



Child-led Protection Orders

An Information Resource
for Victim-Survivors

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Produced by The Backbone Collective

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Child-led Protection Orders – what we know so far

The Family Violence Act (2018) explicitly allows children and rangatahi/young people aged under 16 to apply for a Protection Order ([s62](#); those aged 16 and over can apply as an adult). So far, few children have done so, partially because few people know about the possibility. We raise it here as an option which children and protective whānau may wish to consider, in case other avenues for safety (such as a Protection Order application or Care of Children Act applications by the child's victim-survivor mother) are unsuccessful or closed.

Please note:

- This resource is not a substitute for legal advice, and we recommend getting legal advice if at all possible for a child-led Protection Order.
- We cannot give an indication of how child-led Protection Orders are viewed by the courts – partially because examples are so rare.
- If the child is under 16, and there is an existing parenting order in place, the Protection Order will not automatically be legally prioritised over the parenting order: the parenting order will still remain in force unless replaced, discharged or varied. However:
 - if the Protection Order application is successful, an order enforcing contact won't be made on a "without notice" basis (because of the limits of [s5\(a\)](#) & [s5A](#) in the Care of Children Act).
 - In addition, if there is a parenting order in place, there is scope to ask for the following in the child-led Protection Order application:
 - (i) a special condition for no contact ([s103](#) & [s104](#) of the Family Violence Act) or
 - (ii) possibly, an interim parenting order under [s105](#) (s105 appears to be intended for adult applicants seeking to protect a child of their family).

The information gathered in this resource is based on communications with Ministry of Justice policy officials, OIA requests, and information from lawyers and academics (we are very grateful to those who voluntarily gave their time and expertise). If your child has already applied for a Protection Order or is planning on doing so, and you would like to share the lessons learned to inform other victim-survivors and their children, please email us at info@backbone.org.nz and let us know.

This resource includes:

1. A description of child-led Protection Orders
2. Responses from Legal Aid Services regarding using legal aid for child-led Protection Orders
3. A flowchart of the child-led Protection Order process



This is a resource from The Backbone Collective

The Backbone Collective (est. 2017) is an independent registered charity in Aotearoa New Zealand which safely gathers insights from women victim-survivors of gender violence, to inform continuous improvement of government and service provider policy and practice regarding violence prevention and response. www.backbone.org.nz

Description of child-led Protection Orders

When granted, a child-led Protection Order works in the same way as a Protection Order does for an adult: it protects the applicant from the person the order is made against by listing conditions that person must follow. These conditions usually include: they can't use any family violence against you; they cannot contact you; and they can't have any weapons or a firearms licence.

The law is clear: "If the child expresses views on any matters related to the proceedings, the court must take account of those views." (Family Violence Act 2018, [s63](#))

- Usually, children aged under 16 legally require a representative to apply for the Protection Order on their behalf (although children can also apply to represent themselves – see below).
- Rangatahi/ young people aged 16 and over can apply for a Protection Order on their own, as if they were an adult (Family Violence Act [s62\(2\)\(b\)](#)).
- [Click here for Community Law information on Protection Orders](#)
- [Click here for Ministry of Justice information on Protection Orders](#)

If the child is under 16, who should be chosen as the child's representative?

- The representative should be carefully chosen, as they are not required to follow the instructions of the child, but may act entirely on the basis of their own assessment of the situation.
- It is often best to appoint a family member who is close but who is not a part of related proceedings. If the mother could be party to related proceedings, or a witness in them, then she may not be the best person to be the representative.
- The law states that an authorised approved organisation can be a representative. However, there are no organisations currently approved to be representatives for these applications.

What are the categories of representative?

- The categories of representatives include a "next friend" ([automatically appointed once paperwork is filed](#)) or a "litigation guardian". A next friend does not have legal representation and cannot apply for legal aid for themselves whereas a litigation guardian can apply for legal aid to be represented in court by a lawyer. We have been advised that it is best to appoint a "litigation guardian".

Does the representative need a lawyer?

- Backbone has been told that for the best chance of a successful outcome, it is vital for a litigation guardian to be represented by a lawyer, as it is a very technical and adversarial process. The court's expectations in respect of the quality of applications, affidavits, submissions are high.
- Legal aid is sometimes available for these applications - see section below.

What are the responsibilities of the representative?

- The representative files the Protection Order application on the child's behalf. This includes: (i) taking responsibility for establishing the grounds (explaining the reasons) for the Protection Order to the required standard, and (ii) including the necessary supporting evidence (eg affidavits). As above, the representative (litigation guardian) can engage a lawyer to assist.
- Sometimes the court may order costs in the event that the Protection order application is unsuccessful. If the court orders costs against the child then representatives usually need to take personal responsibility for them (see legal aid section below). Costs could

be indicated if the court thinks the child is being manipulated by others to pursue the application. For rates, see District Court Rules 2014 – **Schedule 4 (time allocations)** and **Schedule 5 (daily recovery rates)**. If the court decides there is some wrongdoing involved then solicitor-client costs or indemnity costs could be awarded. The court may also require a representative to contribute to the costs of a Lawyer for Child if one is appointed by the court.

