

# The Children's Court of New South Wales

## Contact Guidelines

### 1. Introduction

The Report of the Special Commission of Inquiry into Child Protection Services in NSW (the Wood Report) recommended that evidence based guidelines for contact orders be developed by the Children's Court to assist magistrates and to achieve a greater degree of consistency in the kinds of matters taken into account when making contact orders in care proceedings.

These guidelines have been developed by the Children's Court in response to that recommendation. As far as possible evidence based research has been taken into account in developing the guidelines. In developing the guidelines the Court has also drawn upon its accumulated expertise and experience as a specialist court in care and protection proceedings relating to children and young persons.

The guidelines are intended to assist magistrates (as well as practitioners and parties in care proceedings) to identify the kinds of matters to be considered by the court in making a decision regarding contact in care proceedings. These guidelines are not prescriptive or directive and they do not have the status of a Practice Note. They are to be read subject to relevant court authorities: for example, see **In the Matter of Jackson** [2003] CLN 9; **Re Helen** [2004] NSWLC 7; **Re Liam** [2005] NSWSC 75.

The guidelines are intended to be used only as a guide and as an education resource which may inform the court's decision regarding contact. The guidelines do not purport to refer to every matter which may be relevant in the making of a decision concerning contact.

### 2. The guidelines

#### 2.1 What are the purposes of contact?

- *Restoration to the care of a parent or other carer*

If an order that will result in restoring the child to the care of a parent is made, contact prior to restoration will need to be sufficiently frequent to maintain or develop the relationship between the parent and the child.

- *Maintenance of a relationship which has some positive features*

Some parents will be unable to care for their child but will nevertheless be able to love and affirm the child through contact and not undermine

the placement with another carer. Therefore, it is necessary to ask whether the frequency of contact with the birth family enhances or destabilises the current placement.

- *Maintaining a sense of identity regarding kinship and culture*

For some children the benefit of contact will be primarily that they understand who they are in the context of their birth family and cultural background. Contact might also help ensure that the child has a realistic understanding of who their parent is and that the child does not idealise an unsuitable parent and develop unrealistic hopes of being reunited with the parent.

### **3. Relevant matters in making a decision regarding contact**

#### **3.1 The child's best interests - contact must be looked at from the child's perspective**

The focus must always be on the needs of the child and what is in the best interests of the child. How will the child benefit from contact with parents and siblings? Some benefit may be achieved over a long term, i.e. by providing the foundation for a relationship between the child and the parent which will develop later.

#### **3.2 Restoration contact**

If contact is part of a restoration plan it must be sufficiently frequent to allow a positive healthy relationship between the child and the parent to be maintained or to develop. Contact will ideally occur in a situation that is as natural and relaxed as possible. Contact may need to be increased as restoration nears.

#### **3.3 How old and at what developmental stage is the child?**

Younger children will usually need more frequent contact for a shorter duration than older children to maintain a relationship. Older children may benefit more from less frequent contact of greater duration (and thus less intrusive in carer family, sporting, cultural or friendship activities).

#### **3.4 What are the child's wishes regarding contact?**

##### **3.4.1** *How does the child react to the contact that is occurring?*

Often a child's wishes can be deduced from their behaviour at contact. Older children should be able to express their views and care should be taken to ensure that this expression is not influenced. The child's legal representative will have an important role to play in this regard.

Negative reactions immediately before or following a contact visit may not necessarily indicate that the child is not enjoying and benefiting

from contact with their birth family. Contact visits tend to bring out strong emotions in both the child and the parents and negative behaviours exhibited by the child before, during or after contact may simply be an indication of their heightened emotional state. For recently removed children there may be some separation anxiety which will need to be considered.

**3.4.2** *Should the child be able to refuse to attend contact at a particular age?*

As a child matures their views about contact should be given increased weight. Great care should be taken about simply complying with the wishes of a young child who refuses contact when there is not an apparently sound reason. It may be difficult to get an older child to participate in contact that they do not wish to attend without causing greater harm than the benefit to be derived from the contact. The burden placed on carers to get an unwilling child to contact should also be considered.

**3.4.3** Older children asked to reflect on contact arrangements often wish that they had more contact than has occurred.

