

# A Guideline for Family Law Courts and Children's Contact Services



January 2007

# **A guideline for family law courts and children's contact services**

A guideline to enhance the relationship between the Family Law Courts and Children's Contact Services and to facilitate the appropriate use of Children's Contact Services by the Family Law Courts.

JANUARY 2007

This guideline has been developed by a working group comprising representatives of:

- Children's Contact Services
- The Family Court of Australia
- The Federal Magistrates Court
- Legal Aid Commissions
- The NSW Local Court
- The Law Council of Australia – Family Law Section
- Australian Government Attorney-General's Department

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## INTRODUCTION

A number of courts in Australia are involved in disputes arising under the *Family Law Act 1975 (Cth)* (*'the Family Law Act'*). Those courts are principally the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court (*'the Family Law Courts'*) although, particularly in rural areas, Local or Magistrates Courts also play a significant role. The purpose of the Family Law Courts is to assist clients to resolve disputes or to determine those disputes. To achieve their purpose in family disputes the courts provide a range of services or procedures integrated within a case management environment.

From July 2007, changes to the *Family Law Act* will require that other than in special circumstances (for example, violence) clients will, before commencing proceedings in the Family Law Court, have attempted to resolve their dispute in a Family Relationships Centre (FRC) or by other accredited dispute resolution services. The Family Law Courts provide judicial determination in contested matters, and may direct clients to dispute resolution services/practitioners. The Family Law Courts seek to put children and families first in the delivery of their services.

### Children's Contact Services

Children's Contact Services aim to minimise a child's exposure to conflictual or unsafe situations. They provide safe, neutral and child-focused venues for facilitated visits and changeovers to occur between children and their parents and other significant persons in the child's life (for convenience in this guideline referred to as 'parents'). They assist parents who are experiencing conflict to manage these arrangements. Children's Contact Services work with families to encourage positive interaction between children and their parents, and to support the strengthening of these relationships. Over time, and where possible, parents are encouraged to move to self-management of their arrangements for spending time with the child.

### The Purpose of this Guideline

This guideline seeks to inform the referral process from the Family Law Courts to Children's Contact Services, leading to more informed, appropriate referrals, thus optimising beneficial outcomes for children and for parents who are experiencing conflict with their post-separation parenting arrangements. The guideline also provides suggested mechanisms for dealing with the issues commonly arising during a family's use of a Children's Contact Service and which involve both the Family Law Courts and the Children's Contact Service. Finally the guideline seeks to facilitate the Family

Law Courts and Children’s Contact Services assisting families’ move to independent arrangements to maintain meaningful relationships between children and their parents.

This guideline will be made available to the Family Law Courts and other courts administering the *Family Law Act* for their adoption and implementation. (For the purpose of this guideline these courts are referred to as ‘the Court’). This guideline will be published on relevant internet websites to provide maximum exposure, and be available at Children’s Contact Services, courts and family relationship services. The guideline will be reviewed and if appropriate, amended to meet the needs of children and parents using Children’s Contact Services from time to time.

## PRINCIPLES UNDERPINNING GUIDELINE

The guideline is based on the principle that the Court and Children’s Contact Services have the best interests of the child as their paramount consideration (Section 60CA *Family Law Act*).

The Court and Children’s Contact Services wish to implement the commencement and/or maintenance of a meaningful relationship between a child and his or her parent and other people significant to the child’s care, except when it would be contrary to the child’s best interests (s 60B *Family Law Act*) by facilitating the child spending time with his or her parent.

It is the goal of Children’s Contact Services to provide a neutral environment focused on the child and not the dispute of the parents before the Court.

## UNDERSTANDING THIS GUIDELINE

This guideline is not a legal document. It is designed to assist the Court and Children’s Contact Services. It is intended to have an educative role. The guideline itself comprises a number of parts. The major parts of the guideline are as follows:

Part A – Factors to be taken into account by the Court when referring families to a Children’s Contact Service

Part B – Matters to be considered during a family’s involvement with a Children’s Contact Service

Part C – Moving to self-management.

Annexed to the guideline to facilitate understanding is Schedule 1. This schedule provides an explanation of a number of legal terms and other terms referred to in the guideline. Also annexed to the guideline in Schedule 2 are model orders which have been drafted to assist judicial officers, lawyers, and parents to ensure appropriate orders are made.

## GUIDELINE

### General Matters

- 1.1 The guideline covers matters to be considered before a referral of a family is made by the Court to a Children's Contact Service, during a Children's Contact Service's involvement, and moving on from the Children's Contact Service's intervention.
- 1.2 The guideline has been developed to assist those involved with families in conflict over time a child spends with a parent, particularly the Court, Children's Contact Services and government agencies providing funding and administration of accredited Children's Contact Services ('government agencies'). These organisations realise that commitment to the principles and practice set out in the guideline are likely to promote the best interests of children, to whom the services are primarily directed, and will assist their families in a practical and cost effective way.
- 1.3 The guideline recognises that there are differences in facilities, resources and experience amongst Children's Contact Service providers. It also recognises lack of universal relevant knowledge in the Court about Children's Contact Services and their facilities, and in Children's Contact Services about the Court.
- 1.4 The guideline seeks to raise awareness and to improve the knowledge of judicial officers, court personnel and Children's Contact Services staff about the processes and procedures of the respective institutions and services.
- 1.5 The guideline seeks to promote the appropriate provision of information for referral of a family by the Court to a Children's Contact Service.

