house without the Respondent. It applies to a house owned, or partly owned, by you, the respondent or both of you. If you live in a rented house you can apply for a Tenancy Order that will make you the sole tenant of a rented house.**

**An Ancillary Furniture Order - grants you the possession & use of all or any of the furniture & appliances in the house, regardless of who owns them. A Furniture Order allows you the possession & use of furniture & appliances that were in the house that you lived in with the Respondent. However, you must show that any furniture or appliance would be reasonably required for the place where you want to live.**

If you apply for a Protection Order & the Respondent is a guardian of the child involved, the Court will want to know what custody & access arrangements are in place.

The safety of children is very important when custody & access arrangements are considered.

If it's proven that the Respondent has used physical or sexual violence against a child or a child's parent, the Court will consider the child's safety before allowing custody or unsupervised contact with the Respondent.

Access arrangements can be made as a special condition of a Protection Order so that the Respondent can continue to see a child, provided it's safe. The things that will be considered when thinking about the safety of your child include the type of

violence used, the seriousness of the violence, how recently the violence occurred, & the likelihood of the violence happening again. The Court will usually appoint a lawyer to help it to work this out, or it may appoint a lawyer to represent the child. If Orders are made, it's a good idea to give a copy of the Order to any childcare service that your child attends.

## Finding a lawyer

**If you think you may have a legal problem but you're not sure if you need a lawyer, try calling your local Community Law Centre or Citizens Advice Bureau. These are good places to start if you want to work out if you need a lawyer, what for & how to find a suitable one. If you need legal representation, Community Law Centres often have lawyers who provide free legal advice. Some also provide advocacy & others can refer you to local lawyers. Citizens Advice Bureaux can help with the names of local lawyers & some have free legal clinics where lawyers come & give legal advice & other assistance. Your local District Law Society (in the white pages of the phone book) will have a list of lawyers & the areas of law they work in. Youthlaw is a free & confidential legal service for young people under the age of 25.**

### *Legal aid*

**If you need legal representation, you may be able to get 'legal aid' from the government to pay for the lawyer's fees. Whether you are eligible depends on how much money you have & the type of help you need, such as whether or not you have to go to Court. If, for example, you need to get a Protection Order, a Court application will need to be made. You can usually get legal aid for this. If you don't know whether you will qualify for legal aid, a Family Court lawyer should be able to help and will have the application form. If you want help to get a review of Work and Income's decision to refuse you a benefit, you're unlikely to get legal aid but will probably be able to get help from a beneficiary advocacy group or a Community Law Centre. Remember also that most lawyers are willing to help you with legal problems even if you don't have much money.**