

# Legal Answers for Permanent Care Families

## Fact Sheet 3: Contact Arrangements

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### Why is contact with birth families allowed?

The governing principles are set out in the *Children, Youth and Families Act 2005 (Vic)* (CYFA) and the *United Nations Convention on the Rights of the Child 1989* (CROC), to which Australia is a signatory.

CROC promotes the right and need of the child to know their background. Article 9.3 of the Convention provides that a child has the right to “maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests”.

In determining what decision to make or action to take in the best interests of the child, there are many considerations for the Court, including:

- the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child; and
- the need for contact arrangements between the child and the child's parents, siblings, family members and other persons significant to the child.

When deciding whether a proposed carer is suitable, the Court will take into account a variety of “prescribed matters”, including the person's appreciation of the importance of contact with the child's birth parents and family and the exchange of information about the child with the child's birth parents and family.

In making a Permanent Care Order (PCO), the Court

- must include conditions that it considers to be in the best interests of the child concerning contact with the child's parents; and
- may include conditions that the Court considers to be in the best interests of the child concerning contact with the child's siblings and other persons significant to the child; and
- in the case of an Aboriginal child, may include a condition incorporating a cultural plan for the child.

### Is contact supervised?

This will depend on the conditions of the order. If at the time that a PCO is made, the concerns about the child's parents are not significant, then the Court is unlikely to impose a requirement that their contact with the child be supervised. If contact is ordered to be supervised, then it will usually be subject to the carer's discretion. This enables the carer to loosen the restrictions on the parent or parents if the concerns subside over time.

Contact is often supervised by the Department of Human Services (DHS) at the time that a child is removed from parental care. A PCO does not envisage DHS having ongoing involvement in the supervision of contact, and for this reason DHS is unlikely to recommend a PCO to the court until a carer is able to independently facilitate and, if necessary, supervise a child's contact with his or her parents.

## What is the role of agencies and contact centres?

During the proceedings the carer will have had to demonstrate that he or she is able to facilitate the child's contact independently of assistance from DHS or one of its contracted agencies. Neither are usually obligated by the Court to play a meaningful role once the order has been made.

As DHS ceases its case management practice as soon as a PCO is made, DHS and its contracted agencies usually withdraw their ongoing support once the order is made.

However, depending on the agency that has been involved with the child in question, some ongoing assistance with contact arrangements and/or a post legalisation service may be provided. It is advisable to check with these agencies before, or as soon as possible after, the PCO has been granted. There may be a fee charged for these services.

Another option available is for the carer to access the support of Children's Contact Services (CCS). These services provide safe, neutral and child-focused venues for supervised visits and changeovers to take place between children and their parents and other significant persons in the child's life. To access Children's Contact Services locations in your area, see the Australian Children's Contact Service Association website: <http://accsa.org.au>.

## How much contact is the carer obligated to facilitate?

"Contact" is defined in the CYFA, as "the contact of a child with a person who does not have custody of the child by way of –

- a visit by or to that person, including attendance for a period of time at a place other than the child's usual place of residence; or
- communication with that person by letter, telephone or other means –

and includes overnight contact".

The carer is obliged to facilitate, at a minimum, the amount and/or frequency of contact set out in the conditions of the Court Order. A carer may facilitate additional contact if he or she believes it to be in the child's interests.

A court order will often *set a minimum frequency* – for example, a minimum of four to six visits per year, but this will depend on what is in the best interests of the child and on the circumstances and age of the child. A carer may agree to additional contact if they believe it to be in the child's best interests. It is unusual for a Court Order to stipulate a maximum frequency of contact.

If a child has had frequent contact with his or her parents over a long period of time, then the Court will most probably find that a drastic reduction in contact will be harmful. In these circumstances, the Court is likely to endorse a more moderate reduction.

It is unusual, although not unheard of, for the Court to include a condition on a PCO creating an entitlement for extended family to have a minimum frequency of contact.

If the carer believes that these visits are not in the best interests of the child, they can apply to vary the conditions in the order.

If PCO appoints a "kith-and-kin" carer, (where the carer is a blood relative of the child), the order often contains a condition providing a greater amount of contact.

## Can the carer claim financial assistance with the cost of facilitating contact if the parents live far away?

If this has not been dealt with in the court order, and a parent has moved away once the PCO has been granted, it is the expectation of the Court that the parent arrange to return to the home town or city of the child to visit the child.

## Can the order be changed?

The child, carer, birth parent, or the Secretary of DHS can apply to the Children's Court to vary (change) the conditions of the PCO or revoke (cancel) the PCO.

If an order has become unworkable, then the Court will entertain an application to vary it. Examples of this include circumstances:

- where the carer does not facilitate contact at the frequency stipulated in the conditions of the court order. The child's parents (or the child, if he or she is of age to instruct a lawyer) may then make an application to the Court to vary the order and ask the Court to make different arrangements;
- where the order does not contain a provision for the parent's contact with the child to be supervised, but significant concerns about the parent arise. The carer may then make an application to vary the Order to enable the carer to supervise the contact.

From the age of 10, a child will usually have separate legal representation in the Children's Court. This is also recognised as the age at which the child can instruct a lawyer, unless they lack the maturity to do so (in which case the lawyer must act in the child's best interests). In exceptional circumstances, the Court may decide that it is in the best interests of a child under the age of 10 to be legally represented.

The Court may, if satisfied that it is in the best interests of the child to do so, vary any of the conditions included in the order or add or substitute a condition but must not make any change in the custody or guardianship of the child.

Note, the parties involved in the case will be bound by the original conditions of the order until the Court orders a change. Therefore, if an order does not provide for contact to be supervised, then the carer is not entitled to insist upon supervision until the order has been changed.

If the application is for the revocation of the order, the Court may revoke the order in whole or in part.



### About these fact sheets

This fact sheet was produced as part of Legal Answers For Permanent Care Families, a joint project of Peninsula Community Legal Centre Inc. and Permanent Care and Adoptive Families Inc. Project Worker – Saskia Rijfkoegel. April 2014.

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