- 1.6 The Court and Children’s Contact Services recognise that for some families the use of a Children’s Contact Service may be appropriate to maintain and/or facilitate time spent by a child with a parent where it is not possible or practical to otherwise provide for such interaction. Considerations may include, but are not limited to:
- Lack of parenting skills or experience by one parent
  - Introduction of, or reintroduction of time, with a parent where the assistance of an experienced third party is required
  - Situations of intractable conflict between parents affecting children during change over provided in a parenting order, and
  - Allegations of abuse affecting a parent and/or child.
- 1.7 The guideline recognises that the families utilising the services of a Children’s Contact Service are frequently families with complex and often multiple problems.
- 1.8 The Court appreciates that a notation about findings of fact or allegations made in a case might be useful for the Children’s Contact Services to determine what level of supervision of a child and parent is appropriate. For example, a notation might say:
- The Court notes that the mother has made an allegation the father has physically abused the child but no findings have yet been made in relation to that allegation, or
  - The Court notes there is currently no meaningful established relationship between the child and the mother.
- 1.9 The guideline recognises the Court’s ability to make suitable orders is limited to issues, based on evidence, which have been put before it by the parents and/or an Independent Children’s Lawyer as to why a particular order should or should not be made. For example:
- An order may prevent a parent giving a child food at the Children’s Contact Service if there is evidence before the court that the child suffers a food allergy, or
  - An order may prevent the child being photographed or filmed on video by a parent if there is evidence that the photography is likely to be used for an improper purpose or has caused distress to the child in the past.



- 1.10 The Court and Children’s Contact Services recognise that parents sometimes mistakenly assume orders made by the Court are binding on the Children’s Contact Service. The Court recognises that the Children’s Contact Service is not bound by its orders although the Children’s Contact Service will endeavour, if the parents meet its criteria, and it has appropriate facilities and resources, to provide services as set out in the Court orders. These matters are addressed in the model orders adopted by the Court, a copy of which is attached to this guideline.
- 1.11 The guideline recognises that generally the use of a Children’s Contact Service is only of benefit to a child for a defined period, and that long term use of a Children’s Contact Service may not be in a child’s best interests.
- 1.12 When assessing the length of time a family may use the services of Children’s Contact Service a number of factors may be taken into consideration, such as:
- The understanding that it is in a child’s best interest for each parent to have a meaningful involvement in the life of the child
  - The Service’s policies
  - The demands on the service
  - The recommendations of a counsellor or psychologist
  - Whether the court order is interim or final
  - The views of the child or young person
  - The particular circumstances of some parents
  - The parent’s willingness to co-operate in the interests of the safety and well-being of the child and all others involved, and
  - The nature of the service provided (for example, whether it includes both facilitated changeover and supervised visits).
- 1.13 The guideline seeks to ensure the use of age appropriate services for children involved with Children’s Contact Services.
- 1.14 Children’s Contact Services will endeavour, subject to available resources, to provide appropriate facilities for children and parents from culturally and linguistically diverse backgrounds. The Court should take into account the special needs of such children and parents when making parenting orders, including the ability or otherwise of the Children’s Contact Service to provide appropriate facilities and resources for the child and his or her parents.

- 1.15 The Court and Children’s Contact Services recognise the importance of the role of the Independent Children’s Lawyer, when appointed, and how he/ she can facilitate communication about the Court’s orders to the Children’s Contact Service or by bringing recommendations of the Children’s Contact Service to the attention of the Court.
- 1.16 The guideline recognises the importance of cooperation with, and assistance from, parents’ legal representatives to ensure that orders which best reflect the needs of a child are made.
- 1.17 The guideline may be of assistance in relation to families who are not subject of proceedings under the *Family Law Act* but who are involved with a Children’s Contact Service by reason of a care and protection order made under relevant State legislation. However, it has primarily been developed with a view to supporting referrals made under the *Family Law Act*.

## PART A

### FACTORS TO BE TAKEN INTO ACCOUNT BY THE COURT WHEN REFERRING FAMILIES TO A CHILDREN'S CONTACT SERVICE

#### 2.1 Judicial Checklist

- 2.1.1 Orders will, so far as possible, be consistent with the model orders available on the judicial benchbook and attached to this guideline.
- 2.1.2 The following matters should be addressed when making an order for supervised visits or changeover:
- Is the proposed Children's Contact Service able to offer the supervision required (that is, does it have the capacity)?
  - Is there a sufficient 'time-lag' in the order to permit the Children's Contact Service to properly undertake its intake procedure?
  - Is the Children's Contact Service open at the time of the proposed orders (many services operate for limited days of the week)?
  - Does the Children's Contact Service have age appropriate facilities for the children (some services are conducted at weekends in local church halls and may not have suitable facilities for infants)?
  - Will the Children's Contact Service accept the parents? This may involve security issues for staff and other users of the Service (the parent/s or other proposed participant may not meet the Service's intake criteria, or the parent/s may not be prepared to adhere to the particular service's regulations)
  - Are the participants able to meet the costs of the Children's Contact Service?
  - Does the order permit variation? (Service providers may assess that the period in the supervised environment is too long for a child, or conversely a child may be enjoying visits and the visits could be extended or moved to self-management)

- Should the order include other services provided at the centre at which the Children’s Contact Service operates (some services are able to provide counselling and family dispute resolution services ‘in-house’ often with a view to parents moving away from supervised visits, to changeover only and finally independent time spent with a child)?
- Does the order provide that the Children’s Contact Service may terminate its services (many Children’s Contact Service providers say parents insist their court orders compel the Service to provide supervised contact notwithstanding the Service believes it is inappropriate for supervised visits to continue)?
- Because families using Children’s Contact Services tend to be ‘high conflict’, there is a greater need for precision in drafting the orders (that is, if the Service is being used for changeover during school holidays the order should be specific, what day is the holiday time with one parent to commence and conclude).