What if the child is determined not to have a representative?

- To allow a child under 16 to apply for a Protection Order on their own behalf without a representative, the court would assess:
 - the child's competency (including considering whether they have an ability to understand the application they are making, and they are not being pressured or under undue influence)
 - whether their substantive application has merit (they are experiencing family violence) and,
 - whether, for whatever reasons, the child is best placed to bring the application and no one else.

- If the child does not have a litigation guardian or a next friend, the court can appoint a lawyer to represent the child under **s166** of the Family Violence Act to assist with the Protection Order. This is different from the "Lawyer for the Child".

Where is the "Lawyer for the Child" in all this?

- It may be possible for a child to have both a litigation guardian or legal representative/ lawyer pursuing the Protection Order application AND also a court-appointed "Lawyer for the Child" (see **s9B**, Family Court Act). The roles are different: where the Lawyer for the Child role appears to include considering the child's "welfare and best interests", the lawyer pursuing the Protection Order application is concerned with presenting the child's own views on the matter (via compiling appropriate material for the Protection Order application).
- The child's views are conveyed through the representative (litigation guardian/ next friend/ PO application lawyer) or by the child directly (which could include a meeting with the Judge known as a "judicial interview") or by the court-appointed Lawyer for the Child.

Responses from Legal Aid Services to Backbone questions regarding legal aid for child-led Protection Orders

1. Are children able to apply for legal aid? Or do children need a representative to apply for legal aid on their behalf?

A minor aged 16 years or older may apply for legal aid in their own right. Further information can be found on page 17 of the [Grants Handbook](#).

If the minor is under the age of 16, they will require a representative. This representative must be:

- a parent
- a guardian
- a person providing day to day care of the minor
- next friend or
- guardian ad litem. [litigation guardian]

Only the people listed in this answer can represent a minor under the age of 16. The representative must be 20 years old or older and of full mental capacity. The legal aid grant will be in the minor's name, but their representative must sign the application form. Further information can be found on page 18 of the [Grants Handbook](#).

2. What income details are required on the application form - the child's or the representative's?

If the minor is under 16 and financially independent, the minor's financial resources will be required. If the minor is under 16 and is not financially independent, the representative's financial resources will be required. Further information can be found on pages 37 and 38 of the [Grants Handbook](#).

3. We understand that proceedings that come under the Family Violence Act do not attract a legal aid debt. However, what would happen if the child's application under Section 62 spilled over into COCA proceedings (as is so often the case for women in Family Court proceedings) - would there be a legal aid debt then?

If proceedings are added to a grant that have a repayment obligation, the obligation may be waived by the Legal Services Commissioner if the minor is under 16 years of age. Otherwise, if the representative's resources are taken into account, they would be liable for any debt to be repaid. Any final repayments would be calculated at the end of the case. Further information can be found on pages 37, 38 and 146 to 150 of the [Grants Handbook](#).

4. If there is any legal aid debt, who would be responsible for that debt? The child, the representative, or the parents?

As mentioned above at question 3, if the minor is under the age of 16 then the representative's financial resources are taken into account, including any debt. If the minor is aged over 16 and financially independent, then they will be responsible for the debt.

Responses from Legal Aid Services to Backbone questions regarding legal aid for child-led Protection Orders

5. On what grounds could the representative/ child or parents contest the debt if one was made against them?

Legal aid debt can be written off by applying to the Legal Aid Debt team for a write off once the case is closed. More information about write offs can be found on page 155 of the [Grants Handbook](#) and at the following link: www.justice.govt.nz/courts/going-to-court/legal-aid/do-you-need-to-pay-back-your-legal-aid/apply-to-write-off-your-legal-aid-debt/

6. What information do you require about a representative on the application or at any later stage?

The information included on the application form will depend on the age of the minor. If the minor is aged over 16 years, then the application form will include their own details and they are able to sign the application form. If the minor is under the age of 16 then the application will include their details, but the financial details will be of the representative. The representative must also sign the form. The grant of aid will be in the name of the minor.

7. Do the child's parents/guardians have to consent to the application to legal aid?

Please refer to my answer for question 1. The minor's representative must sign the application form. *[Note: Backbone's interpretation of this answer is no, the child's parents/guardians do not have to consent; only the representative must consent if the child is aged under 16.]*

8. Will the child's parents be shown a copy of the application by anyone in Justice if they are not the representative? For example a child applies for legal aid for a protection order application against their abusive father. Would the father be given a copy or notified of the child's legal aid application or decision about that application?

For family cases, lawyers must advise the court and other parties to the proceedings that their client is legally aided under section 24 of the Legal Services Act 2011. Once Legal Aid Services receive the application form, it will not be provided to any third party without the consent of the minor and/or their representative. If a third party requests a copy under the Official Information Act 1993, the Ministry of Justice would have to consider if the release is justified.

Child-Led Protection Orders: The Process