**3.5. How healthy is the attachment or relationship between children and their birth parents?**

**3.5.1** *How long was the child in the care of the parent before removal from their care?*

In most cases there will be a strong attachment between a child and a parent who has been their carer for a long time. In such cases, it is likely that the child will be adversely affected if contact becomes minimal in the absence of reasons to believe that the child will be harmed by contact. An infant or very young child will not have this strength of relationship.

**3.5.2** *How does the parent behave at contact?*

Some behaviour by parents at contact, if persisted with, should result in limited contact; e.g. attending contact substance affected, denigrating others (including carers and the Department/caseworkers), not actively interacting with their child or favouring one child over another.

**3.5.3** *Has the parent failed to attend contact without good reason?*

Persistent non-attendance will be harmful to a child whose expectations will be disappointed. This will often have impacts on their behaviour and possibly affect their placement.

**3.5.4** *Is there a strong relationship that is dysfunctional?*

For some children there will be a strong relationship with a parent that will be dysfunctional. The parent may encourage poor behaviour i.e. violence, challenging appropriate limits on behaviour, diet etc. It is important to look at the health of the relationship.

### **3.6 What are the practical considerations?**

#### **3.6.1** *Is there a substantial distance to be travelled?*

Younger children especially should not be subjected to long travel to attend contact.

#### **3.6.2** *Are there limitations on people travelling to contact – e.g. cost, disability?*

Sometimes a carer will live some distance from the parent either because the care could not be found in the local community or because a parent has changed address. Ordinarily the onus should be on the parent to travel to the contact rather than having the child travel, especially younger children. If a parent is to be travelling, cost issues might need to be addressed. Enquiries should be made as to whether the Department can assist the parent with the cost of travelling to contact.

#### **3.6.3** *Will there be disruption caused to the child or the household in which the child is living?*

Children and carer families will have their own commitments and patterns involving such things as sport, cultural activities, spending time with friends and church attendance. It is important to ensure that a child is not made to feel greatly different from others in the household because they are at contact rather than participating in carer family events. It is also important that the child does not resent attendance at contact because it takes them away from something that they enjoy doing.

### **3.7 What are the arrangements for contact with siblings, extended family and other significant people?**

It is very important to see children in the context of their extended family and not just their parents. Particular attention should be paid to supporting sibling relationships. Even if extended family members are unable to care for a child it is still likely that contact will be beneficial - providing information and family and cultural identity. Existing healthy relationships should be supported even if a child is to remain in out of home care.

Balancing extended family contact and placement stability and normality requires careful consideration. For example, what would be usual contact with grandparents if the child were not in care?

In some situations provision for continued contact with a carer will be very important even though a child is being restored to the care of a parent or moving to another carer.

### **3.8 What indirect contact arrangements are appropriate?**

- *Do arrangements need to be made regarding phone calls, cards and letters, email and social networking (e.g. facebook/MySpace/Twitter/Skype)*

Contact can occur in other ways than face-to-face. In some situations it will be necessary to limit or prohibit indirect contact or to ensure that it is supervised. It may also be necessary to prohibit a parent from making any reference to the child on a social networking website. Alternatively, especially if the parent is at some distance from the child, the use of electronic communication should be encouraged.

### **3.9 Are there special events that should be provided for – birthdays, religious events, special cultural events?**

Events such as these are important ways of maintaining identity and heritage. It should also be recognised that carer families will wish to celebrate some of these events as well. Often an order that contact occur near a particular date will be the best outcome.

### **3.10 What length of order is realistic?**

#### **3.10.1** *How will the needs and circumstances of the child change over time?*

A long-term contact order may create problems as a child's circumstances change, particularly if the contact is to be relatively frequent. School, sport, cultural activities and friendship dynamics are just some of the factors which change over time. As a child gets older less frequent but longer contact may be appropriate.

The need for contact to be supervised may also change as the child and the parents' circumstances change.

#### **3.10.2** *How will the needs and circumstances of the carers/parents/others change over time?*

Carers are sometimes unknown at the time a contact order is sought. In cases where carers are known their attitude to contact should be taken into account in determining what contact orders should be made, as some research suggests that their attitudes can have a powerful influence on the quality and frequency of contact.