## PART B

### MATTERS TO BE CONSIDERED DURING A FAMILY'S INVOLVEMENT WITH A CHILDREN'S CONTACT SERVICE

#### 3.1 Are the Parenting Orders in the Best Interest of the Child?

3.1.1 The Children's Contact Service must consider during a child's use of the Service:

- Any actual physical or emotional harm suffered by the child as a result of time spent with the parent under a parenting order or parenting plan
- Any views expressed by the child having regard to the child's age and state of maturity
- Whether the continuation/type of service provided is in the child's best interests, and
- Whether the parenting orders made for supervision are/are not meeting the best interests of the child or whether they require variation.

3.1.2 Where appropriate the Children's Contact Service should:

- Communicate views and recommendations including any recommendations to relist the matter before the Court to the Independent Children's Lawyer if such a lawyer has been appointed, and/or the parents using the Service, and their lawyers, if any
- Consider requesting the Independent Children's Lawyer to confer with the child to ascertain the child's view
- Terminate the provision of service in accordance with the Children's Contact Service agreement signed by the Service and the parents, and
- Comply with any mandatory reporting requirements to the relevant statutory authority.

#### 3.2 Safety

3.2.1 The priority of a Children's Contact Service is the safety and well-being of children, parents and staff. As Children's Contact Services are child-focused, the safety and well-being of children is the paramount concern.

- 3.2.2 Children's Contact Services will maintain screening and assessment procedures including separate face-to-face interviews with all parents prior to acceptance into the service.
- 3.2.3 Maximising safety requires a Children's Contact Service to continually assess risk factors throughout the family's use of the Children's Contact Service, establish emergency procedures and seek cooperation of all parents at each point of involvement with the Children's Contact Service.
- 3.2.4 Each parent applying to use the Children's Contact Service is expected to engage with the Service in a cooperative, respectful manner and adhere to the particular Children's Contact Service's guidelines.
- 3.2.5 The Children's Contact Service may decline to offer a position to a parent or may withdraw the Service once commenced if these requirements are not met.

### **3.3 Children's Contact Service Agreement**

- 3.3.1 Children's Contact Services should respond to parents' requests for use of the service in a timely manner taking into consideration each parent's literacy, cultural and social needs. Information should be provided to parents or their lawyers on the documents they are required to bring to the intake process.
- 3.3.2 Children's Contact Services require each parent to complete an application to use the service. Some Children's Contact Services may also require parents to complete a formal referral document.
- 3.3.3 Children's Contact Services reserve the right to decline a referral if use of the Service will pose an unacceptable risk to a child, staff or other service users.
- 3.3.4 Children's Contact Services have comprehensive safety and risk management procedures in place. However, no guarantee can be given that a child will not be abducted or that a child will be returned from a changeover. It is important that Children's Contact Services are provided with information, by notation in court orders and/or provision by the Court of relevant documents such as a judgment or a Family Report, or by an Independent Children's Lawyer, or by a parent in matters where there is risk or a prior history of inappropriate behaviour including a breach of a parenting order.

- 3.3.5 An intake with each parent is required to assess the capacity of the Children's Contact Service to perform the service as ordered or requested. The procedures for intake include separate interviews with each parent.
- 3.3.6 At the intake and assessment process the following documents and information should be provided by the parents or their legal representatives:
- A copy of the current parenting order (including any consent order) made by the Court or any parenting plan
  - A copy of the current Family Violence Order (if applicable)
  - A Family Report or other documents if ordered by the Court to be disclosed to the Children's Contact Service (refer to 3.8 page 16)
  - Any information that may impact on the provision of the service; this may include information about a child or parent's health condition, and
  - Each parent's driver licence or other photo identification.
- 3.3.7 Parents will be expected to sign an agreement often referred to as a Service Agreement, setting out the terms and conditions for use of the Children's Contact Services which include:
- Appropriate child-focused conduct by parents during service use, including non-denigration of the other parent
  - Cooperation with staff at all times
  - Safety and risk management procedures, including separate entrances and waiting areas, staggered arrival and departure times, and different arrival and departure routes
  - Grounds for withdrawal of service
  - Confidentiality, limits to confidentiality and reporting practices, and
  - Punctuality and regular attendance.
- 3.3.8 Parents should sign the written agreement prior to the commencement of the service. An explanation informing each parent of the terms and conditions of using the Children's Contact Service should be made taking into consideration each parent's literacy, cultural and social needs. The explanation should include the reasons why a supervised visit or changeover may be temporarily suspended or withdrawn.

3.3.9 Each child should participate in an orientation or familiarisation visit if the child is of sufficient age and capacity. Discussions with the child should be conducted in a manner appropriate to the child's developmental stage.

3.3.10 Orientation/familiarisation visits for children are important to:

- Familiarise the child with the Service's resources and amenities, staff and procedures
- Learn how the child feels about the proposed supervised visit or changeover, so the required level of support can be determined
- Help the child to develop a sense of security and trust in the staff
- Encourage the child to develop confidence and positive expectations about the proposed visit
- Develop a safety signal between the child and staff to be used if and when the child experiences discomfort and/or fear, and
- Assist the Children's Contact Service to further determine how the child and parents may be best supported.

## 3.4 Levels of Supervision

### Changeover

3.4.1 The Service will generally have the same level of supervision of changeover for all parents, unless both parents agree that they would like to take steps towards independence from the Children's Contact Service, in which case individual arrangements will be made (for example, parents meeting at the Service as a first step). Such a change should be reflected in a parenting plan or consent orders made by the Court.

