

Intervention in Family Law Court Proceedings: Section 91B, Family Law Act

A section 91B request is an order made by the Family Court or the Federal Circuit Court requesting that the Secretary intervene in the family law proceedings.

You, as a delegate of the Secretary, are required to respond to this request by notifying the Court that:

- 1. the Secretary intends to intervene in the proceedings, or**
- 2. the Secretary does not intend to intervene in the proceedings.**

Your response must be provided to the Court by the date specified in the order (or if no date is specified within 4 to 6 weeks of the order). If a decision cannot be made by the date specified (or within 4 to 6 weeks if there is no date), because additional information is required or assessments are outstanding, the court should be provided with a written response indicating what DCJ is doing and the timeframe for when the decision will be made.

If you decide that the Secretary should intervene in the family law proceedings, the Secretary will become a party to the proceedings and will have an opportunity to file evidence and/or seek any orders for the child or young person.

What you need to consider

When considering whether to intervene in the proceedings, you must consider all of the information available. This includes considering the reasons why the Court has made a request which may require you to review the material filed in the family law proceedings or any reasons for judgment made by the Court.

If the Court has not made any order that allows DCJ to review the family law file, please contact your Child Law Legal Officer for assistance with seeking access to the Court's file.

The following matters should also be considered when making your decision:

- What has been DCJ's involvement with the child/young person to date
- The specific risk(s) DCJ is concerned about
- The enquiries that have been made or investigations/assessments to date
- If the Court provided reasons for requesting intervention, what enquiries have been made regarding the reasons/concerns
- Any safeguards which DCJ considers must be put into place for the child/young person
- The reason(s) why no Children's Court action has been taken
- Whether there is any outcome in the family law proceedings that DCJ would be concerned about

- Whether the outcome that DCJ wants to achieve would best be achieved within the family law proceedings or by commencing proceedings in the Children's Court.

DCJ has entered into a Memorandum of Understanding with the family law courts to facilitate cooperation, intervention in appropriate cases and information sharing between DCJ and the courts. Generally, initiating separate proceedings in the Children's Court should be avoided if there are already family law proceedings on foot. This is because it is generally not in the interests of children or parents for there to be multiple court proceedings. In addition where there are existing family law proceedings before the Court, there is generally already substantial evidence before the court.

The MOU also provides that it will not use any action under the Care Act as a means of appealing a decision made in family law proceedings that DCJ may disagree with. This means that if DCJ has concerns about a possible outcome or a proposed order being made, then DCJ needs to carefully consider its decision about whether or not to intervene in the proceedings - as it may be unable to commence Children's Court proceedings at a later date.

There are also occasions when the Court provides DCJ with reasons why intervention has been sought. This may include concerns that neither of the parties/parents may be considered suitable to care for the child. If the Court provides reasons, DCJ needs to show it has considered the reasons in any decision made.

If intervention is necessary

If FACS decides to intervene in the proceedings, your Child Law Legal Officer will make arrangements to brief the Crown Solicitors' Office (CSO) to appear. The CSO will prepare the necessary court documents including affidavits.

Your Child Law Legal Officer will require the following information:

1. the name and contact details of the Manager Casework who will provide instructions
2. the name and contact details of the current caseworker
3. the reasons why intervention is proposed
4. a brief summary of the key concerns DCJ has, and
5. the proposed orders (interim or final) that DCJ seeks, which may include:
 - i. assessments of the child/ren, the parents or any other person
 - ii. who should make decisions for the child
 - iii. who the child should live with
 - iv. who the child should spend time with (contact)
 - v. actions DCJ proposes to take without the need for orders, and

- vi. whether the DCJ file has previously been subpoenaed or documents provided to the Court pursuant to an earlier direction.

The CSO will also need a copy of your casework files. These do not need to be redacted.

Where possible, instructions to intervene should be given at least **14 days prior** to the date that a response is required so that the CSO can be properly instructed to appear.

If intervention is not necessary

If DCJ decides not to intervene in the proceedings, DCJ will need to write to the Court to explain why that decision has been made. Your Child Law Legal Officer will review and settle any correspondence that is to be sent to the Court explaining the reasons why DCJ does not wish to intervene.

You should also consider alternatives to intervention that may be of assistance to the court so that the court has all the necessary information to make final orders in the best interests of the child. This may include making a caseworker available to give evidence in the proceedings about DCJ's involvement with the family or proactively sharing information with the court under section 248 or Chapter 16A.

You will need to provide the following information in your draft correspondence:

1. the name and contact details of the Manager Casework who has made the decision that DCJ will not intervene
2. the nature of the allegations, any action that has been taken to assess and/or investigate the allegations/request to intervene and any concerns that DCJ has and any casework currently being done with the family
3. the reasons why intervention is not proposed, and
4. whether DCJ will make a caseworker available to give evidence in the proceedings on behalf of the Independent Children's Lawyer.
5. whether DCJ has previously provided documents or information to the court under a subpoena or previous order and/or if DCJ has additional or new information that DCJ will proactively share this information with the court. .

More information

If you have any further questions about what you are required to do in response to this request, please contact your usual Child Law Legal Officer.