### **3.11 What does the Care Plan contain regarding contact?**

- *Is there a need for a specific order or is the Care Plan sufficient?*
- *Does the Care Plan include provision for determining location of contact?*
- *Will a written contact plan be provided to the parent/child/carer/others and will the contact plan include contact rules?*

For many parents and children it is difficult to predict future circumstances, particularly if a specific long-term carer has not yet been identified. Care should be exercised in ensuring that an unduly limiting contact order is not made. It may be preferable to ensure that plans for contact are clearly set out in the Care Plan without contact orders being made. Even if an order is made it is likely to be for a short duration rather than until the child turns 18 so the Care Plan should contemplate as much of the longer-term future as possible.

### **3.12 Aboriginal and Torres Strait Islander Families**

Contact, whether with parents or with extended family, is likely to assist in maintaining cultural identity when an Aboriginal child is placed outside of kinship or their Aboriginal community. If family contact is limited an appropriate cultural plan should be included in the Care Plan.

### **3.13 What is appropriate for an interim contact order?**

In making an interim order the court must, to some extent, predict the likely outcome of the proceedings and make orders that are in keeping with this. Nevertheless, interim orders can also assist transition. For example, it may be appropriate to provide for more frequent contact in an interim order than will be contemplated long-term. It may also be appropriate to provide for declining or increasing amounts of contact that are in keeping with a move to the likely outcome.

In a case where at the early stages of the proceedings it is difficult to predict the outcome, careful consideration should be given as to whether an interim contact order should be made at that early stage or whether the Department should make contact arrangements in conformity with its assessment of risks to the child.

### **3.14 Are there real risks to the safety, welfare and wellbeing of the child?**

#### **3.14.1 *Should contact be supervised?***

Where a child has been removed from his or her family as a result of physical or sexual abuse, contact visits will most likely need to be supervised in order to ensure the safety of the child. If there has been trauma caused by a parent a child may not feel safe unless contact is closely supervised.

In cases involving allegations of physical or sexual abuse of a child by a parent, very careful consideration should be given to the risk that **any** contact with the parent (even supervised contact) may be

psychologically damaging to the child: see **Should contact be prohibited or restricted?** below at **3.14.5**

If there is a real risk that a parent is likely to be substance affected, affected by uncontrolled mental illness or is likely to behave in a way at contact which will be detrimental to the child or the placement, general supervision will be needed.

In some situations where restoration is planned contact can be used to help a parent improve their parenting skills. It would need to be specifically planned that this would be the case.

### **3.14.2** *Who should supervise contact?*

- i. **Other family or friends.** There is often no reason that contact needs to be supervised by a caseworker or contact worker organised by the Department. Grandparents or family friends may be suitable *if there is evidence that they are going to be sufficiently protective and reliable*. It is more likely when contact is supervised by other family members or friends that timing and location of contact will be flexible and more suited to a child's needs than if organised by the Department. It may also mean that the contact can take place in the first language of the child and the parent if it is not English. In cases where contact is to be supervised by a person other than the Director General or delegate, both the person having contact and the person to supervise the contact must consent before an order can be made: section 86 (4) of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act).
- ii. **The Director General or delegate.** In some situations the risk to the child will require that professional contact supervisors are involved. However, before an order can be made for contact to be supervised by the Director General or delegate, the Director General or delegate must consent: section 86 (2) of the Care Act.

### **3.14.3** *Are written guidelines necessary e.g. re non-denigration of others, not being substance affected, communication in language other than English?*

For some parents it will be necessary to provide rules governing such matters as advance confirmation of attendance, the importance of not denigrating others whilst attending contact, that the contact may be cancelled if the parent attends substance affected, that the parent is not to communicate with the child in a language not spoken by the contact supervisor, etc. This will make it absolutely clear that there may be

consequences (for example, contact suspended or reduced) if the rules are broken.

**3.14.4** *Should contact with parents and others occur separately from each other?*

If there is a real risk of conflict between adults present at contact, separate contact should be ordered, or contact rules provide for the cessation of contact if conflict arises.

**3.14.5** *Should contact be prohibited or restricted?*

In some circumstances a child will experience trauma at contact because of

- i. trauma that they have suffered at the hands of or with the acquiescence of a parent, or
- ii. distressing behaviour by a parent at contact – e.g. intoxication, verbal abuse, favouritism towards one child, denigration of carers or the Department/caseworkers.

As a last resort (in rare cases) any form of contact may need to be prohibited for a period of time or subject to considerable restriction. This should only be done after careful assessment of the risk of distress or harm to the child.

Judge Mark Marien SC  
**President**

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