### Supervised visits

3.4.2 Most families will fall somewhere on a continuum between requiring highly vigilant supervision and requiring low vigilance supervision. The nature and extent of risk factors in each case will determine the level of supervision. Provisions contained in orders from the Court, the Service's increasing knowledge of the family and input from parents and from other professionals should determine the level of vigilance and whether it needs to be increased or decreased over a period of time. In some cases the parents themselves



will determine that supervision is no longer needed and in other cases this will be decided by the Court when Court orders are in place. Parents should be advised by their lawyers, the Independent Children’s Lawyer if appointed, or the Service to incorporate changed arrangements into a parenting plan or consent orders to avoid future difficulties including possible contravention proceedings in the Court.

#### 3.4.3 In assessing risk the Children’s Contact Service will consider:

- Proven or alleged incidents of violence towards the child or other persons
- Proven or alleged sexual abuse
- Abductions or fears of abduction
- The existence of a relationship between the parent spending time with the child
- The mental health of the parent to be supervised
- Alcohol and/or other drug use
- The needs of the individual child
- The level of understanding that the parent to be supervised has of the needs of their child and in particular his/her knowledge and understanding of their own child, and
- The cooperation and attitude of both parents.

#### 3.4.4 The degree of vigilance will help determine:

- How many supervisors are required
- Whether the parent and child should always be within the hearing distance of the supervisor
- Whether the parent and child should always be within sight of the supervisor
- Whether visits can be offsite (if the Service has provision for this)
- Whether a parent can feed an infant or change a nappy
- Whether extra restrictions are put into place
- The frequency and length of visits, and
- Whether more than one family can be supervised by one worker.

## 3.5 Risk Assessment – Suspension of Service

- 3.5.1 Children’s Contact Services shall assess and identify on a regular and ongoing basis the nature and extent of any risk and the family’s supervision needs, taking into account the safety needs of the child, the child’s need for time with the visiting parent, and the effect of interrupting parent/child visits.
- 3.5.2 Children’s Contact Services will suspend or withdraw a supervised visit or changeover if the Service determines the risk factors present jeopardise the safety of any person.
- 3.5.3 Grounds for suspension or termination of a service may include:
- One or both parents fail to comply with the Service Agreement
  - Inappropriate conduct by a parent during service use
  - Angry or threatening behaviour
  - Behaviour which appears to be affected by substance use or abuse, or
  - A child’s refusal to have a visit after presentation in accordance with a Court order.
- 3.5.4 Children’s Contact Services shall have a review process which provides for the Service to discuss with the parent in a formalised manner, the problems which have lead to the actual or impending suspension or withdrawal of the service. If agreement cannot be reached with the parent that ensures sustainable resolution of the problem/s, then the service can be suspended or withdrawn.

## 3.6 Referral Back to the Court

- 3.6.1 The *Family Law Act* does not contain any provision which permits persons other than parties to proceedings to bring a matter back to court. The *Family Law Rules 2004* do permit intervention in proceedings by third parties (Part 6.2). It is unlikely that a Children’s Contact Service would seek to intervene in proceedings, but in an extreme case may consider it appropriate to do so. An intervener has the rights and obligations of a party, and a costs order may be made in favour of, or against an intervener.
- 3.6.2 The Courts will promote awareness of the guideline and use of the model orders to judicial officers and family consultants to facilitate appropriate orders which provide for review of the time a child spends using a Children’s Contact Service, and whether the orders made require modification from time to time.

- 3.6.3 The Independent Children’s Lawyer in carrying out his/her obligations under the *Family Law Act* should liaise with the Children’s Contact Service to determine whether a matter needs to be brought back to the Court.
- 3.6.4 The relisting of a matter in the Court should occur:
- Prior to the due date for expiration of an order which provides for a limited period of supervised time spent by a parent or person/s with a child
  - Prior to the due date for expiration of an order which provides for handover of a child between parents or a person/s
  - When the Children’s Contact Service elects to terminate its service provision, or
  - If the Children’s Contact Service has formed a view that the order requires variation at an earlier time than provided in the order.

### **3.7 Training Children’s Contact Service Staff**

- 3.7.1 Staff of Children’s Contact Services work in a complex operating environment. In addition to the professional qualifications required by each Children’s Contact Service it is recognised that Children’s Contact Service workers require content knowledge and specialist skills in the following areas:
- Performing the tasks associated with the provision of supervised visits and changeover including assessment and a holistic response to individual parent/child needs (including those from indigenous or culturally and linguistically diverse backgrounds)
  - Using a child-focused case management approach which includes preparing the child for the visit, ensuring the safety of all parties by adequate security controls, monitoring contact, recording observations, supervising and terminating visits, and providing reports to the Court (in accordance with this guideline) when necessary
  - Managing intake assessment and screening processes including a risk assessment
  - Working with voluntary and mandated parents who are involved in ongoing entrenched conflict, and may have family violence, mental health, and drug and/or alcohol issues
  - Specialist communication skills for building strong relationships, knowledge about parenting skills and child development, as well as the needs of victims of abuse, and workplace health and safety requirements

- Skills to manage risks that may arise for children of different developmental stages and/or ages from contact with the visiting parent, including parental and/or family conflict, abuse and/or neglect, substance abuse, family violence, mental health issues or interruption of contact
- Observing the terms of Court orders
- Complying with a properly served subpoena, and
- Monitoring proper record keeping.

3.7.2 Qualifications, skills and knowledge should be consistent with the competency-based accreditation standards and training packages for workers in Children’s Contact Services, and where relevant, family counsellors and family dispute resolution practitioners.

## 3.8 Legal Restraints on Publication of Judgments, Expert Reports and Family Reports

3.8.1 Parties to family law proceedings are generally entitled to have their proceedings conducted so they are able to maintain their privacy, and that of their children. Except in exceptional circumstances the Courts are open to the public. Admission of children under the age of 18 years is not permitted except with leave of the Court. The Courts’ judgments are published on the internet after the parties’ names and identifying material has been ‘anonymised’.

3.8.2 Section 121 of the *Family Law Act* prohibits publication by any person of an account of proceedings which identifies:

- A party to the proceedings
- A person related to or associated with the party to the proceedings
- A witness to the proceedings.

3.8.3 There are a limited number of exceptions to the prohibition in s 121 (eg legal practitioners) or **if release is approved by the Court**. This means:

- Children’s Contact Services should not receive from parents, or other sources, judgments, affidavits, Family Reports or expert report **unless** such provision has been authorised by **order of the Court**
- This provision does **not** preclude a Children’s Contact Service having a copy of a Family Violence Order.

3.8.4 Judicial officers should consider when making orders the appropriateness or otherwise of authorising the release of a judgment, Family Report or expert report to the Children’s Contact Service to facilitate the Service providing appropriate services for the parent and the child. The release of such documents may be particularly important if there is relevant information in the documents about safety issues for the child and/or a parent. The Independent Children’s Lawyer (if any) should provide the information to the Children’s Contact Service.

### 3.9 Record Keeping

3.9.1 Record keeping in a Children’s Contact Service plays an important role for the Service, parents and the Court.

3.9.2 A Children’s Contact Service’s records should include:

- A copy, signed by all relevant parties, of the agreement between the Service and the parents
- Intake information
- Non-identifying data capture as required by the Department of Families, Community Services and Indigenous Affairs
- Any relevant Family Violence Order
- Incident reports
- Any correspondence received from, or copies of any correspondence addressed to the Court, the parent’s legal representatives or the Independent Children’s Lawyer, or any relevant government department concerning the child and the parents, and
- Record of the date and time of attendance of the child and the parents to the Children’s Contact Service.

3.9.3 The Children’s Contact Service should keep confidential, except as required by law, the records including the records referred to in 3.9.2.

3.9.4 The Children’s Contact Service should provide legible photocopies of its records to the Court if it is served with a subpoena to produce records.

3.9.5 The Children’s Contact Service should have a proper document retention policy for the safekeeping of its records in accordance with the law.

3.9.6 Staff of the Children’s Contact Service should be trained in proper record keeping including maintaining records on a regular and timely basis.

## 3.10 Report Writing

- 3.10.1 To date, Children's Contact Services have not adopted uniform practices in respect of writing reports for use in court proceedings.
- 3.10.2 The Court and the Children's Contact Services acknowledge that some Services have workers with appropriate qualifications and expertise to undertake report writing for the Court as an expert witness.
- 3.10.3 Chapter 15 of the *Family Law Rules 2004* and Division 15.2 of the *Federal Magistrates Court Rules 2006* set out the duties and obligations of an expert providing an opinion to the Court. The Court rules provide that normally a single expert will be appointed. The parents or an Independent Children's Lawyer may apply to the Court for the provision of the appointment of an expert, or the Court of its own motion may appoint such an expert.
- 3.10.4 Except in exceptional circumstances, unless an expert is appointed as provided in 3.10.3, a Children's Contact Service which is requested by a parent, the parent's lawyer, or an Independent Children's Lawyer to provide a report, shall provide a report limited to the following:
- Dates and times of the child and the parents' attendances at the Service including the intake and assessment process
  - A factual note of any observations including critical incidents whilst the child and parents were using the Service, and
  - Whether the parents have complied with the Service Agreement.
- 3.10.5 Nothing in this section of the guideline derogates from the Children's Contact Services' mandatory obligations at law to report any relevant child abuse or suspected abuse to the relevant State or Territory child protection authority (for example, the Department of Community Services in NSW).

## 3.11 Subpoena

- 3.11.1 Children's Contact Services may be served with a subpoena. Complying with a subpoena can impact adversely on the ability of a Children's Contact Service to provide its core service.
- 3.11.2 Schedule 1 to this guideline provides an explanation of the three types of subpoenas which may be issued by the Court, and other relevant rules in respect of subpoenas. Children's Contact Services should be familiar with the requirements of the rules.

- 3.11.3 Judicial officers should, if requested to authorise the issue of a subpoena to a Children’s Contact Service, consider carefully whether such a subpoena is necessary. This is particularly important if it is a subpoena to order a witness to give evidence having regard to the impact on the provision of core service by the Children’s Contact Service.
- 3.11.4 Where possible and appropriate judicial officers should consider any application to permit any Children’s Contact Service worker subpoenaed to give evidence, giving such evidence by telephone, and where possible, at a date and time arranged in consultation with the Children’s Contact Service. It is noted that the Court may not always be able to accede to an application to take evidence by telephone, and the court sitting times may not always permit the evidence to be adduced at a time convenient to the Children’s Contact Service worker.

## **3.12 Provision of Other Services, Referrals to Other Services**

- 3.12.1 It is recognised by the Court and Children’s Contact Services that the families accessing the service are likely to require other assistance by way of complementary services to establish or re-establish meaningful relationships between a child and his or her parent. Such assistance may include participation in the Parenting Orders Program, access to individual counselling, participation in appropriate group information sessions or group therapy, parenting skills courses, anger management courses, and access to relevant information. It is recognised by the Court and Children’s Contact Services that a Children’s Contact Service may not have the facilities to supply all the complementary services required by the parent/s and the child/ren.
- 3.12.2 The Children’s Contact Service and the Court will endeavour to ensure that parents and children accessing the service are provided with appropriate complementary services if available, or if not available ensure that appropriate referrals are made for the parent/s and the child/ren.
- 3.12.3 To facilitate the implementation of referrals discussed in 3.12.2 the Court shall, where appropriate, use its family consultants to locate suitable post-separation parenting programs and/or other services, and the Children’s Contact Services shall institute and maintain up-to-date referrals.

3.12.4 In referring families or a family member to complementary services the following factors may be taken into account:

- Court orders to address the needs of the parents and purpose of the therapeutic intervention
- Needs of the family member/s (for example, counselling and/or education, programs or services to assist with family violence, mental health or drug and alcohol issues)
- Availability and location of the proposed services
- Parent's capacity to pay for the proposed services
- Cultural appropriateness of the proposed services
- Readiness of the family member/s to attend the complementary services.



## PART C

### MOVING TO SELF-MANAGEMENT

- 4.1.1 It is acknowledged that many families using a Children’s Contact Service should move to self-management in time. It is also acknowledged that for some children supervised visits may, if continued indefinitely, not be in the best interest of a child and if the child cannot maintain a safe face-to-face relationship with a parent the Court may need to determine whether time with the other parent should be for a fixed or indefinite period or cease permanently.
- 4.1.2 The Court, and if appropriate, with input from a Children’s Contact Service, should endeavour to frame orders which will enable a family to move to self-management if it is in the child’s best interests to do so.
- 4.1.3 The Children’s Contact Service should, in an appropriate case, advise the parents or the Independent Children’s Lawyer that in his/her opinion the child would benefit from:
- Moving to visits or time with a parent outside the Service’s premises (although still subject to some supervision), or
  - Ceasing to use the Children’s Contact Service and spending independent time with the child (for example, after a period of re-establishment of a relationship where no safety issues are involved).
- 4.1.4 If contrary to the recommendations in this guideline, there are no provisions in the Court’s orders for reviewing the supervised visits or changeover the Children’s Contact Service should advise the parents or the Independent Children’s Lawyer that, in its opinion, the existing orders require variation, and recommend the parents return to the Court or consider a parenting plan. Notwithstanding the provisions in this guideline, in those circumstances the Children’s Contact Service shall be at liberty to provide the parents or the Independent Children’s Lawyer with a letter stating that, in the Children’s Contact Service’s opinion, the matter should be relisted before the Court to review the order either for self-managed time with the child, suspension of the supervised visits, or other Court order.

- 4.1.5 The Court should endeavour to ensure that any case with orders providing for supervised contact in a Children’s Contact Service is relisted as soon as possible before an appropriate judicial officer after a request for relisting to vary an existing order is made to the Court.
- 4.1.6 The Court and the Children’s Contact Service should consider and recommend to the parent any ongoing appropriate assistance (for example, by way of ongoing counselling or therapy) which would support maintenance of the meaningful relationship between the child and the parent with whom the child is not then substantially living.

## SCHEDULE 1 – DEFINITIONS/EXPLANATORY MATERIAL

**To facilitate understanding of this guideline the following definitions are relevant:**

### **a. Children’s Contact Services**

Accredited Children’s Contact Services are funded and approved under the Family Relationships Services Program (FRSP). These Services assist the children of separated parents to establish and maintain relationships with a parent they do not live with, especially where there is conflict or concerns about safety. The Services help with handover of children and provide supervision of visits. Organisations funded under this Program are required to meet approval requirements and to comply with core standards for management and quality of the service. There are 15 approval requirements that consist of standards and attributes which measure compliance. The following are particularly relevant to this guideline:

- Statement of values
- Entry of Practitioners
- Supervision of Practitioners
- Training and Development
- Safety of Staff
- Accessibility of services
- Managing client feedback
- Client confidentiality
- Client Safety

### **b. Family Consultants**

Family consultants are appointed by the Court to assist and advise the parties to a proceeding on children’s matters. They prepare Family Reports and give evidence on the proceedings to the Court. Family consultants provide the Court with recommendations and information about appropriate services and programs to which the Court can refer the parties.

### c. Family Relationship Centres

Family Relationship Centres (FRCs) provide information and referral to people at all stages of family relationships and offer individual and group sessions, and joint dispute resolution to help separated parents reach agreement on issues concerning their children without going to court. The Centres will assess client needs and will refer to services as appropriate.

The Centres are required to engage with a wide range of community groups and services and to build collaborative relationships with these groups and services. These relationships will underpin effective referral practises with both local service providers (for example, family support agencies, community welfare and crisis services, early intervention services, Children's Contact Services, Parenting Orders Programs and other family dispute resolution services) and national services (for example, Child Support Agency and Centrelink). The Centres will also refer matters involving violence, child abuse, child abduction or urgency to relevant agencies, or to the Court.

### d. Family Violence and Abuse

The *Family Law Act* Section 4(1) provides a definition of family violence as follows:

*family violence* means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal well-being or safety.

Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal well-being or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal well-being or safety.

*abuse*, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or
- (b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.

The Family Court of Australia has a comprehensive Family Violence Strategy which can be accessed on the court's website ([www.familycourt.gov.au](http://www.familycourt.gov.au)).

### e. Family Violence Orders

Orders for the personal protection of a party are generally made under State and Territory legislation to protect a person from family violence. These include Protection Orders, Apprehended Violence Orders (AVOs) and Domestic Violence Orders (DVOs). These orders may prohibit one parent from coming within a prescribed distance of another parent, or stalking or harassing the other parent. Under the *Family Law Act* such orders are defined as *Family Violence Orders* (Reg 12BB, Schedule 8). If appropriate the Court can make an order which is inconsistent with the family violence order (see s 68N). Often family violence orders will contain a provision which allows parties to come into contact with each other only for the purpose of delivering or collecting a child under the provisions of an order made under the *Family Law Act*. The Court's order will override the family violence order.

### f. Independent Children's Lawyer

The *Family Law Act* s 68LA provides for the appointment of an Independent Children's Lawyer, and sets out the general nature of the lawyer's role.

The Independent Children's Lawyer:

- Is not the child's lawyer. He/she does not act on the child's instructions
- May be employed by a Legal Aid Commission or be a Legal Practitioner in private practice
- Is **appointed by the Court** either by the Court itself or on the application of one of the parties
- Will generally be appointed in cases of actual or alleged child abuse
- Will provide evidence to the Court, independent of the parties, including evidence of the child's views
- Specific duties of the Independent Children's Lawyer include:
  - a. acting impartially
  - b. ensuring the child's views are fully put before the Court
  - c. analysing reports
  - d. endeavouring to reduce trauma for the child

- e. facilitating resolution to the extent it is in the best interest of the child; but he/she
- Is not required to disclose to the Court information communicated to him/her by the child, but may disclose that information to the Court if in the child's best interests to do so.

### g. Indigenous Clients and Children

The *Family Law Act* contains special provisions a court must take into account when making parenting orders about an Aboriginal child or a Torres Strait Islander child. These are:

- The right to enjoy his or her culture, and
- The likely impact the proposed parenting order will have on that right.

### h. Parenting Orders—Interim, Final and Consent

Interim parenting orders are orders for a child to spend time with another person or persons (generally a parent) [these orders were formerly known as interim contact orders].

These are orders made by a court during the course of proceedings usually before a final order is made. They can be recognised by the use of the words 'until further order'/'pending further order' or 'until (specified date)' at the commencement of the order.

Interim orders:

- Are defined in s 64B of the *Family Law Act*
- Are generally made **without** a full hearing at which allegations have been tested
- May be made by a judicial officer or by consent (see page 27)
- Should bear a court seal and be signed by an officer of the Court
- **May** post date a final order if fresh proceedings are commenced after previous 'final' proceedings
- May vary or discharge previous orders in whole or part, and
- May be overridden by a subsequent parenting plan (s 64D) unless this is prohibited by an existing parenting order because of exceptional circumstances.

## Final parenting order for child to live with or spend time with a person or other persons (generally a parent)

These are orders which finally dispose matters in dispute between parties. They can be made by consent or after a defended hearing. They can be **distinguished** from an interim order because they will **not** contain words ‘until further order’/‘pending further order’ or ‘until (specified date)’ at the commencement of the order.

Final orders:

- Are defined in s 64B of the *Family Law Act*
- May expressly discharge all previous parenting orders
- Should bear a court seal and be signed by an officer of the Court, and
- May be overridden by a subsequent parenting plan (s 64D) unless this is prohibited by an existing parenting order because of exceptional circumstances.

## Consent Orders

These are parenting orders made by the Court with the consent of the parties. Such orders may be either interim or final orders. They have the same **force and effect** as if made by a court at a defended hearing. They can be **recognised** by the use of the words ‘**By Consent**’ at the commencement of an interim or final order.

Consent orders:

- Can be varied or discharged by a further consent order or an order of the Court
- May be overridden by a subsequent parenting plan (s 64D) unless this is prohibited by an existing parenting order because of exceptional circumstances
- Will usually have a ‘Minute of Order’ attached to them bearing the court seal and signed by a judicial officer, and
- Will be signed by the parties, and their legal representatives and the Independent Children’s Lawyer (if any).

## i. Parenting Plans

A parenting plan is an agreement between parents of a child which is in writing, signed and dated and deals with matters such as the person with whom a child shall live, and the time a child is to spend with another person or persons (s 63C). Advice about parenting plans may be given by a legal practitioner, family counsellor, family dispute resolution practitioner or a family consultant (some of these roles are defined

in Part 11 of the *Family Law Act*). A parenting plan is not enforceable although a plan may be taken into account in contravention proceedings. As noted above a parenting plan can override an earlier interim or final parenting order.

#### **j. Parenting Orders Program (previously Contact Orders Program)**

The Parenting Orders Program (previously known as the Contact Orders Program) assists separating families in high conflict over parenting arrangements. In many cases parents have already been through the court process to have parenting arrangements determined. Some may have previously breached orders made by the Court. The courts may encourage or order parents to attend this program in conjunction with the family's use of a Children's Contact Service.

The Parenting Orders Program uses a variety of child-focused and child-inclusive interventions to respond more effectively and flexibly to families' needs and is designed to work where possible with all members of the family. It involves a case worker intensively managing parents and getting them to understand the effect their conflict is having on their children. An important part of the program is when the parents hear about what the children want and what developmentally they need. Family members, including children, can receive a range of services such as counselling, mediation and group work education as part of the Parenting Orders Program.

#### **k. Subpoena**

A subpoena is a 'witness summons issued by the Court that requires a named person to attend the Court to give evidence or to bring documents, books or other things to the Court' (Explanatory Guide to the *Family Law Rules 2004*). The purpose of subpoena, legal obligations created by subpoena and their operation is explained in a brochure produced by the Family Court of Australia ('Subpoena: Information for a person requesting the issue of a subpoena' and 'Subpoena: Information for named person (served with a subpoena)'; also see the Court's websites). Chapter 15 Part 3 of the *Family Law Rules 2004* and Part 15 Division 3 of the *Federal Magistrates Court Rules 2001* set out the relevant rules relating to subpoena.

There are three types of subpoenas:

- A subpoena requiring a person to attend court and give evidence
- A subpoena to produce documents
- A subpoena requiring a person to attend court and give evidence and to produce documents.



The subpoena is issued by the Court. Normally a subpoena must be served not less than 7 days prior to the date the documents are required to be produced, but sometimes the Court may shorten this time.

Other relevant matters are:

- There are differences in the *Family Law Rules 2004* (Family Court of Australia) and the *Federal Magistrates Court Rules 2001* in respect of subpoenas
- A sealed copy of the subpoena must be served on the named person by hand
- The person served must be provided with money to reasonably comply with the subpoena (conduct money). The subpoena does **not** require compliance if not served in accordance with the rules and/or conduct money is not provided
- Documents may be produced to the Court 2 days prior to the hearing
- Documents must be produced to **the Court** not the issuing party
- If the person named in the subpoena to give evidence is **not** required the issuing party may excuse the person (rule 15.24 *Family Court Rules*)
- The subpoena remains in force until compliance, or the issuing party excuses a person, or the completion of the hearing
- A person who wishes to challenge a subpoena must attend court on the court date to apply for an order
- Photocopies of documents may be produced instead of original document but there must be an affidavit attached to the photocopies verifying the accuracy of the documents
- The person who produces the documents must inform the Registry Manager whether the documents are to be returned or if the documents can be destroyed
- Objection can be taken to inspection of or photocopying of documents but such objection must be made **in writing** 10 days before the court date
- A person may be compelled by the Court to produce a document for the Court to determine whether a claim for legal professional privilege is made out
- If documents produced become an exhibit in the proceedings they will not be returned to the producing party until at least 28 days after the hearing or an appeal but must be returned no later than 42 days (unless written permission has been given to destroy the documents)
- Non-compliance with a subpoena may result in the issue of a warrant for the person's arrest and ordering the person to pay costs for non-compliance, and
- A court may on application make an order for the payment of any loss or expense incurred in complying with a subpoena.

## SCHEDULE 2

### Model Orders for Supervised Visits and Changeover at a Children's Contact Service

- ( ) Each party must:
- (a) contact the <name and address of Contact Service> ('the Contact Service') within 7 days and arrange an appointment for assessment for suitability for supervised <time a child spends with the parent, or other person/persons/changeover in accordance with a parenting order>;
  - (b) attend the assessment;
  - (c) comply with any appointments made by the Contact Service for supervised <time a child spends with the parent, or other person/persons/changeover in accordance with a parenting order>;
  - (d) comply with all reasonable rules of the Contact Service; and
  - (e) comply with all reasonable requests or directions of the staff of the Contact Service.
- ( ) If after the assessment intake procedure the Contact Service is unable or unwilling to provide <supervision of time a child spends with the parent, or other person/persons/changeover in accordance with a parenting order> as set out in order <number> then each party and the Independent Children's Lawyer has leave to restore the matter to the list on <number> days written notice to the other party and to the Court.
- ( ) If after assessment the parties are accepted by the Contact Service as suitable for supervised <time a child spends with the parent, or other person/persons/changeover in accordance with a parenting order> <name> is to have contact with <the child/ children/name(s) and date(s) of birth> each <specify e.g day of week/each weekend/ each second (weekend or specified day of week)> at times nominated by the Contact Service and such visit is to <occur at the Contact Service/ be implemented by (name) collecting the child/ren from the Contact Service at the start of visit and returning the child/ren to the same place at the end of visit>.

- ( ) In the event that the Contact Service offers supervised <time a child spends with the parent, or other person/persons/changeover in accordance with a parenting order> only at times which are less regular than specified in order <number> then the visit shall occur at the times which are offered by the <name of Contact Service>.
- ( ) <For supervised time a child spends with the parent, or other person/persons/changeover in accordance with a parenting order> The visit under order <order number> is to be supervised by the Contact Service and <(name) must pay the reasonable fees for the supervision on each occasion of supervision OR each of the parents must pay one half of any reasonable fees for the supervision on each occasion of supervision OR each party must pay the reasonable fees charged him or her by the Contact Service for each occasion of supervision OR (specify the proportion of fees each party is to pay)>.
- ( ) <Name> must <cause some other responsible adult known to the child and nominated beforehand in writing to the Contact Centre, the other parties and the child's/children's representative to> deliver <the child/ren> to and collect <the child/ren> from the <name of Contact Service> at the times specified by the <Name of Contact Service> and on each occasion promptly leave the building and the vicinity.
- ( ) <Name of contact parent> must not attend the Contact Service or its vicinity before the time the time the parent or person/s spends with a child is to start and must promptly leave the Contact Service and the vicinity at the conclusion of the period to be spent with the child.
- ( ) If the <Contact Service> <name of centre> during the currency of these orders declines or is unable to continue to provide its services, or the <Contact Service> recommends in writing to the parties a variation of these orders, then either party <or the Independent Children's Lawyer> may on 7 days written notice to the other party and the Court restore the matter to the list.
- ( ) If during the currency of these orders the parties <and the child's/ Independent Children's Lawyer> agree in writing to vary these orders the parties have leave to list the proceedings <in chambers urgently> for consent orders to be made.

- ( ) The period of the time a child spends with the parent or person/s provided in these orders may vary by reason of the closure of the Contact Service's services during school and public holiday periods, and in such event, the next occasion for the child to spend time with the parent or person/s shall occur at times when the services can be provided by the Contact Service.
- ( ) The <Contact Service> may recommend the parties or either of them to participate in a program or programs, and in that event either party may relist the matter for mention on 3 days notice.
- ( ) **<Name of party/parties> must participate in <name of course or primary dispute resolution facility> provided by <name of service provider>.**

